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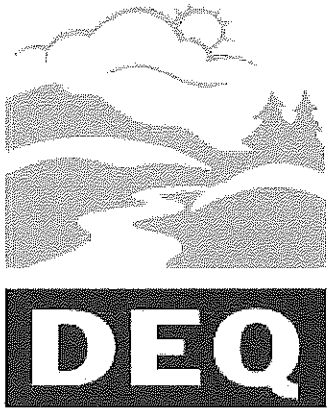
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 05/04/2001



State of Oregon
Department of Environmental Quality

Environmental Quality Commission Meeting Agenda

May 3-4, 2001
Department of Environmental Quality
Conference Room 3A
811 S.W. Sixth Avenue, Portland, 97204

Thursday, May 3, 2001 Beginning at 1:30 p.m.

A. **Action Item**: Contested Case No. WMC/SW-HQ-98-143 regarding Northwest Plastics Recovery, Inc.
B. **Action Item**: Contested Case No. WMC/SW-NWR-98-060 regarding Pacific Western Company
C. **Informational Item**: Potential Legislation Regarding City of Portland Clean River Plan

Friday, May 4, 2001 Beginning at 8:30 a.m.

The Commission will hold an executive session at 8:00 a.m. on pending litigation involving the Department and adoption of general permits. Executive session is held pursuant to ORS 192.660(1)(h). Only representatives of the media may attend but will not be allowed to report on any deliberations during the session.

D. **Approval of Minutes**
E. **Commissioners' Reports**
F. **Director's Report**
G. **†Rule Adoption**: Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)
H. **Informational Item**: Lane Regional Air Pollution Authority
I. **Discussion Item**: Development of Performance Appraisal Process for Director
J. **Informational Item**: Oregon Watershed Enhancement Board Strategic Plan
K. **Informational Item**: Enforcement Issue Follow-up to November 2000 EQC/DEQ Summitt

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

Note: Because of the uncertain length of time needed for each agenda item, the Commission may hear any item at any time during 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 participants agree. Those wishing to hear discussion of an item should arrive at the beginning of the meeting to avoid missing the item.

Public Forum: The Commission will break the meeting at approximately 11:30 a.m. on Friday, May 4, 2001 for public forum if people are signed up to speak. Public forum is an opportunity for citizens to speak to the Commission on environmental issues and concerns not part of the agenda for this meeting. Individual presentations will be limited to five minutes. The Commission may discontinue public forum after a reasonable time if a large number of speakers wish to appear. Public comment periods for Rule Adoption items have closed and, in accordance with ORS 183.335(13), no comments may be presented to the Commission on those agenda items.

The next Commission meeting is scheduled for June 21-22, 2001, in Portland, Oregon.

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

State of Oregon
Department of Environmental Quality Memorandum

Date: April 2, 2001

To: Environmental Quality Commission

From: Stephanie Hallock, Director S. Hallock

Subject: Agenda Item A, Contested Case No. WMC/SW-HQ-98-143 regarding Northwest Plastics Recovery, Inc., May 3-4, 2001 EQC Meeting

Appeal to EQC

Northwest Plastics Recovery, Inc. petitioned for Commission review of the Hearing Order for assessment of civil penalty, dated March 3, 2000 (Attachment G). The Order found the company liable for a civil penalty of $800 for failing to submit the 1997 Oregon Material Recovery Survey to the Department.

Background

Findings of fact made by the Hearings Officer are summarized as follows:

Northwest Plastics Recovery has owned and operated a plastics recycling business based in Tacoma, Washington since at least 1992 that accepts plastics from Oregon and other states. The company filed an Oregon Material Recovery Survey with the Department in 1994 and 1996. On December 30, 1997, the Department sent the 1997 survey form to the company for completion and return.

After allowing time for survey return and sending a reminder post card, the Department issued a Notice of Noncompliance to Northwest Plastics Recovery on May 7, 1998, requiring completion and return of the survey. The company did not submit the survey. On March 15, 1999, the Department issued a Notice of Assessment of Civil Penalty and Department Order assessing a $800 penalty for failing to return the survey.

On May 1, 1999, Northwest Plastics Recovery appealed the Notice and requested a hearing. A hearing was held on December 2, 1999. During the hearing, the company stated it believed the reporting requirement did not apply to its business because it is based outside of Oregon, in Tacoma, Washington. The company also stated it believed the survey completion requirement to be unauthorized, burdensome, and duplicative.

The Hearings Officer held that Northwest Plastics Recovery was subject to Oregon jurisdiction because it collected materials from Oregon, violated the Department's Oregon Material Recovery Survey requirements by failing to submit

the required annual survey, and was liable for a penalty of $800.

On June 23, 2000, Northwest Plastics Recovery filed a timely appeal of the Order, taking exception to the following findings:

- Northwest Plastics Recovery violated the requirement to submit an Oregon Material Recovery Survey for 1997, and
- Northwest Plastics Recovery was liable for a civil penalty.

EQC Authority

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

Alternatives

The Commission may:

1. As requested by Northwest Plastics Recovery, reverse the Order, which found Northwest Plastics Recovery in violation of the Department's Oregon Material Recovery Survey rules and liable for a civil penalty.
2. As requested by the Department, uphold the Hearings Officer's determination that Northwest Plastics Recovery is in violation and liable for a civil penalty in the amount of $800.

The Commission is reviewing the Order, including the recommended findings of fact and conclusions of law, and may substitute its judgment for that of the Hearing Officer except as noted below.[1] The Order was issued under 1999 statutes and rules for the Hearing Officer Panel Pilot Project,[2] which require contested case hearings to be conducted by a hearing officer appointed to the panel. The Commission's authority to review and reverse the hearing officer's decision is limited by the statutes and rules of the Department of Justice that implement the project.[3]

The most important limitations are as follows:

1. The Commission may not modify the form of the Order in any substantial manner without identifying and explaining the modifications.[4]
2. The Commission may not modify a recommended finding of historical fact unless it finds that the recommended finding is not supported by a

[1] OAR 340-011-0132.
[2] Or Laws 1999 Chapter 849.
[3] *Id.* at § 5(2); § 9(6).
[4] *Id.* at § 12(2).

preponderance of the evidence.[5] 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.[6]

Rules implementing the 1999 statutes also have more specific provisions for how Commissioners must declare and address any ex parte communications and potential or actual conflicts of interest.[7]

In addition, a number of procedural provisions are 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.[8]
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.[9]

Attachments

A. Letter from Mikell O'Mealy, March 20, 2001
B. Answer Brief of the Department on Appeal, July 19, 2000
C. Petitioner's Brief and Exceptions to Order, June 23, 2000
D. Letter from Susan Greco, May 30, 2000
E. Petition for Commission Review, May 25, 2000
F. Notice of Remailing, April 26, 2000
G. Hearing Order Regarding Violation and Assessment of Civil Penalty, March 3, 2000
H. Exhibits from Hearing of December 2, 1999
   1. Notice of Hearing, November 15, 1999
   2. Notice of Contested Case Rights and Procedures
   3. Answer and Request for Hearing, May 1, 1999
   4. Notice of Violation, Department Order, and Assessment of Civil Penalty, March 15, 1999

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[5] *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.
[6] *Id.* at § 8; OAR 137-003-0655(4).
[7] OAR 137-003-0655(5); 137-003-0660.
[8] OAR 340-011-132(3)(a).
[9] *Id.* at (4).

5. Oregon Material Recovery Surveys Memorandum, December 31, 1997
6. Oregon Material Recovery Surveys Postcard, March 20, 1998
7. Notice of Noncompliance, May 7, 1998
8. 1996 Oregon Material Recovery Survey
9. 1994 Oregon Material Recovery Survey (admitted over objection)

Available Upon Request OAR Chapter 340, Division 11, 12; OAR 340-090-0100(5), ORS 459A.050(6), ORS Chapter 468

Report Prepared By: Mikell O'Mealy
Assistant to the Commission

Phone: (503) 229-5301

Attachment A

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

March 20, 2001

Via Certified Mail

Eric J. Norton
NW Plastics Recovery Inc.
2367 Lincoln Avenue
Tacoma WA 98421

Larry Edelman
Department of Justice
1515 S.W. Fifth Avenue, Suite 410
Portland OR 97201

RE: Case No. WMC/SW-HQ-98-143

The appeal in the above referenced matter has been set for the regularly scheduled Environmental Quality Commission meeting on Thursday, May 3 and Friday, May 4, 2001. 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) 229-5301 or (800) 452-4011 ex. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy
Rules Coordinator

cc: Larry Cwik, DEQ Office of Compliance and Enforcement

Attachment B

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: Department of Environmental Quality v. Northwest Plastics Recovery, Inc., Respondent.	ANSWER BRIEF OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY ON APPEAL TO THE COMMISSION

BACKGROUND

This matter results from Respondent's refusal to complete an Oregon Material Recovery Survey as required by ORS 459 A.050 and OAR 340-90-100 (5). The Survey must be completed by all privately operated recycling and material recovery facilities. The Survey is designed to enable the Department of Environmental Quality (DEQ) to track compliance with, and progress under, Oregon's recycling laws. Hearing Record, Exhibit 5

Respondent contends that, as an out-of-state corporation, it is not subject to Oregon's Survey requirement.

DEQ issued a Notice of Violation, Department Order and Assessment of Civil Penalty to Respondent on March 15, 1999. On May 1, 1999 Respondent requested a contested case hearing.

A hearing was held before a Hearing Officer on December 2, 1999.

The Hearing Officer rendered a decision and issued a Hearing Order on March 2, 2000 (Attachment A). The Hearing Order upheld the Department's assessment of an $800.00 civil penalty against Respondent for its failure to complete and submit the Survey.

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Department of Justice
1515 SW Fifth Ave, Suite 410
Portland, OR 97201
(503) 229-5725

Respondent, by letter of June 23, 2000, appealed the Hearing Officer's decision and order.

ARGUMENT ON APPEAL

Respondent continues to argue that it is not subject to Oregon's Survey requirement because it is not an Oregon Corporation. Respondent's Exception Letter of June 23, 2000. The location of Respondent's facility, however, is not determinative of its legal obligations. The issue is whether the law in question is intended to apply to Respondent and, if so, whether Respondent has sufficient business contacts with Oregon to provide a reasonable basis for assertion of jurisdiction by Oregon to enforce its regulatory requirements.[1]

Based on the hearing record the Hearing Officer found correctly that:

> The Respondent's activities in Oregon fell within the requirements of OAR 340-90-100 (5). The Respondent was a private recycler engaged in accepting scrap material for recycling from various industries. Some of those industries were in Oregon. The Respondent was actively involved in soliciting business from Oregon and in collecting materials. In collecting materials, the Respondent even on occasion sent its truck to Oregon to pick up the waste material. Hearing Order p. 4.

Contrary to the implication of Respondent's arguments, Oregon is not attempting to regulate the conduct of Respondent's business in Washington. Rather, by doing business in Oregon, Respondent has acceded to Oregon requirements as to the conduct of its business in Oregon.

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[1] This test is fundamentally the same as that for establishing personal jurisdiction of a state as to out-of-state businesses. See *International Shoe Co. v. Washington*, 326 US 310 (1945); *State ex rel. Hydraulic Servocontrols Corporation v. Dale*, 294 Or 381 (1982).

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Completion of the Survey is a requirement applicable to any business engaged in any recycling or material recovery activities in Oregon regardless of location of the facility.[2]

Oregon is a leading state with respect to recycling, and it has a number of laws related to recycling which impose reporting requirements on both in-state and out-of-state businesses in a manner similar to the Survey requirement.[3] These types of reporting laws are essential to provide the information necessary to assure that Oregon's tough recycling mandates are achieved.

The Department requests that the Commission affirm the Hearing Officer's Findings and Order.

DATED this 19 day of July 2000.

Respectfully submitted,

Larry H. Edelman, #89158
Assistant Attorney General
Attorney for the Department

[2] The Department Survey database indicates that more than three hundred companies received and returned the Survey in 1997. Twenty six of those companies were located in Washington, seven in California, three in Idaho, and one in British Columbia. The numbers are similar for the years 1998 and 1999.

[3] For example, ORS 459A.550 requires reporting of recycled glass content by glass container manufacturers whether located in-state or out-of-state who sell glass containers to packagers in Oregon. Similarly, ORS 459.A.650 et seq. requires reporting and record keeping by both in-state and out-of-state manufacturers and packagers with respect to recycled plastic content of plastic packages sold in Oregon.

Department of Justice
1515 SW Fifth Ave, Suite 410
Portland, OR 97201
(503) 229-5725

CERTIFICATE OF SERVICE

I hereby certify that I filed this 19 day of July, 2000 the foregoing **Answer Brief** with the

Oregon Environmental Quality Commission
c/o Susan Greco, Rules Coordinator,
DEQ Headquarters, 811 S.W. 6th Avenue
Portland, Oregon 97204

and mailed by certified mail a true and correct copy to Respondent:

Northwest Plastics Recovery, Inc.
Eric Norton, President
2367 Lincoln Avenue
Tacoma, Washington 98421-3404

DATED this 19 day of July 2000.

Larry H. Edelman, #89158
Assistant Attorney General
Attorney for the Department

Department of Justice
1515 SW Fifth Ave, Suite 410
Portland, OR 97201
(503) 229-5725

Attachment C

June 23, 2000

Environmental Quality Commission
811 SW 6th Avenue
Portland, OR 97204

Environmental Quality Commission,

Please consider the following IN THE MATTER OF : NO. WMC/SW-HQ-98-143 EXCEPTIONS TAKEN TO HEARING ORDER REGARDING VIOLATION AND ASSESSMENT OF CIVIL PENALTY ASSESED TO RESPONDENT Northwest Plastic Recovery, Inc.

I take exception to the following Findingss of Fact and logic employed by Judge Linda Lee and the Department used to determine NW Plastic Recovery, Inc.'s obligation to fill out an annual Recycling Survey for the State of Oregon DEQ.

Judge Linda Lee, in her *Conclusions and Reviews*, determined that the activities of NW Plastic Recovery, Inc. fall within the requirements of OAR 340-90-100(5) because it accepted materials from various industries in the State of Oregon. I disagree. The entities which fall within the requirements of OAR 340-90-100(5) are the *industries in Oregon, **licensed by the State of Oregon** ,* from which Northwest Plastic Recovery accepts the materials.

If NW Plastic Recovery, Inc. (a Washington State company) is required to fill out this survey because it is a *privately operated recycling facility*, does this mean that every recycling facility in every state of the USA, in every country of the world, in every planet in the solar system must fill out this survey? How does the Department conquer such a task? The purpose of the survey is to determine the performance of ***local*** recycling programs as stated in *340-090-0005,* not nation, world, or solar system wide performance.

Judy Henderson the Department of Recycling Survey's "expert", by her own admission, didn't even know how NW Plastic Recovery, Inc. (a WA State Co.) appeared on her list. Although, she did admit that she didn't think that all recyclers in WA State received a survey with Oregon State mandated instructions.

Larry Cwik of the DEQ testified to the importance NW Plastic Recovery's' participation in this survey program, because it's the **only** way in which the State of Oregon can get a clear picture of their challenges and performance regarding the management of solid waste in the State of Oregon. I disagree.

Larry and Judy of the Department need to know that the only reason I appeared on their survey list is because the Oregon State licensed material recovery facilities, and

waste generators from which I received some plastic materials, did their job and reported how much plastic they passed on to Northwest Plastic Recovery.

The suspect Material Recovery Survey contains language that suggests this survey was intended exclusively for Oregon State businesses. If the department requires out of state businesses to fill out their Material Recovery Survey, then they are engaged in the business of collecting random data that is not pertinent to solid waste management in the State of Oregon , and is none of their business.

Furthermore, I am not aware of any agreement I have with any agency in the State of Oregon that compels me to fill out their Material Recovery Survey.

Judge Linda Lee states that she thinks that I am being unreasonable for suggesting this survey is unduly burdensome even though it is only a single two-sided page. How many unnecessary, unpaid tasks is Judge Linda Lee willing to do before she considers it a burden? As a business owner who doesn't spend much time with his wife and child, I think even one unnecessary task is unduly burdensome especially if it's required by a Department that doesn't know it's purpose or law.

Judge Linda Lee also found it important to point out the fact that business is a for-profit enterprise and that I derived economic benefit from it. What does this have to do with the central issue of the case?

It is my hope that the EQC will read OAR Chapter 340, Division 90 and come to the same conclusion that I have. These rules are designed to compel businesses that are licensed by the State of Oregon to accurately fill out an annual Materials Recovery Survey so that they can help facilitate the DEQ in the important task of solid waste management in the State of Oregon. And that the participation in this survey from an out of state business is unnecessary to that goal, if the DEQ and the Oregon State businesses are doing their job.

Dated this 23rd day of June

Eric J Norton
President Northwest Plastic Recovery, 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

May 30, 2000

Eric J. Norton
NW Plastics Recovery Inc.
2367 Lincoln Avenue
Tacoma WA 98421

RE: Appeal to Environmental Quality Commission

Dear Mr. Norton:

On May 25, 2000, the Environmental Quality Commission received your timely request for administrative review by the Commission in DEQ Case No. WMC/SW-HQ-98-143.

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 E

NW PLASTIC RECOVERY INCORPORATED

Department of Environmental Quality
received
MAY 26 2000
OFFICE OF THE DIRECTOR

May 25, 2000

Mr. Langdon Marsh
Director of Oregon DEQ
811 SW 6th Ave.
Portland, OR 97204

FAX: 503-229-5850

Mr. Marsh:

The purpose of this letter is to request a review of Hearing Order NO. WMC/SW-HQ-98-143 by the Environmental Quality Commission. Please inform me of the process which follows this request for review.

Sincerely,

Eric J. Norton

My mailing address is:

NW Plastic Recovery, Inc.
2367 Lincoln Ave.
Tacoma, WA 98421

2367 Lincoln Avenue, Tacoma, WA 98421 • Phone (253) 274-8294, FAX (253) 274-8295
E-Mail: plastrec@aa.net

Attachment F

Ref No.: G60205
Case No: 00-GAP-00010
Case Type: DEQ

STATE OF OREGON

Dec Mailed: 04/26/00
Mailed by: TAM

HEARING ORDER

NORTHWEST PLASTIC RECOVERY, INC.
ERIC NORTON
2367 LINCOLN AVE
TACOMA WA 98421 3404

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

NOTICE OF REMAILING

The following **HEARING ORDER** was originally served to the parties on March 3, 2000. Due to error on the part of the Employment Department, respondent's copy of the order was mailed to a wrong address. It is hereby remailed in its entirety to the above parties on this date, April 26, 2000.

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:	)	
Department of Environmental Quality,	)	**HEARING ORDER REGARDING**
Department	)	**VIOLATION AND ASSESSMENT**
	)	**OF CIVIL PENALTY**
vs.	)	**NO. WMC/SW-HQ-98-143**
	)	
Northwest Plastics Recovery, Inc.,	)	
Respondent	)	
	)	

BACKGROUND

The Department of Environmental Quality (Department) issued a Notice of Violation, Department Order and Assessment of Civil Penalty on March 15, 1999, pursuant to Oregon Revised Statutes Chapters 183, 466 and 468, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12. On May 1, 1999, the respondent, Northwest Plastics Recovery, Inc., appealed the Notice and requested a hearing.

A hearing was held on December 2, 1999, in Portland, Oregon before hearings officer, Linda B. Lee. Eric J. Norton, President, represented Northwest Plastics Recovery. Larry Cwik, environmental law specialist, represented DEQ, with two witnesses.

The hearing record was left open to allow the Department an opportunity to submit a legal memorandum from its attorney regarding the Respondent's request for expenses associated with contesting the penalty assessment. The Department's legal memorandum was received on December 21, 1999. The hearing record was left open until January 18, 2000 to allow the Respondent an opportunity to respond. No response was received. The hearing record was closed January 18, 2000.

ISSUE

Did respondent violate OAR 340-90-100 (5) adopted pursuant to ORS 459A.025 (1), by failing to submit the 1997 Oregon Material Recovery Survey to the Department of Environmental Quality?

FINDINGS OF FACT

1. The Respondent has been in business since 1992. It accepts plastic scrap material for recycling from various industries. The Respondent has its headquarters and physical location in Tacoma, Washington. On occasion an employee of the Respondent has driven one of the Respondent's trucks into Oregon to pick up materials.

2. OAR 350-90-100(5) requires that recycling and material recovery facilities must report the type and corresponding weight of each category of material recycled, processed, or recovered by calendar year, by wasteshed of origin and source type by February 28th of each year.

3. In 1994 survey information was obtained from the Respondent president by telephone. In 1996 the Respondent president completed and submitted the survey on the Department's survey form.

4. On December 30, 1997, the Department sent Respondent the 1997 Oregon Material Recovery Survey to complete and return to the Department prior to February 28, 1998. The Respondent received the survey and threw it away. Respondent decided that the State of Oregon lacked the authority to require the Respondent to provide the information. When the company president received similar reports to complete from other states, he threw them away. The Respondent's president does not believe the rule applies to Respondent because the business is not located in Oregon. The Respondent's president feels that requiring him to complete the survey is unauthorized and burdensome. He also feels the Department request that Respondent complete the survey is duplicative because the information can be obtained from the company located in Oregon that provides the plastic scrap to the Respondent.

5. On March 20, 1998, the Department sent Respondent a reminder card to return the survey by April 15th. The Respondent ignored the reminder card. On May 7, 1998, the Department sent a Notice of Noncompliance to Respondent. The Notice of Noncompliance stated that failure to correct the violation by completing and returning the 1997 survey within 30 days would result in formal enforcement action that might result in a civil penalty assessment. As of the December 2, 1999 hearing date, Respondent had not submitted the 1997 Oregon Material Recovery Survey.

6. On March 15, 1999, the Department notified the Respondent that it was being assessed a civil penalty of $800. The Department found that Respondent failed to submit the 1997 Oregon Material Recovery Survey. DEQ found the violation to be minor. DEQ assigned a value of "2" to whether or not the violation was a single occurrence, finding that the violation existed for more than one day. DEQ assigned a value of "2" to the cause of the violation finding that Respondent was negligent. DEQ assigned a value of "2" to Respondent's cooperativeness, finding that the Respondent was uncooperative in correcting the violation.

ULTIMATE FINDINGS

Respondent failed to submit the 1997 Oregon Material Recovery Survey.

APPLICABLE LAW

ORS 459A.025(1) authorizes the Environmental Quality Commission to adopt rules regarding waste disposal and recycling.

OAR 340-090-0100, provides in part,

> Reporting Requirements
> The information in this rule is reported in order to determine statewide and local wasteshed recovery rates, to determine compliance with the opportunity to recycle requirements and to provide accurate and comprehensive information on the type and amounts of residential and commercial solid waste generated, disposed and recovered in Oregon:
> (1) General requirements. The information in subsection (2)(b) and sections (3), (4), and (5) of this rule shall be reported on a form provided by the Department and shall be reported to the Department no later than February 28 of each calendar year for the previous calendar year. The information to be reported under section (6) of this rule is optional.
> (2) County requirements. * * *
> (3) Solid waste disposal facility requirements. * * *

(4) The Metropolitan Service District on behalf of Multnomah, Clackamas, and Washington counties and the cities therein, shall report the following information: * * *
(5) Privately operated recycling and material recovery facility requirements. This section applies to buy-back centers, drop-off centers, manufacturers, distributors, collection service providers who collect or otherwise handle materials other than those required to be reported under subsection (2)(b) of this rule, and other private recycling operations and material recovery facilities who collect, otherwise acquire, use recycled material in manufacturing, or recycle material that is not included in the reporting requirements of subsection (2)(b) and section (6) of this rule. These facilities shall accurately report to the Department the type and corresponding weight of each category of material recycled, processed, recovered or used in a new product containing recycled content in a calendar year as follows:
(a) Weight of each material recovered shall be reported, broken down by wasteshed of origin and by source as provided on the data form supplied by the Department;
(b) Weight of materials reported shall exclude recycling of wastes described in OAR 340-090-0060(5);
(c) Weight of material collected shall be determined either by direct measurement of the material collected, purchased, or generated; or by determining the weight sold or otherwise sent off-site or used on-site for recycling during the year, adjusted by the difference in weight of material in inventory on the first day and last day of the calendar year;
(d) To avoid double counting of materials, entities reporting under this section shall identify weight and sources of material they collected from other recyclers, subsequent recyclers and end users that directly receive their material and the weight of material sold or delivered to each directly subsequent recycler or end user. This applies to all materials collected for recycling, including materials delivered to subsequent recyclers or end users or collected and reported to the county under subsection (2)(b) of this rule;
(e) Private recyclers shall report the final status of each material sold, delivered or utilized. The report shall indicate whether the material was recycled, composted, or burned for energy recovery in order to determine which materials will count toward the recovery rate in OAR 340-090-0050;
(f) Total weight of material recovered by each private recycler shall be reported based on actual measurement. In cases where determining the actual weight of material recovered by wasteshed or by collection source is not possible, reasonable estimates allocating the weight of material collected by wasteshed and collection source may be made.
(6) Scrap metal industry requirements. * * *

OAR 340-012-0065, captioned Solid Waste Management Classification of Violations, provides in section (2)(c) that failure to accurately report weight and type of material recovered or processed from the solid waste stream in accordance with the laws and rules of the Department is a Class Two violation.

CONCLUSIONS AND REASONS

DEQ has the burden of establishing a violation by a preponderance of the evidence. DEQ has met its burden in this case. The Respondent's activities in Oregon fell within the requirements of OAR 340-90-100 (5). The Respondent was a private recycler engaged in accepting scrap material for recycling from various industries. Some of those industries were in Oregon. The Respondent was actively involved in

soliciting business from Oregon and in collecting materials. In collecting materials, the Respondent even on occasion sent its truck to Oregon to pick up waste material. While the Respondent argues that completing the form and providing the information was unduly burdensome, that does not appear to have been the case. The form was a single two-sided page. The Respondent completed forms in 1994 and 1996 and they could have been used as guides for completing the 1997 report. Respondent was engaged in a for profit private enterprise and some of the information requested in the forms should have been part of his general business records. Apparently the Respondent derived some economic benefit from it recycling efforts in Oregon otherwise it would not have continued to do business in Oregon. The Respondent also argues that the Department exceeded its statutory authority and infringed on his rights by requiring him to complete the report and then assessing a penalty when he failed to comply. The Department has statutory authority to require recyclers who collect materials in Oregon and from Oregon to submit reports. By doing business in Oregon the Respondent acceded to this authority.

As outlined in the Findings and Determination of Respondent's Civil Penalty dated March 15, 1999, Respondent 's failure to submit the 1997 Oregon Material Recovery Survey is a Class II violation pursuant to OAR 340-012-0065 (2)(c). The Respondent is liable for a penalty in the amount of $800.

CIVIL PENALTY

The Respondent is liable for a civil penalty of $800.

Dated this 2nd day of March 2000.

ENVIRONMENTAL QUALITY COMMISSION

Linda B. Lee

Linda B. Lee
Hearing Officer

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:	)	
Department of Environmental Quality,	)	**HEARING ORDER REGARDING**
Department	)	**VIOLATION AND ASSESSMENT**
	)	**OF CIVIL PENALTY**
vs.	)	**NO. WMC/SW-HQ-98-143**
	)	
Northwest Plastics Recovery, Inc.,	)	
Respondent	)	
	)	

The Commission through its hearing officer orders that Northwest Plastics Recovery Corporation is liable to the state of Oregon for the sum of $800. The state has a judgment for and to recover that amount pursuant to the civil penalty assessment dated March 15, 1999.

Review of this order is by appeal to the Environmental Quality Commission pursuant to OAR 340-011-0132. A request for review must be filed within 30 days following the mailing date of this order.

Dated this 2nd day of March, 2000.

ENVIRONMENTAL QUALITY COMMISSION

Linda B. Lee

Linda B. Lee
Hearing Officer

Appeal Rights

If you are not satisfied with this decision, you have 30 days, following the mailing date of the order to appeal it to the Environmental Quality Commission. See Oregon Administrative Rule (OAR) 340-011-0132. If you wish to appeal the Commission's decision, you have 60 days to file a petition for review with the Oregon Court of Appeals from the date of service of the order by the Environmental Quality Commission. See, ORS 183.480 et seq.

STATEMENT OF MAILING

AGENCY CASE NO. NO. WMC/SW-HQ-98-143
HEARINGS CASE NO. G60205

I certify that the attached Final Order was served through the mail to the following parties in envelopes addressed to each at their respective addresses, with postage fully prepaid.

Eric Norton
Northwest Plastics Recovery Corporation
2338 South Holgate Street, #HDPE
Tacoma, Washington 98402-1404

Larry Cwik
DEQ Enforcement Section
2020 SW Fourth, 4th Floor
Portland, OR 97201-4987

Susan Greco
DEQ
811 SW Sixth Avenue
Portland, OR 97204

Mailing/Delivery Date: _____
Hearings Clerk: _____

Attachment G

Ref No.: G60205
Case No: 00-GAP-00010
Case Type: DEQ

STATE OF OREGON

Dec Mailed: 03/03/00
Mailed by: SLS

HEARING DECISION

NORTHWEST PLASTIC RECOVERY, INC.
ERIC NORTON
2338 S HOLGATE ST # HDPE
TACOMA WA 98402 1404

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: 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: Department of Environmental Quality, Department vs. Northwest Plastics Recovery, Inc., Respondent	)))))))))	HEARING ORDER REGARDING VIOLATION AND ASSESSMENT OF CIVIL PENALTY NO. WMC/SW-HQ-98-143

BACKGROUND

The Department of Environmental Quality (Department) issued a Notice of Violation, Department Order and Assessment of Civil Penalty on March 15, 1999, pursuant to Oregon Revised Statutes Chapters 183, 466 and 468, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12. On May 1, 1999, the respondent, Northwest Plastics Recovery, Inc., appealed the Notice and requested a hearing.

A hearing was held on December 2, 1999, in Portland, Oregon before hearings officer, Linda B. Lee. Eric J. Norton, President, represented Northwest Plastics Recovery. Larry Cwik, environmental law specialist, represented DEQ, with two witnesses.

The hearing record was left open to allow the Department an opportunity to submit a legal memorandum from its attorney regarding the Respondent's request for expenses associated with contesting the penalty assessment. The Department's legal memorandum was received on December 21, 1999. The hearing record was left open until January 18, 2000 to allow the Respondent an opportunity to respond. No response was received. The hearing record was closed January 18, 2000.

ISSUE

Did respondent violate OAR 340-90-100 (5) adopted pursuant to ORS 459A.025 (1), by failing to submit the 1997 Oregon Material Recovery Survey to the Department of Environmental Quality?

FINDINGS OF FACT

1. The Respondent has been in business since 1992. It accepts plastic scrap material for recycling from various industries. The Respondent has its headquarters and physical location in Tacoma, Washington. On occasion an employee of the Respondent has driven one of the Respondent's trucks into Oregon to pick up materials.

2. OAR 350-90-100(5) requires that recycling and material recovery facilities must report the type and corresponding weight of each category of material recycled, processed, or recovered by calendar year, by wasteshed of origin and source type by February 28th of each year.

3. In 1994 survey information was obtained from the Respondent president by telephone. In 1996 the Respondent president completed and submitted the survey on the Department's survey form.

4. On December 30, 1997, the Department sent Respondent the 1997 Oregon Material Recovery Survey to complete and return to the Department prior to February 28, 1998. The Respondent received the survey and threw it away. Respondent decided that the State of Oregon lacked the authority to require the Respondent to provide the information. When the company president received similar reports to complete from other states, he threw them away. The Respondent's president does not believe the rule applies to Respondent because the business is not located in Oregon. The Respondent's president feels that requiring him to complete the survey is unauthorized and burdensome. He also feels the Department request that Respondent complete the survey is duplicative because the information can be obtained from the company located in Oregon that provides the plastic scrap to the Respondent.

5. On March 20, 1998, the Department sent Respondent a reminder card to return the survey by April 15th. The Respondent ignored the reminder card. On May 7, 1998, the Department sent a Notice of Noncompliance to Respondent. The Notice of Noncompliance stated that failure to correct the violation by completing and returning the 1997 survey within 30 days would result in formal enforcement action that might result in a civil penalty assessment. As of the December 2, 1999 hearing date, Respondent had not submitted the 1997 Oregon Material Recovery Survey.

6. On March 15, 1999, the Department notified the Respondent that it was being assessed a civil penalty of $800. The Department found that Respondent failed to submit the 1997 Oregon Material Recovery Survey. DEQ found the violation to be minor. DEQ assigned a value of "2" to whether or not the violation was a single occurrence, finding that the violation existed for more than one day. DEQ assigned a value of "2" to the cause of the violation finding that Respondent was negligent. DEQ assigned a value of "2" to Respondent's cooperativeness, finding that the Respondent was uncooperative in correcting the violation.

ULTIMATE FINDINGS

Respondent failed to submit the 1997 Oregon Material Recovery Survey.

APPLICABLE LAW

ORS 459A.025(1) authorizes the Environmental Quality Commission to adopt rules regarding waste disposal and recycling.

OAR 340-090-0100, provides in part,

> Reporting Requirements
> The information in this rule is reported in order to determine statewide and local wasteshed recovery rates, to determine compliance with the opportunity to recycle requirements and to provide accurate and comprehensive information on the type and amounts of residential and commercial solid waste generated, disposed and recovered in Oregon:
>
> (1) General requirements. The information in subsection (2)(b) and sections (3), (4), and (5) of this rule shall be reported on a form provided by the Department and shall be reported to the Department no later than February 28 of each calendar year for the previous calendar year. The information to be reported under section (6) of this rule is optional.
>
> (2) County requirements. * * *
>
> (3) Solid waste disposal facility requirements. * * *
>
> (4) The Metropolitan Service District on behalf of Multnomah, Clackamas, and Washington counties and the cities therein, shall report the following information: * * *
>
> (5) Privately operated recycling and material recovery facility requirements. This section applies to buy-back centers, drop-off centers, manufacturers, distributors, collection service providers who collect or otherwise handle materials other than those required to be reported under subsection (2)(b) of this rule, and other private recycling operations and material recovery facilities who collect, otherwise acquire, use recycled material in manufacturing, or recycle material that is not included in the reporting requirements of subsection (2)(b) and section (6) of this rule. These facilities shall accurately report to the Department the type and corresponding weight of each category of material recycled, processed, recovered or used in a new product containing recycled content in a calendar year as follows:
>
> > (a) Weight of each material recovered shall be reported, broken down by wasteshed of origin and by source as provided on the data form supplied by the Department;
> >
> > (b) Weight of materials reported shall exclude recycling of wastes described in OAR 340-090-0060(5);
> >
> > (c) Weight of material collected shall be determined either by direct measurement of the material collected, purchased, or generated; or by determining the weight sold or otherwise sent off-site or used on-site for recycling during the year,

adjusted by the difference in weight of material in inventory on the first day and last day of the calendar year;

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

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

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

(6) Scrap metal industry requirements. * * *

OAR 340-012-0065, captioned Solid Waste Management Classification of Violations, provides in section (2)(c) that failure to accurately report weight and type of material recovered or processed from the solid waste stream in accordance with the laws and rules of the Department is a Class Two violation.

CONCLUSIONS AND REASONS

DEQ has the burden of establishing a violation by a preponderance of the evidence. DEQ has met its burden in this case. The Respondent's activities in Oregon fell within the requirements of OAR 340-90-100 (5). The Respondent was a private recycler engaged in accepting scrap material for recycling from various industries. Some of those industries were in Oregon. The Respondent was actively involved in soliciting business from Oregon and in collecting materials. In collecting materials, the Respondent even on occasion sent its truck to Oregon to pick up waste material. While the Respondent argues that completing the form and providing the information was unduly burdensome, that does not appear to have been the case. The form was a single two-sided page. The Respondent completed forms in 1994 and 1996 and they could have been used as guides for completing the 1997 report. Respondent was engaged in a for profit private enterprise and some of the information requested in the forms should have been part of his general business records. Apparently the Respondent derived some economic benefit from it

recycling efforts in Oregon otherwise it would not have continued to do business in Oregon. The Respondent also argues that the Department exceeded its statutory authority and infringed on his rights by requiring him to complete the report and then assessing a penalty when he failed to comply. The Department has statutory authority to require recyclers who collect materials in Oregon and from Oregon to submit reports. By doing business in Oregon the Respondent acceded to this authority.

As outlined in the Findings and Determination of Respondent's Civil Penalty dated March 15, 1999, Respondent 's failure to submit the 1997 Oregon Material Recovery Survey is a Class II violation pursuant to OAR 340-012-0065 (2)(c). The Respondent is liable for a penalty in the amount of $800.

CIVIL PENALTY

The Respondent is liable for a civil penalty of $800.

Dated this 3rd day of March 2000.

ENVIRONMENTAL QUALITY COMMISSION

L B Lee

Linda B. Lee
Hearing Officer

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF: Department of Environmental Quality, Department vs. Northwest Plastics Recovery, Inc., Respondent	)	HEARING ORDER REGARDING VIOLATION AND ASSESSMENT OF CIVIL PENALTY NO. WMC/SW-HQ-98-143

The Commission through its hearing officer orders that Northwest Plastics Recovery Corporation is liable to the state of Oregon for the sum of $800. The state has a judgment for and to recover that amount pursuant to the civil penalty assessment dated March 15, 1999.

Review of this order is by appeal to the Environmental Quality Commission pursuant to OAR 340-011-0132. A request for review must be filed within 30 days following the mailing date of this order.

Dated this 3rd day of March, 2000.

ENVIRONMENTAL QUALITY COMMISSION

L B Lee

Linda B. Lee
Hearing Officer

Appeal Rights

If you are not satisfied with this decision, you have 30 days, following the mailing date of the order to appeal it to the Environmental Quality Commission. See Oregon Administrative Rule (OAR) 340-011-0132. If you wish to appeal the Commission's decision, you have 60 days to file a petition for review with the Oregon Court of Appeals from the date of service of the order by the Environmental Quality Commission. See, ORS 183.480 et seq.

STATEMENT OF MAILING

AGENCY CASE NO. NO. WMC/SW-HQ-98-143
HEARINGS CASE NO. G60205

I certify that the attached Final Order was served through the mail to the following parties in envelopes addressed to each at their respective addresses, with postage fully prepaid.

Eric Norton
Northwest Plastics Recovery Corporation
2338 South Holgate Street, #HDPE
Tacoma, Washington 98402-1404

Larry Cwik
DEQ Enforcement Section
2020 SW Fourth, 4th Floor
Portland, OR 97201-4987

Susan Greco
DEQ
811 SW Sixth Avenue
Portland, OR 97204

Mailing/Delivery Date: 03/02/00
Hearings Clerk: SLS

Attachment H

Exhibits from Hearing of December 2, 1999

1. Notice of Hearing, November 15, 1999
2. Notice of Contested Case Rights and Procedures
3. Answer and Request for Hearing, May 1, 1999
4. Notice of Violation, Department Order, and Assessment of Civil Penalty, March 15, 1999
5. Oregon Material Recovery Surveys Memorandum, December 31, 1997
6. Oregon Material Recovery Surveys Postcard, March 20, 1998
7. Notice of Noncompliance, May 7, 1998
8. 1996 Oregon Material Recovery Survey
9. 1994 Oregon Material Recovery Survey (admitted over objection)

Ref No: G60205
Agency Case No: WMCSWHQ98143
Case Type: DEQ

Date Mailed: 11/15/99
Mailed By: TJA

STATE OF OREGON

NOTICE OF HEARING

NORTHWEST PLASTIC RECOVERY INC.
ERIC NORTON
2338 S HOLGATE ST STE HDPE
TACOMA WA 98402 1404

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	*HEARING PLACE*	*ADMINISTRATIVE LAW JUDGE*
THURSDAY, DECEMBER 2, 1999 1:30 PM PT	DEPT OF ENVIRONMENTAL QUALITY 2020 SW 4TH 4TH FLOOR - CONFERENCE ROOM C PORTLAND OREGON	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.

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

EXHIBIT # 1

Issues to be considered are:

Did Respondent violate OAR 340-90-100 (5), adopted pursuant to ORS 459A.025 (1), by failing to submit the 1997 Oregon Material Recovery Survey to the Department?

EXHIBIT # 1

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.

EXHIBIT # 2

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 issued involved in the case;

c. The evidence is unduly repetitious and duplicates evidence already received.

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.

May 1, 1999

Northwest Plastic Recovery, Inc.
2338 Holgate Street South
Tacoma, **Washington** 98402

DEQ Rules Coordinator
Management Services Division
811 S. W. Sixth Avenue
Portland, Oregon 97204

Re: Request for Hearing, and "Answer" to Notice of Violation, Department Order and Assessment of Civil Penalty No. WMC/SW-HQ-98-143.

The purpose of this letter is to request a hearing before the Environmental Quality Commission to contest Notice of Violation No. WMC/SW-HQ-98-143. Enclosed is my written "Answer" to the allegations contained in the aforementioned Notice of Violation.

Sincerely,

Eric J. Norton
President
Northwest Plastic Recovery, Inc.

EXHIBIT # 3

ANSWER TO NOTICE OF VIOLATION,
DEPARTMENT ORDER AND
ASSESSMENT OF CIVIL PENALTY
NO. WMC/SW-HQ-98-143

I. Answer to Authority.

(ORS) 468.126 through 468.140, 466.190,466.880; (ORS) Chapter 183; and (OAR) Chapter 340, Divisions 11 and 12 do not give the State of Oregon DEQ authority to assess a civil penalty to Northwest Plastic Recovery, Inc. for not completing and submitting to the DEQ an annual recycling survey.

II. Answer to Findings.

According to the findings of the DEQ, "(OAR) 340-90-100(5) requires that recycling and material recovery facilities **in Oregon** must report by February 28th of each year...by wasteshed of origin and source type." Northwest Plastic recovery, Inc. does not have a facility in Oregon. Furthermore, (OAR) 340-90-100(5) derives its authority from (ORS) 459A.025, which requires an agreement between the DEQ and a private person, pursuant to (ORS) 459.025(3).
I am not aware of such an agreement. Applying (OAR) 340-90-100(5) to Northwest Plastic Recovery, Inc. exceeds the Statutory Authority of the State of Oregon DEQ.

III. Answer to Violation.

The stated findings of the DEQ are not accurate or statutorily based; therefore, Northwest Plastic Recovery, Inc. is not guilty of alleged violations.

IV. Answer to Department Order.

Northwest Plastic Recovery, Inc. is not required by Oregon statute to submit an annual recycling survey to the DEQ; therefore no survey will be submitted.

V. Answer to Assessment of Civil Penalty.

No violation has occurred; therefore no penalty should be assessed.

encl 1

Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

March 15, 1999
CERTIFIED MAIL

Eric Norton
Northwest Plastics Recovery Corporation
2338 South Holgate Street, #HDPE
Tacoma, WA 98402-1404

Re: Notice of Violation,
Department Order, and Assessment of Civil Penalty
No. WMC/SW-HQ-98-143

Northwest Plastics Recovery (Northwest Plastics Recovery) owns and operates a recycling and material recovery business that accepts recycled materials from Oregon. Oregon law, specifically Oregon Administrative Rule (OAR) 340-90-100(5), requires that recycling and material recovery facilities which accept materials from Oregon must report by February 28th of each year the type and corresponding weight of each category of material recycled, processed, or recovered by calendar year by wasteshed of origin and source type. Wastesheds are areas of the state either sharing a solid waste disposal system or designated by the Environmental Quality Commission as appropriate for the development of a common recycling program.

This information is important so that the Department can determine if wastesheds throughout Oregon are progressing satisfactorily toward recycling goals mandated by the Oregon Legislature. The goals are designed to decrease wasteful practices and protect agricultural and other productive lands in Oregon from conversion to landfills.

On December 30, 1997, the Department sent Northwest Plastics Recovery the 1997 Oregon Material Recovery Survey to complete and return to DEQ prior to February 28, 1998. Northwest Plastics Recovery did not complete and return the survey. So, on March 20, 1998, DEQ sent Northwest Plastics Recovery a reminder card, asking that the survey be completed and returned by April 15th, or for a telephone call if an extension to the deadline was needed. The survey was still not returned.

On May 7, 1998, Paul Slyman, Manager, DEQ Solid Waste Policy and Program Development, sent a Notice of Noncompliance (NON) to Eric Norton of Northwest Plastics Recovery. The NON stated that the 1997 Oregon Material Recovery Survey had not been submitted. It also gave a revised deadline of 30 days from receipt of the NON for submittal of the overdue survey, offered assistance in completing the survey, and stated that the violation would be subject to a civil penalty assessment if not corrected by the deadline given. Northwest Plastics Recovery received the NON on May 11, 1998. To date,

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

EXHIBIT # 4

however, Northwest Plastics Recovery has not submitted the 1997 Oregon Material Recovery Survey.

Northwest Plastics Recovery is liable for a civil penalty assessment because Northwest Plastics Recovery violated Oregon's solid waste laws. In the enclosed Notice, I have assessed a civil penalty of $800 for Northwest Plastics Recovery's failure to submit to the Department the 1997 Oregon Material Recovery Survey. The Notice and Order formally cites the violation and orders Northwest Plastics Recovery to submit the overdue Material Recovery Survey within 30 days.

Appeal procedures are outlined in the Notices. If Northwest Plastics Recovery fails to either pay or appeal the penalty within 20 days, a Default Order will be entered against Northwest Plastics Recovery. Also, violation of a Department Order is a Class I violation, and subject to an additional civil penalty assessment.

We look forward to Northwest Plastics Recovery's cooperation in correcting the violations and complying with the enclosed Order, and Oregon environmental law in the future. We are willing to assist Northwest Plastics Recovery with questions regarding rule interpretations or the applicability of specific regulations to Northwest Plastics Recovery.

Also enclosed are the following: a copy of referenced rules and OAR, Division 12 Civil Penalties; and another copy of the Material Recovery Survey form. Exceptional pollution prevention may result in partial penalty mitigation.

If Northwest Plastics Recovery has any questions with regard to the Notice and Order, or completing the survey, please contact Judy Henderson of the Department's Solid Waste Policy and Program Development Section, at (503) 229-5521, or toll-free in Oregon at 1-800-452-4011, ext. 5521. If Northwest Plastics Recovery has questions concerning the enforcement process, please contact Larry Cwik of the Department's Enforcement Section at (503) 229-5728 or toll-free in Oregon at 1-800-452-4011, Enforcement Section ext. 5728.

Sincerely,

Langdon Marsh
Director

Enclosures
Cc: Waste Management and Cleanup Division, DEQ
Oregon Department of Justice
Environmental Quality Commission
Environmental Protection Agency

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: NORTHWEST PLASTICS RECOVERY CORPORATION, Respondent.	)	NOTICE OF VIOLATION, DEPARTMENT ORDER AND ASSESSMENT OF CIVIL PENALTY NO. WMC/SW-HQ-98-143

I. AUTHORITY

This Notice of Violation, Department Order and Assessment of Civil Penalty (Notice & Order) is issued by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, 466.190, 466.880; ORS Chapter 183; and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

II. FINDINGS

1. From at least 1993 through the present, Northwest Plastics Recovery Corporation (Respondent), has owned and/or operated a recycling and material recovery business that accepts recycled materials from Oregon.

2. OAR 340-90-100(5) requires that recycling and material recovery facilities in Oregon must report by February 28th of each year the type and corresponding weight of each category of material recycled, processed, or recovered by calendar year by wasteshed of origin and source type.

3. On December 30, 1997, the Department sent Respondent the 1997 Oregon Material Recovery Survey to complete and return to DEQ prior to February 28, 1998.

4. On March 20, 1998, DEQ sent Respondent a reminder card to return the survey, asking that the survey be completed and returned by April 15th, or for a

telephone call if an extension to the deadline was needed.

5. On May 7, 1998, Paul Slyman, Manager, DEQ Solid Waste Policy and Program Development, sent a Notice of Noncompliance (NON) to Respondent.

6. To date, Respondent has not submitted the 1997 Oregon Material Recovery Survey to the Department.

III. VIOLATION

Based upon the above noted findings, Respondent has violated the following provisions of Oregon's environmental laws and regulations applicable to the facility as set forth in ORS Chapters 459, 466, and 468; and OAR Chapter 340, Division 108:

CLASS II VIOLATION:

1. From March 1, 1998 through the present, Respondent has violated OAR 340-90-100(5), adopted pursuant to ORS 459A.025(1), in that Respondent has failed to submit to the Department the 1997 Oregon Material Recovery Survey described above. This is a Class II violation pursuant to OAR 340-12-0065(2)(c).

IV. DEPARTMENT ORDER

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

1. Within 30 days, adequately complete and submit to DEQ the overdue 1997 Oregon Material Recovery Survey. The completed survey must include information on the type and corresponding weight of each category of material Respondent recycled, processed, or recovered in the calendar year 1997 by wasteshed of origin and source type, along with information on who the subsequent recyclers and end users were that directly received the material and the weight of material sold or delivered to each.

Submit this information to: Judy Henderson, Solid Waste Policy and Program Development Section, 811 S.W. 6th Ave., Portland, OR 97204.

V. ASSESSMENT OF CIVIL PENALTY

The Director imposes a $800 civil penalty for the violation cited in Section III above. The findings and determination of Respondent's civil penalty pursuant to OAR 340-12-045 are attached and incorporated as Exhibit 1.

VI. OPPORTUNITY FOR CONTESTED CASE HEARING

This Notice & Order shall become final unless, within 20 days of issuance, of this Notice & Order, Respondent requests a hearing before the Environmental Quality Commission (Commission) pursuant to ORS 466.190. **The request must be made in writing, must be received by the Department's Rules Coordinator within twenty (20) days from the date of service of this Notice & Order, and must be accompanied by a written "Answer" to the allegations contained in this Notice & Order.**

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

1. Factual matters not controverted shall be presumed admitted;

2. Failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense;

3. New matters alleged in the Answer shall be presumed to be denied unless admitted in subsequent pleading or stipulation by the Department or Commission.

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

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

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

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

VII. OPPORTUNITY FOR INFORMAL DISCUSSION

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

VIII. PAYMENT OF CIVIL PENALTY

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

3-15-99
Date

Langdon Marsh
Langdon Marsh, Director

EXHIBIT 1

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

VIOLATION 1: Failure to submit 1997 Oregon Material Recovery Survey.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-12-0065(2)(c).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-12-0045(1)(a)(B)(ii) as the Department finds that the violation had no potential for or 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 340-12-0042(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 340-12-030(14).

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of 0, as there is no prior significant action as defined in OAR 340-12-030(14).

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of +2 as the violation was continued for more than one day.

"R" is the cause of the violation and receives a value of +2 as Respondent's violation was negligent. Respondent had a duty to submit the required survey by the due date, and failed to do so, despite several communications from the Department, on December 30, 1997, March 20, 1998, and May 15, 1998. Respondent failed to exercise reasonable care to carry out its duty, causing the violation.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of +2, as the Respondent has been uncooperative to date in correcting the violation.

"EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of 0 as the Department has insufficient information upon which to base a determination.

PENALTY CALCULATION:

$$\begin{aligned}
\text{Penalty} &= BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB \\
&= \$500 + [(0.1 \times \$500 \times (0 + 0 + 2 + 2 + 2)] + \$0 \\
&= \$500 + [(\$50 \times 6)] + \$0 \\
&= \$500 + \$300 \\
&= \$800
\end{aligned}$$

CERTIFICATE OF MAILING

I hereby certify that I served Notice of Violation, Department Order, & Assessment of Civil Penalty Order No. WMC/SW-HQ-98-143

ERIC NORTON
NORTHWEST PLASTICS
RECOVERY CORPORATIC
2338 SOUTH HOLGATE ST.
TACOMA WA 98402-1404

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:
ERIC NORTON
NORTHWEST PLASTICS
RECOVERY CORPORATION
2338 SOUTH HOLGATE ST. HDPE
TACOMA WA 98402-1404

4a. Article Number P494 681 551
WMC/SW-HQ-98-143

4b. Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery 3-24-99

5. Received By: *(Print Name)*

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

6. Signature: *(Addressee or Agent)*
X

Is your RETURN ADDRESS completed on the reverse side?

PS Form **3811**, December 1994 102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

by mailing a true copy of th

prepaid, at the U.S. Post Office in Portland, Oregon, on 3/19/99

PS Form **3800**, April 1995

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

P 494 681 551
US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

Sent to
ERIC NORTON
NORTHWEST PLASTICS
RECOVERY CORPORATION
2338 SOUTH HOLGATE ST. HDPE
TACOMA WA 98402-1404

Deborah Nesbit
Department of Environmental Quality

State of Oregon EXHIBIT 1

Department of Environmental Quality Memorandum

Date: December 31, 1997

To: Handlers of Recovered Materials

From: Paul Slyman, Manager, Solid Waste Policy & Program Section

Subject: 1997 Oregon Material Recovery Surveys

Once again, we are asking you to report on the amounts of recyclable materials you handled last year so we can measure Oregon's progress toward our 50% recovery goal for the year 2000. Without your help, we cannot meet our legislative mandate to calculate Oregon's 1997 statewide and wasteshed recovery rates.

Who Should Complete This Form?

All firms that handled recyclable materials collected from the state of Oregon **anytime during calendar year 1997** must complete the Material Recovery Survey (ORS 459A.050 (6) & (8)). This includes buy back centers, drop off centers, charity groups, brokers, exporters, yard debris facilities, processors, manufacturers, beer and soft drink distributors, and others.

Bottle bill distributors: The 1997 legislature directed DEQ to conduct an annual, voluntary survey of companies handling bottle bill containers to collect information about unredeemed deposits. If you handle bottle bill materials, you will receive forms to report information about the number of containers you sold and redeemed deposits on in 1996 and 1997.

Recovered Material to Include in Survey

Include all **post-consumer solid waste** collected for recycling from **residential and commercial** sources. As defined by administrative rule, post-consumer waste is "a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. Post-consumer waste does not include manufacturing waste." See Attachment A for materials definitions.

Do not include

- Pre-consumer waste (recovered materials obtained from manufacturers, such as wood waste from lumber mill operations, scraps from paper mills, major land clearing debris)
- Discarded vehicles or parts of vehicles that do not routinely enter the solid waste stream
- Hazardous waste materials recovered for recycling.

Confidentiality

ORS 459A.050 (7) directs the Department to hold your customer lists and specific amounts and types of materials collected as confidential. Information will be released only in an aggregate form. However, it may be disclosed on a limited basis to other governmental agencies.

Who to Contact for Assistance

- Judy Henderson toll-free at 1 (800) 452-4011, ext. 5521, or (503) 229-5521

Please return your surveys in the enclosed envelope by February 28, 1998

EXHIBIT # 5

EXHIBIT 6

March 20, 1998

In late December we mailed the *1997 Oregon Material Recovery Survey* to you, and requested that you return it to us by February 28.

If you have already completed and returned it to us, please accept our sincere thanks. If not, please do so today. This survey is required by ORS 459A.050. **Recyclers who do not complete the survey by April 15 this year can expect to receive a letter of non-compliance and be subject to fines.**

If you need another copy of the survey, please call Kelly Scharbrough toll free at 1-800-452-4011 or (503) 229-6299, and she will get another one in the mail to you today. If you cannot complete the survey by April 15, please call me.

Sincerely,

Judy Henderson

Judy Henderson
Survey Coordinator
(503) 229-5521 or 1-800-452-4011, ext. 5521

EXHIBIT # 6

EXHIBIT 3

May 7, 1998

CERTIFIED MAIL NO. Z 191 184 546
RETURN RECEIPT REQUESTED

Eric Norton
NORTHWEST PLASTICS RECOVERY
2338 S Holgate St #HDPE
Tacoma, WA 98402-1404

RE: NOTICE OF NONCOMPLIANCE WMC/R-HQ-98-041
NORTHWEST PLASTICS RECOVERY, CID #1517

Dear Mr. Norton:

On December 30, 1997 we sent you the 1997 Oregon Material Recovery Survey to complete and return to our office by February 28, 1998. Since we did not receive your survey by the deadline, on March 20, 1998 we sent you a reminder card and asked that you return your survey by April 15, 1998 or call to make arrangements for an extension of the deadline. A check of our records shows that you have still not responded to our requests for a completed survey.

Oregon Administrative Rule (OAR) 340-90-100(5) requires privately-operated recycling and material recovery facilities to report, by February 28 each year, the type and corresponding weight of each category of material recycled, processed, or recovered in a calendar year by wasteshed of origin and by source type. You must also identify subsequent recyclers and end users that directly receive the material and the weight of material sold or delivered to each. This information is used to calculate individual wasteshed and statewide recovery rates.

Members of the solid waste industry, local governments, and Oregon citizens use this calculation to assess how well the state is doing toward reaching our legislatively-mandated goal to recover 50% of our solid waste generated by the year 2000. This information is also used to plan local opportunity to recycle programs, assess markets, and make solid waste business decisions.

Violation of the Department's Rules

Your failure to report the weight and type of material recovered or processed from the solid waste stream violates OAR 340-90-100, is a class 2 violation under OAR 340-90-100(5), and is considered to be a significant violation of Oregon environmental law. Should you fail to correct the violation in accordance with the schedule set forth below, 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.

Required Action

To correct this violation, you must complete your 1997 Oregon Material Recovery Survey and mail it to Judy Henderson at 811 SW 6th Ave., Portland, OR 97204 within 30 days of receipt of this letter or write a letter to me explaining why you think you are not covered by this requirement. Enclosed are two copies of the survey form. If you need help completing the survey, please call Judy Henderson at (503) 229-5521 or toll-free at 1 (800) 452-4011, ext. 5521.

Sincerely,

Paul Slyman, Manager
Solid Waste Policy and Program Development

cc: DEQ Enforcement Section
Enclosures

EXHIBIT # 7

KS

1996 Oregon Material Recovery Survey

If you need assistance completing this form, in Oregon call 1-800-452-4011 and ask for Judy Henderson at ext. 5521; or direct dial, (503)229-5521.

Material	ID Code	Line#
#2 HDPE	1517	1

A Sources Of Material

OREGON COUNTY NAME	Amount you collected yourself from offices, grocery stores, private citizens, schools, restaurants/bars, etc.	Amount you collected from other recyclers or amount from unknown sources	A+B TOTAL TONS/ GALLONS	
METRO AREA			112.86T	2
				3
				4
				5
				6
				7
				8
				9
Additional County Totals, If Any, *page 2, line 33*				10
Unknown County Of Origin In Oregon				11
Total Tons Collected From Out-Of-State				12
TOTAL Tons Collected In 1996		*Add lines 2 through 12*	112.86T	13

B Material Sold/Shipped/Transferred/Used

(Circle 'C' if material composted, 'E' if material burned for energy recovery, or 'R' if recycled)

COMPANY NAME	LOCATION (City/State)		TONS/GALLONS	
ALL END USERS		C E R		14
IN WA STATE		C E R	112.86T	15
		C E R		16
		C E R		17

Total Exported To Out-Of-Country Markets (List Company Handling Export Of Materials On Line 18)

COMPANY NAME	LOCATION (City/State/Country)		TONS/GALLONS	
		C E R	0	18
Total Tons From Additional Companies, If Any, *page 2, line 40*			0	19
Total Tons Used By Your Company To Make A Product		C E R	0	20
TOTAL Tons Sold In 1996		*Add lines 14 through 20*		21

C	Beginning Inventory, January 1, 1996 (If Known)	X	22
D	Ending Inventory, December 31, 1996 (If Known)	X	23
E	**Does this form balance? Line 13 + line 22 should equal line 21 + line 23. If not, please explain:**		

F Name Of Person Who Filled Out This Form: ERIC J NORTON Phone: 206 274-8294

Exhibit 8

Worksheet To List Additional Counties Of Origin and Buyers

A Sources Of Material (Continued)

OREGON COUNTY NAME	Amount you collected yourself from offices, grocery stores, private citizens, schools, restaurants/bars, etc.	Amount you collected from other recyclers or amount from unknown sources	A+B TOTAL TONS/ GALLONS
			24
			25
			26
			27
			28
			29
			30
			31
			32
Add lines 24 through 32. Enter amount on page 1, line 10.			33

B Material Sold/Shipped/Transferred/Used (Continued)

(Circle 'C' if material composted, 'E' if material burned for energy recovery, or 'R' if recycled)

COMPANY NAME	LOCATION (City/State)		TONS/GALLONS
		C E R	34
		C E R	35
		C E R	36
		C E R	37
		C E R	38
		C E R	39
Add lines 34 through 39. Enter amount on page 1, line 19.			40

G Comments

IT IS DIFFICULT FOR OUT OF STATE BUSINESSES TO CORELATE OREGON CITIES TO COUNTIES, AND END USER OR ~~COMPANY~~ CUSTOMERS SHOULD ONLY BE SPECIFIC TO STATE NOT NAME OR CITY

CONFIDENTIALITY OF INFORMATION

ORS 459A.050 (7) states, "Information collected under subsection (6) of this section, as it relates specifically to the entity's customer lists or specific amounts and types of materials collected or marketed, shall be maintained as confidential by the Department and exempt from disclosure under ORS 192.410 to 192.505. The Department may use and disclose such information in aggregated form."

Printed on Recycled Paper

Exhibit 9

1994 Oregon Material Recovery Survey

If you need assistance completing this form, call Jacquie Moon at 1-800-452-4011 or (503) 229-5479.

Material	ID Code	Line#
HDPE	1517	1

A Sources of Material - Location & Collection Method

OREGON COUNTY NAME	A DIRECT (Collected directly from offices, grocery stores, private citizens, schools, restaurants/bars, etc.)	B INDIRECT (Collected from other recyclers)	C UNKNOWN (Collected from unknown source)	A+B+C TOTAL TONS/ GALLONS	
Metro		3T *		3T	2
					3
					4
					5
					6
					7
					8
					9
Additional County Totals, (if any), *page 2, line 34*					10
Known County of Origin in Oregon					11
Total Collected from Out-of-State					12
TOTAL 1994 Collected *Add lines 2 through 12*				3T	13

B Material Sold/Shipped/Transferred/Used (List U.S. Companies) (Circle 'C' if material composted, 'E' if material burned for energy recovery, or 'R' if recycled)

COMPANY NAME	COMPANY LOCATION (City) (State)		TONS/GALLONS	
Out of region company - makes a product with it		C E R	3T	14
		C E R		15
		C E R		16
		C E R		17
		C E R		18
Total Exported to Out of Country Markets (List Company Handling Export of Materials on Line 20.)				19
COMPANY NAME	COMPANY LOCATION (City) (State/Country)			
		C E R		20
Total Used by Your Company to Make a Product		C E R		21
Total from Additional Companies, (if any), *page 2, line 42*				22
TOTAL *Add lines 14 through 22*			3T	23
Beginning Inventory, January 1, 1994 (if known)				24
D **Ending Inventory, December 31, 1994 (if known)**				25

E **Does this form balance? Line 13 + line 24 should equal line 23 + line 25. If not, please explain in the comments section, line 43.** * Info taken by phone 5/26/95. Won't report any more info (hostile). Doesn't feel he gets any help from dom 26

Worksheet to List Additional Counties of Origin & Buyers

A (continued) Sources of Material - Location & Collection Method

OREGON COUNTY NAME	A DIRECT (Collected directly from offices, grocery stores, private citizens, schools, restaurants/bars, etc.)	B INDIRECT (Collected from other recyclers)	C UNKNOWN (Collected from unknown source)	A+B+C TOTAL TONS/ GALLONS	
					27
					28
					29
					30
					31
					32
					33
Add lines 27 through 33. Enter amount on page 1, line 10					34

B (continued) Material Sold/Shipped/Transferred/Used (Circle 'C' if material composted, 'E' if material burned for energy recovery, or 'R' if recycled)

COMPANY NAME	COMPANY LOCATION (City) (State)		TONS/GALLONS	
		C E R		35
		C E R		36
		C E R		37
		C E R		38
		C E R		39
		C E R		40
		C E R		41
Add lines 35 through 41. Enter amount on page 1, line 23.		C E R		42

F Comments: 43

CONFIDENTIALITY OF INFORMATION

ORS 459A.050 (7) states, "Information collected under subsection (6) of this section, as it relates specifically to the entity's customer lists or specific amounts and types of materials collected or marketed, shall be maintained as confidential by the Department and exempt from disclosure under ORS 192.410 to 192.505. The department may use and disclose such information in aggregated form."

Printed on Recycled Paper

State of Oregon
Department of Environmental Quality Memorandum

Date: April 2, 2001

To: Environmental Quality Commission

From: Stephanie Hallock, Director S. Hallock

Subject: Agenda Item B, Contested Case No. WMC/SW-NWR-98-60 regarding Pacific Western Co., May 3-4, 2001 EQC Meeting

Appeal to EQC

Pacific Western Co. petitioned for Commission review of the Hearing Order for assessment of civil penalty, dated March 29, 2000 (Attachment K). The Order found the company liable for a civil penalty of $24,622 for establishing, maintaining and operating a solid waste site without a permit. The Order also found the company in continuing violation for operating a solid waste disposal facility without a permit.

Background

Findings of fact made by the Hearings Officer are summarized as follows:

Pacific Western Co. has owned and operated a solid waste disposal site near Carver since at least 1996. The solid waste on the site consists of two large piles of roofing waste and requires a DEQ permit. This type of waste may contain asbestos, a compound that requires special waste disposal methods. The Department has had environmental concerns about the possibility of asbestos in the roofing material on the site.

On January 29, 1998, the Department issued a Notice of Noncompliance to Pacific Western Co. The violation continued and on April 28, 1999, the Department issued a Notice of Violation, Assessment of Civil Penalty and Department Order assessing a $24,622 penalty for establishing, maintaining and operating a solid waste site without a permit. The penalty included an economic benefit assessment of $15,022, which was based on savings the company realized by delaying proper sampling and disposal of the waste.

On May 13, 1999, Pacific Western Co. appealed the Notice and requested a hearing. A hearing was held on January 19, 2000.

The Hearings Officer held that Pacific Western Co. violated the Department's solid waste permit requirements by operating a solid waste site without a permit. The Officer also found the company liable for the penalty and in continuing

violation of the Department's rules. The Officer ordered the company to appropriately dispose of all waste material at its site within 60 days of receipt of the Order and to present documentation to the Department of waste removal within 10 days of disposal.

On April 20, 2000, Pacific Western Co. filed a timely appeal of the Order, taking exception to the following findings:

- asphalt roofing waste is solid waste,
- Pacific Western Co. was operating a solid waste disposal site without a permit, and
- Pacific Western Co. was liable for a civil penalty including economic benefit.

EQC Authority

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

Alternatives

The Commission may:

1. As requested by Pacific Western Co., reverse the Order, which found the company in violation of the Department's solid waste permitting rules and liable for a civil penalty of $24,622, and ordered disposal of all waste on its site within 60 days.
2. As requested by the Department, uphold the Hearings Officer's determination that Pacific Western Co. was in violation, is liable for a civil penalty in the amount of $24,622, continues to be in violation of the Department's rules, and must appropriately dispose of all waste on its site within 60 days and notify the Department of disposal within 10 days of completion.

The Commission is reviewing the Order, including the recommended findings of fact and conclusions of law, and may substitute its judgment for that of the Hearing Officer except as noted below.[1] The Order was issued under 1999 statutes and rules for the Hearing Officer Panel Pilot Project,[2] which require contested case hearings to be conducted by a hearing officer appointed to the panel. The Commission's authority to review and reverse the hearing officer's decision is limited by the statutes and rules of the Department of Justice that implement the project.[3]

The most important limitations are as follows:

---

[1] OAR 340-011-0132.
[2] Or Laws 1999 Chapter 849.
[3] *Id.* at § 5(2); § 9(6).

1. The Commission may not modify the form of the Order in any substantial manner without identifying and explaining the modifications.[4]
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.[5] 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.[6]

Rules implementing the 1999 statutes also have more specific provisions for how Commissioners must declare and address any ex parte communications and potential or actual conflicts of interest.[7]

In addition, a number of procedural provisions are 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.[8]
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.[9]

Attachments

A. Letter from Mikell O'Mealy, March 20, 2001
B. Petitioner's Motion to Amend and Amended Reply Brief, August 8, 2000
C. Petitioner's Reply Brief, August 4, 2000
D. Reply to Respondent's Brief and Exceptions to Hearings Officer Decision, July 12, 2000
E. Letter from Larry Cwik, June 28, 2000
F. Petitioner's Brief and Exceptions to Hearings Officer Decision, June 12, 2000
G. Letter from Langdon Marsh, May 11, 2000
H. Letter from William Cox, May 9, 2000

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[4] *Id.* at § 12(2).
[5] *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.
[6] *Id.* at § 8; OAR 137-003-0655(4).
[7] OAR 137-003-0655(5); 137-003-0660.
[8] OAR 340-011-132(3)(a).
[9] *Id.* at (4).

I. Letter from Susan Greco, April 20, 2000
J. Petition for Commission Review, April 11, 2000
K. Order for Assessment of Civil Penalty and Department Order, March 29, 2000
L. Final Order and Judgement, March 29, 2000
M. Exhibits from Hearing of January 19, 2000
   1. Notice of Hearing, December 16, 1999
   2. Notice of Contested Case Rights and Procedures
   3. Request for Hearing, May 13, 1999
   4. Notice of Violation, Assessment of Civil Penalty and Department Order, April 28, 1999
   5. Photographs (3)
   6. Letter from Cory-Ann Chang to Lowell Patton., February 11, 1997
   7. Notice of Noncompliance, January 29, 1998
   8. Letter from Pacific Western Co.
   9. Photograph
   10. BEN Calculation Memo, March 1, 1999
   11. Letter from Larry Cwik to Lowell Patton, October 28, 1999

Available Upon Request OAR Chapter 340, Division 11, 12; ORS 459.205, ORS Chapter 468

Report Prepared By: Mikell O'Mealy
Assistant to the Commission

Phone: (503) 229-5301

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

March 20, 2001

Via Certified Mail

William C. Cox
Attorney at Law
0244 S.W. California Street
Portland OR 97219

Lowell Patton, President
Pacific Western Company
P.O. Box 85
Clackamas OR 97015-0085

Larry Edelman
Department of Justice
1515 S.W. Fifth Avenue, Suite 410
Portland OR 97201

RE: Case No. WMC/SW-NWR-98-060

The appeal in the above referenced matter has been set for the regularly scheduled Environmental Quality Commission meeting on Thursday, May 3 and Friday, May 4, 2001. 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) 229-5301 or (800) 452-4011 ex. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy
Rules Coordinator

Cc: Larry Cwik, DEQ Office of Compliance and Enforcement

Attachment B

William C. Cox attorney at law

Land Use and Development Consultation

August 8, 2000

Environmental Quality Commission
C/O Susan Greco
811 SW 6th Ave
Portland, Oregon 97204

RE: Pacific Western Co. v. DEQ
No. WMC/SW-NWR-98-060
Motion to Amend and Amended Reply Brief

Dear Ms. Greco:

This office hereby motions to amend Pacific Western's Reply Brief in the above captioned matter to correct two typographical errors that if not corrected, change the meaning of what was intended to be briefed. The sentence portions identified in italics below are the sentence potions being amended.

First, on lines 4-6, page 2 of petitioner's reply brief the sentence reads "Lowell Patton testified that were it not for DEQ's demand to stop processing the asphalt material, *it was is petitioner's* intention to process the material into a roadway surface." The word "is" is requested to be removed so line 5 would read "...it was petitioner's intention...."

Second, on lines 17-19, page 2 of petitioner's reply brief the sentence reads "A review of the record and hearing tapes reveals that respondent's assertions of environmental *risk are supported* by the record and substantial evidence." The word "not" is requested to be inserted so line 18 would read "...respondent's assertion of environmental risk are not supported...."

Enclosed is an Amended Reply Brief reflecting the changes. I thank you for your time in this matter.

Sincerely,

Gary P. Shepherd

CC: client
Larry Cwik

0244 S.W. California Street • Portland, Oregon 97219 • (503) 246-5499 • FAX (503) 244-8750

8-2-99

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

PACIFIC WESTERN COMPANY, Petitioner, vs. DEPARTMENT OF ENVIRONMENTAL QUALITY, Respondent.	No. WMC/SW-NWR-98-060 AMENDED REPLY BRIEF OF PETITIONER

Petitioner, Pacific Western Company, offers the following reply brief in the above captioned matter.

1) The asphalt material is not solid waste:

Respondent alleges, as evidence that the material is a solid waste, that petitioner has not used the material for processing for more than five years. (Response Brief at 2). Respondent ignores that the reason petitioner has not processed the material into a finished product is because respondent ordered petitioner to stop such activities. Respondent is estopped to argue petitioner was inactive in processing the asphalt material when respondent is the cause of inactivity on site. Were it not for respondent's cease and desist order, petitioner would have proceeded with processing the asphalt material. Respondent's attempts to suggest petitioner's intentions were to let the

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asphalt material sit and accumulate on site indefinitely and with no plan to process them. That assertion is contrary to the testimony of Lowell Patton concerning petitioner's intentions. Lowell Patton testified that were it not for DEQ's demand to stop processing the asphalt material, it was petitioner's intention to process the material into a roadway surface. Tape 2, Side 4.

As stated in petitioner's opening brief, by definition and pursuant to ORS 459.005(24), a prerequisite to a finding that the asphalt material is solid waste is a finding that the asphalt material is useless or discarded. Discarded is defined by Webster's as to throw away or abandon as no longer useful. In this case, there is no substantial evidence to establish or support a finding that the asphalt material is useless. As such, a finding that petitioner's unlawfully uses solid waste cannot be supported.

2) Risk of Environmental Harm:

A review of the record and hearing tapes reveals that respondent's assertions of environmental risk are not supported by the record and substantial evidence. DEQ's representative testified that there was a risk for potential environmental harm if the asphalt material contained asbestos and if the material were disturbed in a manner that asbestos particles would be released in the air. They also testified that decomposition of the material, if it contained asbestos, could result in environmental harm when runoff from the piles dried to allow asbestos dust to release. DEQ representatives did not quantify

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the risk and when cross examined by Lowell Patton, testified the only real risk would come from disturbing a pile of roofing materials which contained asbestos. Tape 1, Side 2; Tape 2, Side 3.

DEQ's claims of risk assume that the asphalt processing material on petitioner's property is hazardous and contains asbestos. There is no evidence in the record to establish that the asphalt material contains asbestos. The record demonstrates petitioner has expended thousands of dollars in testing the material in accordance with DEQ protocol and not one test came back indicating the presence of asbestos. Tape 1. Respondent's own test revealed no asbestos was present in the samples DEQ took. Exhibit 6. Respondent makes nothing more than unsupported allegations not supported by substantial evidence.

In addition, there is no evidence in the record that demonstrates asbestos has been released into the environment from the asphalt materials on petitioner's property. Hypothetical and unsubstantiated allegations do not constitute substantial evidence to support any finding related to environmental harm.

3) No profit made:

The minimal charge for the material imposed by petitioner was to cover his cost of material handling and processing. Lowell Patton testified it never made a profit. Tape 3, Side 5. No evidence was introduce to demonstrate petitioner made a profit on the asphalt material.

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4) Weight of asphalt material:

The estimated weight of the asphalt material was not based on estimates of the material observed at site, rather from a general category of demolition material, which except for about one or two items, is not present on petitioner's property.

5) Cooperation of petitioner:

Contrary to respondent's allegations on page 6 of its response brief, the February 11, 1997 letter from DEQ does not state the asphalt material must be removed. The hearings officer acknowledged no request to move the material was made in the February 1997 letter. Tape 1. Respondent's misunderstandings of its own letters and demands supports petitioner's argument set forth in the opening brief.

Conclusion:

Based on the foregoing and petitioner's opening brief, petitioner requests the violation and assessment of civil penalty be reversed. Petitioner has not established nor maintained a solid waste disposal site in violation of OAR 340-093-0050 and ORS 459,205(1). Furthermore, the civil penalty imposed is not supported by facts, law, or substantial evidence in the record.

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(503) 246-5499

DATED this 8th day of August, 2000.

William C. Cox, OSB 76110
Gary P. Shepherd, OSB 95499
Of Attorneys for Pacific Western Company

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 8th day of August, 2000, I filed Petitioner's Amended Reply Brief with the Environmental Quality Commission by first class mail, postage prepaid, deposited in Portland, Oregon and addressed to:

Environmental Quality Commission
C/O Susan Greco
811 SW 6th Ave
Portland, Oregon 97204

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

Larry Cwik
Department of Environmental Quality
2020 SW 4th Ave.
Suite 400
Portland, Oregon 97201

DATED this 8th day of August, 2000.

William C. Cox, OSB 76110
Gary P. Shepherd, OSB 95499
Of Attorneys for Pacific Western Company

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Attachment C

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

PACIFIC WESTERN COMPANY, Petitioner, vs. DEPARTMENT OF ENVIRONMENTAL QUALITY, Respondent.	No. WMC/SW-NWR-98-060 REPLY BRIEF OF PETITIONER

Petitioner, Pacific Western Company, offers the following reply brief in the above captioned matter.

1) The asphalt material is not solid waste:

Respondent alleges, as evidence that the material is a solid waste, that petitioner has not used the material for processing for more than five years. (Response Brief at 2). Respondent ignores that the reason petitioner has not processed the material into a finished product is because respondent ordered petitioner to stop such activities. Respondent is estopped to argue petitioner was inactive in processing the asphalt material when respondent is the cause of inactivity on site. Were it not for respondent's cease and desist order, petitioner would have proceeded with processing the asphalt material. Respondent's attempts to suggest petitioner's intentions were to let the

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asphalt material sit and accumulate on site indefinitely and with no plan to process them. That assertion is contrary to the testimony of Lowell Patton concerning petitioner's intentions. Lowell Patton testified that were it not for DEQ's demand to stop processing the asphalt material, it is was petitioner's intention to process the material into a roadway surface. Tape 2, Side 4.

As stated in petitioner's opening brief, by definition and pursuant to ORS 459.005(24), a prerequisite to a finding that the asphalt material is solid waste is a finding that the asphalt material is useless or discarded. Discarded is defined by Webster's as to throw away or abandon as no longer useful. In this case, there is no substantial evidence to establish or support a finding that the asphalt material is useless. As such, a finding that petitioner's unlawfully uses solid waste cannot be supported.

2) Risk of Environmental Harm:

A review of the record and hearing tapes reveals that respondent's assertions of environmental risk are supported by the record and substantial evidence. DEQ's representative testified that there was a risk for potential environmental harm if the asphalt material contained asbestos and if the material were disturbed in a manner that asbestos particles would be released in the air. They also testified that decomposition of the material, if it contained asbestos, could result in environmental harm when runoff from the piles dried to allow asbestos dust to release. DEQ representatives did not quantify

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the risk and when cross examined by Lowell Patton, testified the only real risk would come from disturbing a pile of roofing materials which contained asbestos. Tape 1, Side 2; Tape 2, Side 3.

DEQ's claims of risk assume that the asphalt processing material on petitioner's property is hazardous and contains asbestos. There is no evidence in the record to establish that the asphalt material contains asbestos. The record demonstrates petitioner has expended thousands of dollars in testing the material in accordance with DEQ protocol and not one test came back indicating the presence of asbestos. Tape 1. Respondent's own test revealed no asbestos was present in the samples DEQ took. Exhibit 6. Respondent makes nothing more than unsupported allegations not supported by substantial evidence.

In addition, there is no evidence in the record that demonstrates asbestos has been released into the environment from the asphalt materials on petitioner's property. Hypothetical and unsubstantiated allegations do not constitute substantial evidence to support any finding related to environmental harm.

3) No profit made:

The minimal charge for the material imposed by petitioner was to cover his cost of material handling and processing. Lowell Patton testified it never made a profit. Tape 3, Side 5. No evidence was introduce to demonstrate petitioner made a profit on the asphalt material.

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4) Weight of asphalt material:

The estimated weight of the asphalt material was not based on estimates of the material observed at site, rather from a general category of demolition material, which except for about one or two items, is not present on petitioner's property.

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Contrary to respondent's allegations on page 6 of its response brief, the February 11, 1997 letter from DEQ does not state the asphalt material must be removed. The hearings officer acknowledged no request to move the material was made in the February 1997 letter. Tape 1. Respondent's misunderstandings of its own letters and demands supports petitioner's argument set forth in the opening brief.

Conclusion:

Based on the foregoing and petitioner's opening brief, petitioner requests the violation and assessment of civil penalty be reversed. Petitioner has not established nor maintained a solid waste disposal site in violation of OAR 340-093-0050 and ORS 459,205(1). Furthermore, the civil penalty imposed is not supported by facts, law, or substantial evidence in the record.

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DATED this 4th day of August, 2000.

William C. Cox, OSB 76110
Gary P. Shepherd, OSB 95499
Of Attorneys for Pacific Western Company

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 4th day of August, 2000, I filed Petitioner's Reply Brief with the Environmental Quality Commission by first class mail, postage prepaid, deposited in Portland, Oregon and addressed to:

Environmental Quality Commission
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7-12-01

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF: PACIFIC WESTERN COMPANY, an Oregon Corporation, RESPONDENT	)))))	REPLY TO RESPONDENT'S BRIEF AND EXCEPTIONS TO HEARINGS OFFICER DECISION No. WMC/SW-NWR-98-060 CLACKAMAS COUNTY

I. INTRODUCTION

This Reply is prompted by Pacific Western Company's (Pacific Western) June 12, 2000 Brief of Petitioner and Exceptions to Hearings Officer Decision, filed on the company's behalf by William C. Cox, Attorney at Law, concerning Notice of Violation, Assessment of Civil Penalty, and Department Order (Notice and Order) No. WMC/SW-NWR-98-060 issued April 28, 1999, to Pacific Western Company, an Oregon corporation, by the Department of Environmental Quality (DEQ).

II. RESPONSES TO PACIFIC WESTERN ARGUMENTS

1. Pacific Western argues that the roofing waste in two large piles on Respondent's property located at 16051 S.E. Highway 224, Carver, Clackamas County, Oregon is not solid waste. Solid waste is defined in Oregon Revised Statute (ORS) 459.005(24) as:

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

Construction and demolition waste is defined in Oregon Administrative Rule (OAR) 340-093-0030(20) as:

> "solid waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other

construction and demolition wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster; and soils, rock, stumps, boulders, brush and other similar material. This term does not include industrial solid waste and municipal solid waste generated in residential or commercial activities associated with construction and demolition activities."(emphasis added)

Clean fill is defined in OAR 340-093-0030(13) as:

"material consisting of soil, rock, concrete, brick, building block, tile, or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include putrescible wastes, construction and demolition wastes and industrial solid wastes."

In 1995, Respondent accepted for disposal on its property many truckloads of roofing tear-off material, including discarded asphalt shingles, and related roofing waste including tar paper and wood, in exchange for cash compensation.(Findings of Fact number 1, 3) The shingles and related waste were discarded by others and placed on Respondent's property with Respondent's permission and encouragement.(Exhibit 8) As they were discarded by others, they became waste before Respondent received them. They had outlived their useful life as shingles or related materials. Respondent has handled the material as waste for more than five years, doing little processing for any potential beneficial reuse, namely, running some of the roofing waste through a chip grinder, resulting in the smaller of the two piles, about 12 feet in diameter, and four to five feet high.(Finding of Fact number 3; Exhibit 9) The vast majority of the roofing waste has received no processing for potential beneficial re-use in five years, and still sits as a waste pile about 30 feet wide by 175-200 feet long by about 14 feet high, according to Ms. Chang's testimony.(Exhibit 5 also)

Respondent did not contact the Department with any plan for re-use of the waste until after the Department responded to a complaint at Respondent's property. Respondent also did not conduct any sampling for potential asbestos contamination

of any of the waste until after the Department's April 1999 penalty was issued to Respondent. Respondent's actions have shown that Respondent intended to just let the large waste piles sit and accumulate openly on the ground at Respondent's site, exposed to the elements, indefinitely, for years. Respondent's actions were not consistent with that of one conducting an earnest resource recovery or beneficial re-use project.

Moreover, Respondent's large piles of roofing waste are "discarded . . . commercial, industrial, demolition materials", specifically included within the definition of solid waste. The roofing wastes are considered as construction or demolition waste as they resulted from the "demolition of buildings, roads, and other structures," as listed in the definition of construction and demolition waste cited above. The roofing wastes do not automatically qualify, without testing, as clean fill as they may "contain contaminants which could adversely impact waters of the State or public health," thereby excluding the wastes from the definition of clean fill cited above.

2. Respondent also argues that its site is not a disposal site. The definition of disposal site in ORS 459.005(8) is:

> "land and facilities used for the disposal, handling, or transfer of, or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site."

Respondent's site is "land . . . used for the disposal, handling, . . . of . . . solid wastes." Respondent's site is a disposal site.

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3. During the contested case hearing, Respondent's President, Lowell Patton, admitted that Respondent did not have a solid waste disposal permit from the Department for its site.(Findings of Fact number 4) Even if Respondent had been conducting a bona fide, Department-approved recycling or resource recovery operation, a solid waste permit still would have been required to ensure protection of environmental quality, pursuant to OAR 340-093-0050..

4. Respondent mentions in its Brief prior local government complaints about Respondent's site, a related lawsuit, and interpretations of local regulations concerning Respondent's waste piles. These do not impact DEQ's jurisdiction over the solid waste piles at the site. Resolution of such complaints with the local authorities does not remedy DEQ's continuing concern over potential threats to environmental quality from the large waste piles at Respondent's site. The local governments' concerns are distinct from the Department's concern, and the law at issue here, prohibiting Respondent's unpermitted solid waste disposal site.

5. Pacific Western argues that there was no potential for environmental harm from its unpermitted waste site. This is contradicted by the sworn testimony in the record of Ms. Chang and Mr. Wall. Both witnessed the waste at the site and agreed that the unpermitted Pacific Western solid waste disposal site presented a potential threat of pollution to surface waters and other potential environmental problems. The sworn testimony in the record of Mr. Wall showed that used asphalt shingle waste has a risk of containing asbestos fragments. Asbestos causes diseases such as mesothelioma and asbestosis and is a suspected carcinogen. Despite this risk, Respondent failed to do any sampling for the presence of asbestos in the waste piles from the initial receipt of the waste, in 1995, until more than three months after receiving the Department's April 1999 enforcement action. To date, Respondent has only tested one of the two piles for asbestos. The larger of the two piles has still

not been tested. Also, to allow large piles of roofing waste such as Respondent's to remain unpermitted would encourage others to leave large piles of waste on their properties without permit, which would be a threat to public health and the environment.

6. Pacific Western argues that it had no economic benefit. This is contradicted by the sworn testimony in the record of Mr. Patton and Mr. Dilts. Respondent accepted many truckloads of discarded asphalt shingles for disposal on its property, in exchange for cash compensation, in 1995. Indeed, the record shows that Respondent charged $13.00 per cubic yard for disposal of this waste at its site (Findings of Fact 1). Respondent has accepted approximately 3000 cubic yards of the waste on its site (Findings of Fact 3). Respondent has also avoided an estimated $82,000 in solid waste disposal fees to date (Petitioner's Brief, page 16). The Department calculated the economic benefit portion of Respondent's penalty based on a delayed disposal of the solid waste, calculated through the BEN computer model at $15,022.(Exhibit 10)

7. Pacific Western argues that the Department's economic benefit calculation was based on an incorrect estimate of the weight of the waste piles. It supplies new information that the weight of the piles should have been based on the density of 796 pounds per cubic yard. Respondent suggests that its figure is based on reliable industry estimates (Petitioner's Brief, page 8, footnote 5), but it cites no actual source for this data, leaving its assertion in question. The Department's estimate was based on a density of 1,100 pounds per cubic yard and is based on a figure for weight for mixed construction and demolition waste listed in the Department's administrative rules, OAR 340-097-0110(7)(b)(C). The Department objects to Respondent's attempt to enter new evidence on this issue, raised for the first time after the hearings officer closed the record and issued the Hearing Order.

This matter should have been raised and addressed by the hearings officer during the contested case hearing.

8. Respondent also argues that the economic benefit calculation should have been based on a non-compliance start date of January 1998. However, as Respondent points out, Respondent received a Department letter dated September 23, 1996, requesting proper disposal of the waste.(Petitioner's Brief, page 9; Findings of Fact number 5) The letter only corroborates Ms. Chang's sworn testimony, already in the record, that Department had told Respondent in 1996 that the large unpermitted piles of used roofing waste could not remain at Respondent's site.[1] The1996 conversations between Department and Respondent, and the September 23, 1996 letter, were followed by a February 1997 letter from the Department to Respondent, again informing Respondent that it needed to either conduct proper sampling for potential consideration for beneficial re-use of the waste, or properly dispose of the large waste piles at a permitted site.(Exhibit 6) The Department never told Respondent that it could keep the waste on the site. Indeed, Department staff attempted to work for a year and a half in a technical assistance mode with Respondent, from July 1996 through January 1998, in an effort to resolve the issue cooperatively. By January 1998, however, it became clear that Respondent did not intend to cooperate in either removing the unpermitted solid waste piles or obtaining adequate samples and testing of same to allow a potential beneficial re-use of the waste. The Department then issued its January 29, 1998 Notice of Non-compliance.(Exhibit 7) Respondent was still uncooperative, and the Department issued the April 1999 formal enforcement action, the Notice and Order. The continued lack of cooperativeness in Respondent's conduct belies Respondent's

[1] Respondent's counsel requested that the Department send him a copy of the September 23, 1996 letter on June 2, 2000,and a copy was sent to him by fax on the same day.

assertion in the Brief that it did not know that it was in violation of the law, and once it did, took steps to comply with the law.(Petitioner's Brief, page 9)

9. Respondent argues that upholding the Hearings Officer's Findings and Order will likely dissuade recycling efforts.(Petitioner's Brief, page 16) This is not accurate. The Department strives to encourage recycling throughout Oregon. However, placing a waste that has been untested for asbestos, and may contain it, on roads, is not the kind of re-use the Department can support. Allowing large uncovered piles of asphalt shingles to remain on bare ground for more than four years is not the kind of activity that Department-approved recyclers conduct. Respondent's intransigence with the Department's repeated requests over a four-year period for sampling of its solid waste has not been conducive to any potential reuse of its waste. If Respondent truly wants to re-use its solid waste in a beneficial way, the Department remains willing to be supportive, as long as its concerns for protections for environmental quality are addressed satisfactorily.

10. Respondent argues that the Department's requirements have caused "daunting financial obligations," have been "economically disastrous," and that Respondent should receive special consideration as a small business.(Petitioner's Brief, pages 13, 14, 19). The Department met with the President of Respondent on June 17, 1999, after the Notice and Order was issued, in an informal discussion meeting requested by Respondent. During the meeting the Department offered to provide financial hardship forms from the Department's business office for the Respondent to complete and return with supporting documentation. The Department may consider financial hardship in reducing a penalty during settlement. Respondent declined to accept the offer to be sent the forms and complete and return them to the Department for consideration.

12. The penalty assessed for Respondent's unpermitted solid waste disposal site violation, $24,622, including an economic benefit to Respondent of

$15,022, was correctly calculated using the Department's civil penalty calculation formula in OAR 340-012-0045 (Hearings Order, Conclusions and Reasons).

III. CONCLUSION

The Department has shown through documents and testimony admitted into the record that the preponderance of evidence indicates that Pacific Western violated ORS 459.205(1) by establishing and operating an unpermitted solid waste disposal site on its property near Carver, Oregon, and that the penalty for this violation was correctly calculated according to law.

IV. PROPOSED ULTIMATE FINDINGS

The record provides sufficient proof to find that Pacific Western has established and maintained an unpermitted solid waste disposal site on its property near Carver, Oregon, in violation of ORS 459.205(1). Respondent is in continuing violation of this law.

V. PROPOSED CONCLUSIONS AND REASONS

Based upon the foregoing reasoning, the Department concludes that Respondent has established and maintained a solid waste disposal site in violation of OAR 340-093-0050 and ORS 459.205(1). A solid waste disposal site permit is required for Respondent's waste at the site. Respondent does not have a permit from the Department. The civil penalty imposed by the hearings officer is supported by both the law, and the facts in the record. Respondent is found to be in continuing violation of OAR 340-093-0050 and ORS 459.205(1), and Respondent's waste piles pose a threat to environmental quality until they are properly removed and disposed of or beneficially re-used in accord with a Department-approved plan.

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VI. PROPOSED COMMISSION ORDER

Based on the foregoing FINDINGS AND CONCLUSIONS OF LAW, it is hereby Ordered that the Hearings Officer's decision dated March 29, 2000 is affirmed. Respondent is ORDERED TO:

1. Dispose of all waste at the site within sixty days from the date of this order to a Department-approved solid waste disposal site.
2. Send receipts and photographic documentation of the waste disposal within 10 days of completion of the Department-approved waste disposal to Cory-Ann Chang, DEQ Northwest Region, 2020 S.W. Fourth Avenue, Suite 400, Portland, OR 97201.

Respectfully submitted,

7/12/00
Date

Larry Cwik
Environmental Law Specialist
Oregon Department of Environmental Quality

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 17th of July, 2000, I filed RESPONSE TO BRIEF OF PETITIONER AND EXCEPTIONS TO HEARINGS OFFICER DECISION with the Environmental Quality Commission by first class mail, postage prepaid, deposited in Portland, Oregon and addressed to:

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

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

William C. Cox, Attorney at Law
0244 S.W. California Street
Portland, OR 97219

DATED this 17th day of July, 2000.

Larry Cwik
Statewide Enforcement Section
Department of Environmental Quality

Oregon

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

ENFORCEMENT SECTION

June 28, 2000

Susan Greco
Rules Coordinator
Management Services Division
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

Re: Response to Brief of Petitioner and Exceptions
to Hearings Officer Decision
In the Matter of Pacific Western Company
Case No. WMC/SW-NWR-98-060

Dear Ms. Greco:

As I was on vacation when the Brief listed above arrived at the Department, and I did not see it until June 26, 2000, I have requested an extension to July 26, 2000 to file the Department's response to the Brief, and the opposing counsel, William Cox, agreed to this today.

Thank you.

Sincerely,

Larry Cwik
Enforcement Section

enclosures

cc: Les Carlough, Manager, Enforcement Section
Cory Ann Chang/Ed Druback, Northwest Region
William Cox, Attorney at Law, 0244 S.W. California Street, Portland, OR 97219

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Portland, OR 97201-4987
(503) 229-5528
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DEQ-1

Attachment F

6-17-99

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

PACIFIC WESTERN COMPANY, Petitioner, vs. DEPARTMENT OF ENVIRONMENTAL QUALITY, Respondent.	No. WMC/SW-NWR-98-060 BRIEF OF PETITIONER and EXCEPTIONS TO HEARINGS OFFICER DECISION

Petitioner, Pacific Western Company, offers the following brief and exceptions to the hearings officer's findings and conclusions in this matter.

INTRODUCTION

Petitioner was improperly found to have established and maintained a solid waste disposal site without a permit in violation of ORS 459.205 and OAR 340-093-0050. Petitioner was also wrongfully assessed a civil penalty of $24,622. To find petitioner in violation of applicable statutes and rules, a determination that petitioner operated a "disposal site" and that "solid wastes" are present is necessary. By law, neither finding can be supported based on the facts of this case, ORS 183.470. Petitioner has not, nor is it continuing to maintain a disposal site, as that term is defined. In addition, the material on

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petitioner's property is not solid waste, as that term is defined. If petitioner were to be legally found to have operated and maintained a solid waste disposal site, the penalty imposed is not based on facts which are supported by substantial evidence in the record. ORS 183.482(8)(c)[1].

A. ***Petitioner has neither established nor maintained a disposal site:***

Petitioner was found to have violated ORS 459.205(1) and OAR 340-093-0050, by having established and maintained a solid waste disposal site on its property without a permit. A perquisite to finding petitioner in violation of the permit requirement is finding that petitioner established and maintained a disposal site. As the term is used in ORS 495.205(1), 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 dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site."

[1] The statute states substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

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The definition of "disposal site" in OAR 340-093-0030(30) is the same. Petitioner has not established and maintained a "disposal site" as that term is defined.

Petitioner is not operating a dump or landfill were materials are permanently disposed of or temporarily stored for transfer to another facility. Petitioner is not operating any of the facilities envisioned by or specifically mentioned in the definition of "disposal site." For approximately one year, petitioner accepted processed asphalt products (asphalt shingles) to be used by it in an industrial manufacturing process. Tape 1, Side 1. The asphalt shingles, a mineral product as detailed below, was essential for the production of petitioner's intended final product, a roadway surface material. Mr. Patton testified the end product was intended for use by petitioner for roadways on its site and other property owed by petitioner and Mr. Patton individually. Tape 3, side 5. The process of changing the finished appearance and physical properties of a product in an effort to make use of that product for a different purpose should not be classified as either a solid waste or a disposal site. To do so completely frustrates the recycling process and therefore is inconsistent with Legislative Policy set forth in ORS 459.015(1). To define petitioner's activity as disposal of solid waste is by analogy to claim that a location used for the grinding of wood products into usable chips and hog fuel is a disposal site.

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Petitioner's use of the property is consistent with Clackamas County zoning. The subject zone is rural industrial (RI) and permits outright, as a primary use, the storage of mineral products.[2] Clackamas County Zoning and Development Ordinance, Section 604.03. Asphalt, by definition, is a mineral. Specifically, it is a variety of bitumen. *See* Webster's Dictionary, Second College Edition. "Bitumen" is defined as asphalt found in its natural state, mineral pitch. *See* Webster's Dictionary, Second College Edition. Asphalt shingles, a mixture of asphalt and sand or gravel, are therefore a mineral product, which petitioner is permitted by county code to have and use on its property. As the applicable zoning code indicates, storage of the product in question is permitted. The hearings officer has redefined storage to mean disposal. There is no evidence in the record to support such a characterization or redefinition. The evidence neither establishes petitioner intended to, nor does it establish that petitioner in fact did, maintain a disposal facility. Storage for processing does not equal disposal. Since there is no supportable conclusion that petitioner either established or maintained a disposal site, it was contrary to law

[2] Clackamas County investigated petitioner to ensure that use of the property is consistent with uses permitted by the rural industrial zone. Clackamas County declined to pursue an enforcement action following its investigation. It can be presumed from the decision not to bring an enforcement action that petitioner's use of the property (storing mineral products) is consistent with the property's zoning and applicable county regulations. The county had also previously brought an enforcement action against petitioner for bringing stumps and brush onto the property. The Circuit Court found petitioner's activities to be a permitted use in the zone. Tape 3, side 5.

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to find petitioner in violation of ORS 459.205(1) and OAR 340-093-0050 (see ORS 183.470).

B. The asphalt material is not a solid waste:

Petitioner accepted asphalt shingles for use in an industrial process to produce a product. The asphalt shingles are not "solid waste" as that term is defined in ORS 459.005(24) and OAR 340-093-0030(81). "Solid waste"

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

In reaching the conclusion that the asphalt shingles petitioner was storing on its site are solid waste, the Hearings Officer by definition had to find the subject material to be a useless or discarded. That finding cannot be supported.

Demolition materials, by definition, are materials obtained by demolishing something, often specifically destroyed by explosives. *See* Webster's Dictionary, Second College Edition. Demolish is defined, stems from, and synonymous with the word destroy. *See* Webster's Dictionary, Second College Edition. As stated above, the asphalt shingles are an altered mineral product, a variety of bitumen, which is a mineral of naturally occurring asphalt. While asphalt shingles can arguably, in some

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circumstances, result from the conducting of a demolition activity, they are not per se demolition waste or ruble. As in this case they are a product containing a mineral content for use by petitioner in another form after having been transformed by petitioner's industrial processes. As such, the asphalt shingles are neither useless nor, in this factual setting, discarded. Being useless or discarded is a necessary element in defining a solid waste.[3] To the contrary, the asphalt material is useful and was purposefully obtained.[4] Tape 3, side 5. The record lacks substantial evidence to demonstrate that the asphalt material obtained by petitioner is a useless or discarded solid waste. To hold that petitioner's activity is prohibited by law and subject to penalty will effectively destroy both the concept of recycling and the industrial practice of storing materials destined for processing into a finished product.

C. Penalty is unwarranted, unlawful and not factually supported:

If this Commission upholds the hearings officer findings and conclusion that petitioner established and maintained a solid

[3] Discard is defined by Webster's as to throw away or abandon as no longer useful or valuable.

[4] The act of charging to have the shingles deposited on site is not proof of an intent to dispose. Rather it is a means to reduce the cost of the end product (road surfacing material) and possibly saving the seller transportation and dumping fees. It represents a market driven opportunity created by the high cost Metro charges for disposing of otherwise recyclable materials and the inconvenient location of sites to do so. Petitioner's representative, Mr. Patton, testified it never made a profit on the shingles in their unprocessed form. Tape 3, Side 5. No evidence was introduce to demonstrate petitioner made a profit on the asphalt material in its pre recycled form.

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waste disposal facility, petitioner requests the civil penalty imposed be dismissed. The hearings officer affirmed the imposition of a civil penalty by DEQ's enforcement division of $24,622. The civil penalty was imposed using the formula outline in the OAR Chapter 340, Division 12. The formula has various components which are each assigned a value. The values the hearings officer (DEQ) assigned to many of the individual components were neither factually correct and nor supported by substantial evidence in the record. Since the individual components of the formula are not supported by substantial evidence, the civil penalty imposed is not supported by the record.

i. *Economic Benefit (EB) factor:*

Of the $24,622 civil penalty imposed, $15,022 represented the alleged economic benefit received by petitioner. Exhibit 10. In arriving at this sum, DEQ estimated a tipping fee cost of $82,500 and used a date from July 1996 as the beginning of the violation. Exhibit 10. The total amount of tipping fees was calculated using the estimate of 3,000 cubic yards of asphalt material multiplied by an estimate of the material weighing 1100 pounds/cubic yard, which was converted into tons (1650), and then multiplied by an estimate of $50/ton for tipping fees. Tape 1, side 2; Tape 2, side 3 (testimony of Chang and Diltz). The weight figure alone, as used in the calculation, was not based on the type or weight of the actual asphalt material. It was merely an estimate. There are no facts in evidence to establish the weight

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of the asphalt material on petitioner's property. Ms. Chang testified she "assumed" the asphalt material weighed 1,100 pounds per cubic yard because that is an estimated figure she uses for demolition material. Tape 1, side 2. Besides her error of mischaracterizing petitioners industrial product storage activity as disposal of a solid waste, Ms. Chang effectively imposed a civil penalty based upon nothing more than an assumption about a broad category of materials within which there is no evidence the subject shingles fit. The DEQ provided no evidence demonstrating the actual weight of the subject material.[5] The unreliable weight estimate and product characterization used by DEQ in determining the $15,022 economic benefit portion of petitioner's civil penalty is not supported by evidence in this case and cannot be sustained.

ii. *Date of Non-compliance is incorrect:*

Another factor used in determining the economic benefit portion of the civil penalty is the date at which the alleged non-compliance began. Exhibit 11. The earlier the date used the larger penalty. The penalty formula uses the date in factor R, for which petitioner was assessed a detrimental value.

Roger Dilts testified that he based his calculation on an initial date of non-compliance of July 1996; or the date the material should have been disposed of elsewhere (Testimony, Tape

[5] Petitioner, based on reliable industry information, figures a cubic yard of the asphalt product weighs 769 pounds, and not 1100 pounds as estimated by DEQ.

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2, Side 3). Use of that date is not only inequitable it is incorrect. Petitioner attempted to comply with all applicable rules, laws, and requirements once he was informed of them by DEQ operatives. The DEQ stated throughout the contested hearing that it brought this enforcement action because it wanted the material removed and disposed of in a landfill but petitioner refused. That is not a correct or fair assertion of the facts.

The date used by Ms. Chang and Roger Diltz, and upheld by the hearings officer, relates to the date Ms. Chang first visited the site, July 1996. She visited the site with representatives of Clackamas County and Metro who were also investigating petitioner's use of the land for compliance with applicable zoning and rules. [6] Tape 1. Following her initial site visit she wrote a letter to Mr. Patton dated September 23, 1996. DEQ representatives did not enter that letter into the record to allow thorough review by the hearings officer. Nevertheless, several times they offered their conclusions of what the letter intended at the hearing and in subsequent letters. Ms. Chang testified that Mr. Patton was on notice as of the July 1996 meeting that he was required by law to remove the asphalt material. That statement is not supported by the record. Such an error is alone basis for reversal.

[6] In 1996, petitioner was contacted by Metro, Clackamas County, and the DEQ concerning the acceptance and processing of asphalt material for use in roadway construction. Following their respective investigations, Metro and Clackamas County declined to pursue enforcement actions.

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By an 'outside the record' review of the September 23, 1996 letter it is clear that the DEQ did not state petitioner was violating solid waste disposal rules and regulations; DEQ did not state petitioner was operating without a permit; and, DEQ did not suggest or require petitioner to obtain a permit.[7] The letter merely indicates Ms. Chang assumes the material will not be used and therefore should be removed. As of the end of 1996 no notice had been given to inform petitioner of a law alleged to be violated. Mr. Patton testified the first time petitioner was notified of an allegation of a specific rule violation was on January 29, 1998 via letter. Tape 3, Side 5. The written correspondence in the record supports his testimony. As of 1996, petitioner had not been informed of any rules or regulations it was alleged to be violating. Given Metro's and Clackamas County's decision not to proceed with enforcement actions, petitioner also reasonably believed it was operating in accordance with applicable zoning.

Following the 1996 letter and site visit, and prior to the January 29, 1998 notice of non compliance, the DEQ corresponded

[7] The September 23, 1996 letter referred to in Ms. Chang's testimony does not state petitioner has violated a law nor does it identify any law that is alleged to be violated. The six sentence letter states: "From your letter it appears that you have decided not to pursue processing of old asphalt roofing material to manufacture a road surface material. Therefore, the Department requests that within sixty (60) days of receipt of this letter, you properly dispose of the existing pile of old asphalt shingles located at 16050 SE Highway 244 in Carver. Failure to do so may lead to a formal enforcement action by the Department."

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with Mr. Patton on February 11, 1997.[8] Rather than indicating an intent to bring an enforcement action, that letter deals strictly with asbestos testing. It does not specify any laws or rules alleged to have been violated. The letter neither requests material removal nor indicates a pending enforcement action. To the contrary, a request for testing indicates a belief the material would be remaining on site and the road surfacing material production continuing. The letter states in pertinent part: "...if you wish (sic) accept additional roofing material in the future, you must require written documentation, in the form of laboratory analysis results, from your suppliers...." Such a statement reasonably led petitioner to believe he could continue his activities, i.e. that DEQ was not requiring that petitioner remove the asphalt. When questioned by DEQ during the hearing on actions taken in response to the February 11, 1997 letter, Mr. Patton testified that no written demands requiring the material to be removed had been issued therefore the material was not removed. He also testified the testing was delayed because petitioner lacked the necessary funds. Tape 3, Side 4 and 5.

For the first time, in its Notice of Noncompliance and warning of civil penalty dated January 29, 1998, the department notified petitioner in writing that it considered petitioner to be in violation of its rules. Again, DEQ did not demand or even

[8] The February 1997 letter's, Exhibit 7, authenticity is questionable. The letter has a date of 2/11/97 on the first page and a date of 1/29/98 (almost a year later) on the second page. The second page also has no signature.

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request the materials be removed. Following the notice of noncompliance, petitioner wrote Ms. Chang a letter questioning DEQ's authority to regulate the asphalt product storage. Petitioner's letter demonstrates it was unsure of the applicable law, the alleged violations, or the authority of DEQ. It was not until DEQ issued a Notice of Violation on April 28, 1999, over three years from its initial site visit, that DEQ finally identified the applicable law (ORS 459.205(1)) in conjunction with its conclusion that the material had to be removed to a disposal site. Exhibit 4; Tape 3, side 5.

Petitioner, through DEQ correspondence, inaction and representations, believed its operation to be in compliance with applicable laws. Its reasonable assumption, which continues, is based on its operations being consistent with the zoning and applicable land use regulations, a legislative policy promoting recycling and the DEQ's representations and correspondence. As such, the record does not support an initial noncompliance date of July 1996.[9]

---

[9]. The activities, assumptions, interpretations, applications and conclusions of their authority and rules by DEQ operatives and the hearings officer are clearly inconsistent with the intent of the legislature when it enacted ORS 183.335(2)(b)(E). That statute requires that the DEQ, or any agency, to consider and project the economic effect of an action or interpretation of a rule on cost of compliance by small businesses affected thereby. Petitioner is by definition a small business intended to be afforded the protection of ORS 183.355(2)(b)(E); ORS 183.310(9).

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iii. *Attempts to remedy / reach solution / actions taken:*

The civil penalty formula employs factors (H, O, R, and C) relating to petitioner's history, its attempts to remedy the situation and its attempts reach a solution. The hearings officer associated values to these factors unsupported by evidence in this case.

An important fact to consider in assessing a value to the civil penalty factors is DEQ's inconsistent, unclear and confusing actions as outlined above in subsection (ii). Although limited by financial resources and the daunting financial obligations of DEQ's requests, upon being properly informed and instructed, petitioner has attempted to take appropriate corrective action. In an accommodation to the 1996 request by Metro officials, petitioner immediately stopped accepting additional materials. Tape 1, Side 1; Tape 3, Side 5.

From 1996 until its April 28, 1999 notice of violation, DEQ did not request the material be removed from the site. Mr. Patton testified petitioner believed it was and is in compliance with applicable Clackamas County and Metro standards. The uncontroverted evidence in the record is that the subject industrial processing activity is permitted by Clackamas County Zoning code. DEQ did not formally indicate which law it believed required removal of industrial resource material or that removal was mandated until the April 28, 1999 letter. Tape 2, side 4.

Mr. Patton testified he had a meeting with DEQ and its representatives in an effort to resolve the matter and in an

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attempt to avoid hiring attorneys. Mr. Patton asserted he has followed DEQ's requests, which involve spending substantial sums of money (in Mr. Patton's words they were "economically disastrous), and participated in good faith in finding a solution. Tape 2, side 4; tape 3, side 5.

DEQ expressed a concern over asbestos being released into the air from the pile of asphalt material. Mr. Patton testified petitioner believed DEQ's concern was with the potential existence release of asbestos fibers during grinding of the material. Tape 2, Side 4; Tape 3, Side 5. As its finances allowed, petitioner had 65 samples taken and tested according to DEQ sampling protocol for the detection of asbestos. Tape 1, side 2; Tape 2, side 4; Tape 3, Side 5. Once it was determined that the material did not contain asbestos, petitioner reasonably believed that no harm was being done by allowing the material to be stored on its property.

In fact, in an attempt to satisfy DEQ representatives, petitioner made a beneficial use request to use the asphalt material on site. The Department responded by thanking him for his cooperation to date. Exhibit 11. As of this date, DEQ has neither approved nor disapproved of petitioner's beneficial use request.

iv. *Deterrence purpose not furthered in this case:*

DEQ representative Roger Dilts testified that the main purpose of imposing a civil penalty was to deter violators. Tape

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2, side 4. The record is clear that petitioner did not intentionally violate any DEQ rules. Petitioner reasonably concluded that since it complied with Metro's request and is in compliance with County land use codes it was not in violation of any applicable law. Petitioner accepted asphalt materials/mineral products to be used in a lawful industrial process. There is no evidence that petitioner intended to dispose of solid waste nor start a landfill or dump operation. The evidence indicates an intent to use a mineral product for roadway construction on its, and associated businesses' private property. As well, no evidence has been presented that petitioner's activity poses a risk to the community. To the contrary, both DEQ's and petitioner's tests show the material to be benign.

If the purpose of a civil penalty is deterrence, then civil penalties are to be equated with punitive measures. The purpose of punitive measures is to deter violators from engaging in conduct which intentionally injures others without a care or reason. See ***Van Lom v. Schneiderman***, 187 Or 89, 107, 210 P2d 461 (1949). An award of punitive damages is to deter clearly wrongful and intentional conduct. *See* ***McElwain v. Georgia-Pacific***, 245 Or 247, 256-257, 412 P2d 957 (1966). A civil penalty should only be used to deter clearly wrongful and intentional conduct.

In this case, there is neither clearly wrongful nor intentional conduct of petitioner which needs or should be deterred by a substantial civil penalty. There is nothing to be

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gained, but much to be lost by doing so. This case will set a precedent of a kind likely to dissuade recycling efforts; a result diametrically opposed to announced Legislative intent. DEQ's requirements, if upheld, will be financially burdensome on petitioner. DEQ's own estimates indicate it will cost petitioner $82,500 to dispose of the asphalt material in a landfill. DEQ also estimated it would cost between $7,500-9,000 for further lab testing and an additional $1,500 for administrative costs. Tape 2, side 3 & 4. These figure do not include the labor costs necessary to carry out DEQ's mandates. To add additional penalties would be excessive. Further financial obligations directed away from allowing recycling or other beneficial uses will do nothing but assure that solid waste landfills will reach capacity more readily.

CONCLUSION

Based on the foregoing, petitioner requests the violation and assessment of civil penalty be reversed. Petitioner has neither established nor maintained a solid waste disposal site in violation of OAR 340-093-0050 and ORS 459.205(1). Furthermore, the civil penalty imposed is neither supported by facts, law, or substantial evidence in the record nor the result of common sense analysis. There is no safety, health or welfare issue present in this case that can support the decision of the hearings officer.

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EXCEPTIONS TO HEARINGS OFFICER DECISION

PROPOSED FINDINGS OF FACT

1) Pacific Western Company is a forest products company, in the business of recycling stumps, brush and woody material. In 1995, Pacific Western issued a notice that it would accept asphalt roofing shingles if delivered to it industrially zoned property. Pacific Western intended to use the mineral based products in an industrial process to produce roadway construction material. It intended to use the roadway material for surfacing roadways on property owned or controlled by Pacific Western and associating businesses. Pacific Western began accepting asphalt products on the company's site at 16051 SE highway 224, Carver, Oregon.

2) Metro contacted Pacific Western and expressed concern about Pacific Western's actions. Clackamas County also reviewed Pacific Western activities to ensure they complied with the site's zoning and county land use codes. In addition DEQ investigated Pacific Western's operation. DEQ was concerned that the resource material contained potential environmental hazards. It was also concerned with zoning issues. Following their respective investigations, Clackamas County and Metro ceased further enforcement action following Pacific Western's agreement not to accept additional asphalt products.

3) Two piles of asphaltic resource material, consisting of asphalt shingles, are presently located on Pacific Western's industrial facility. The smaller pile consists of material taken

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from the larger pile and processed for use as a roadway surfacing product. More than 400 cubic yards of the asphalt product is on site.

4) Pacific Western's industrial processing facility is not a solid waste disposal site as that term is defined by applicable rule and statute. The subject material is by definition a mineral product which is being stored on site for use in an industrial manufacturing process.

5) After its July 1996 inspection, a DEQ inspector sent petitioner a letter requesting that the subject material be removed. The request was based upon the inspector's expressed assumption the material was no longer intended for recycling or use for roadway surfacing. The September 23, 1996 DEQ letter, did not inform petitioner it was in violation of solid waste disposal rules and regulations; did not indicate petitioner was operating without a permit; and, did not require petitioner to obtain a permit. The record indicates Pacific Western believed it was operating in accordance with applicable laws since its activities are permitted by the applicable zoning laws and it was voluntarily accommodating Metro's request that no additional material be imported to the site.

6) The February 11, 1997 letter from DEQ deals strictly with asbestos testing. It does not specify that any laws or rules had been violated, it does not contain a request that the subject material be removed, nor does it indicate Pacific Western would be subject to an enforcement action.

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7) DEQ first officially notified petitioner on January 29, 1998 that it considered petitioner to be in violation of applicable laws. In the same correspondence DEQ issued petitioner its first warning of civil penalty for failure to apply for a permit. In that letter DEQ did not specifically demand or request the materials be removed.

8) It was not until DEQ issued a notice of violation on April 28, 1999, over three years from its initial site visit, that DEQ, despite requests from petitioner, identified the specific law (ORS 459.205(1)) it was relying upon in demanding that the material be removed to a disposal site.

9) The record does not support imposition of any penalty on Pacific Western, let alone the $24,622 imposed by the hearings officer. The penalty proposed by the hearings officer is not based upon reliable or supported value factors required by OAR Chapter 340, Division 12. The values assigned to many of the individual components of the rules are based upon assumptions and dissimilar example estimates. They are thus were not supported by substantial, reliable evidence. The penalty also is contrary to legislative protections intended for small businesses as set forth in ORS 183.335 and related statutes.

10) There is no evidence of a reliable nature to refute Pacific Western's denial of making a profit from its alleged acceptance of solid waste for disposal. As indicated above petitioner was not accepting solid waste for disposal. Furthermore, the weight figure relied upon by the hearings

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officer in calculating economic benefit for imposition of the civil penalty does not accurately indicate the actual weight of the subject material. The economic benefit portion of the penalty assessed by the hearings officer is not supported by substantial evidence in this case.

11) The date used by the Hearings Officer for calculation of the proposed civil penalty is not supported by the record. The record establishes that petitioner has not known since the July 1996 date chosen by the hearings officer that storage of the asphalt material is prohibited by DEQ rules.

12) The record does not support a conclusion that petitioner has unreasonably refused to take appropriate action to remedy alleged violations of DEQ rules. Petitioner has taken action to correct the situation, deal with the problem, and reach a solution. Petitioner, at a substantial cost, attempted to address properly identified concerns. For example it took 65 samples of the material pursuant to DEQ sampling protocol. Petitioner made a beneficial use request to use the asphalt material on site. The Department thanked Petitioner for its cooperation at that time.

13) Imposition of a civil penalty against Pacific Western will not further the deterrence purpose of civil penalties in enforcement actions. The record indicates Pacific Western did not intentionally violate any DEQ rules. Pacific Western reasonably and honestly believed that because it was in compliance with local zoning laws that no violation had been committed. Pacific

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Western did not intend to operate a disposal site. Pacific Western accepted asphalt materials/mineral products to be used in a lawful industrial process.

PROPOSED ULTIMATE FINDINGS

The record does not provide sufficient proof to find that Pacific Western intended to establish and maintain a solid waste disposal site at it the subject industrial zoned property in violation of DEQ rules and ORS 459.205(1).

PROPOSED CONCLUSIONS AND REASONS

Based upon the forgoing reasoning we conclude that Petitioner has not established and maintained a solid waste disposal site in violation of OAR 340-093-0050 and ORS 459.205(1). No solid waste disposal deposit site permit is required. The civil penalty imposed by the hearings officer is neither supported by the law nor facts in the record. The civil penalty is dismissed. Furthermore, there is not evidence to establish that the activities undertaken by petitioner offer a threat to the health, safety and welfare of the citizens of Oregon. Therefore this commission lacks authority to affirm the sanctions imposed by the hearings officer.

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PROPOSED DEPARTMENT ORDER

Based on the foregoing FINDINGS and CONCLUSIONS OF LAW, it is hereby Ordered that the decision of the hearings officer is reversed. DEQ's Notice of Violation and Assessment of Civil Penalty against Pacific Western is dismissed.

Respectfully submitted,

June 12, 2000.

William C. Cox, OSB 76110
Gary P. Shepherd, OSB 95499
Attorneys for Petitioner

WILLIAM C. COX, Attorney at Law
0244 SW California Street
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 12th day of June, 2000, I filed BRIEF OF PETITIONER and EXCEPTIONS TO HEARINGS OFFICER DECISION with the Environmental Quality Commission by first class mail, postage prepaid, deposited in Portland, Oregon and addressed to:

Environmental Quality Commission
C/O Susan Greco
811 SW 6th Ave.
Portland, Oregon 97204

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

Larry Cwik
Department of Environmental Quality
2020 SW 4th Avenue, Suite 400
Portland, Oregon 97201

DATED this 12th day of June, 2000.

William C. Cox, OSB 76110

WILLIAM C. COX, Attorney at Law
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Oregon
John A. Kitzhaber, M.D., Governor

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

May 11, 2000

William C. Cox
Attorney at Law
0244 S.W. California Street
Portland OR 97219

RE: Pacific Western Company
Case No. WQ/SW-NWR-99-163

Dear Mr. Cox:

The Environmental Quality Commission has received your request for an extension to file the exceptions and brief in the above referenced matter. An extension of 30 days has been granted for the filing of your exceptions and brief, which will now be due on or before June 12, 2000. 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 a copy to Larry Cwik, Department of Environmental Quality, 2020 S.W. 4th Avenue, Suite 400, Portland, Oregon, 97201. If you should have any questions, please contact Susan Greco at (503) 229-5213 or (800) 452-4011, extension 5213 within the state of Oregon.

Sincerely,

Langdon Marsh, Director

cc: Larry Cwik, NWR

Attachment H

William C. Cox attorney at law

Land Use and Development Consultation

May 9, 2000

Susan Greco
DEQ, Rules Coordinator
811 SW 6th Avenue
Portland, Oregon 97204-1334

Re: Appeal of Pacific Western Company
Case No. WMC/SW-NWR-98-0060

Dear Ms. Greco,

This letter will confirm our discussion regarding this office's representation of the appellant and the need for additional time to submit a brief in support of Pacific Western's appeal. Having just become involved in this controversy it will take time to review all documents and obtain a background history sufficient to adequately represent our client. Only then can an appropriately analyzed and researched brief be drafted and filed. Based upon this office's workload I request an extension of 63 days from May 12, 2000 to file the appellant's brief. That extended date would fall on July 14, 2000. Please confirm this new date as soon as possible so I can plan my work load accordingly.

Sincerely yours,

William C. Cox

WCC/abh
CC: Client
Addressee via facsimile to 229-5850

0244 S.W. California Street • Portland, Oregon 97219 • (503) 246-5499 • FAX (503) 244-8750

Oregon
John A. Kitzhaber, M.D., Governor

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
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April 20, 2000

Lowell Patton, President
Pacific Western Company
P.O. Box 85
Clackamas OR 97015-0085

RE: Appeal to Environmental Quality Commission

Dear Mr. Patton:

On April 12, 2000, the Environmental Quality Commission received your timely request for administrative review by the Commission in DEQ Case No. WMC/SW-NWR-98-0060.

Pursuant to OAR 340-011-0132, you must file exceptions and brief within thirty days from the filing of the request (May 12, 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 J

State of Oregon
Department of Environmental Quality

Received
APR 12 2000

OFFICE OF THE DIRECTOR

Pacific Western Company
P.O. Box 85
Clackamas, OR 97015

April 11, 2000

Susan Greco
Rules Coordinator
Dept. of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204-1334

Ref. No.: G60260
Case No.: 00-GAP-00020
Case Type: DEQ

We herewith wish to appeal the decision in the subject case as rendered by Linda B. Lee, Hearings Officer, dated 29 March 2000.

Yours very truly,

Pacific Western Co.
P.O. Box 85
Clackamas, OR 97015
(503) 658-5151

Attachment K

Ref No.: G60260
Case No: 00-GAP-00020
Case Type: DEQ

STATE OF OREGON

Dec Mailed: 03/29/00
Mailed by: SLS

HEARING DECISION

PACIFIC WESTERN CO.
LOWELL PATTON, PRESIDENT
PO BOX 85
CLACKAMAS OR 97015 0085

DEPARTMENT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE

PORTLAND OR 97204 1334

LARRY CWIK
DEQ ENFORCEMENT SECTION
811 SW 6TH AVE
PORTLAND OR 97204 1334

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:	)	
Department of Environmental Quality,	)	**HEARING ORDER REGARDING**
Department	)	**VIOLATION, ASSESSMENT**
	)	**OF CIVIL PENALTY AND**
	)	**DEPARTMENT ORDER**
vs.	)	**NO. WMC/SW-NWR-98-060**
	)	
Pacific Western Company	)	**CLACKAMAS COUNTY**
Respondent	)	
	)	
	)	

BACKGROUND

The Department of Environmental Quality (DEQ) issued a Notice of Violation, Assessment of Civil Penalty and Department Order on April 28, 1999, pursuant to Oregon Revised Statutes Chapters 183 and 468, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12. On May 13, 1999, the respondent, Pacific Western Company, appealed the Notice and requested a hearing.

A hearing was held on January 19, 2000, in Portland, Oregon before hearings officer, Linda B. Lee. Lowell E. Patton, represented Pacific Western Company. Larry Cwik, environmental law specialist, represented DEQ, with three witnesses.

ISSUE

Has Respondent established, maintained and operated a solid waste disposal site at Respondent's facility without a permit, by disposing of asphalt roofing debris on the ground at the facility in violation of ORS 459.205 (1) and OAR 340-093-0050?

FINDINGS OF FACT

1. Pacific Western Company is involved in recycling stumps, brush and woody material. In 1995 an individual acting under the auspices of Pacific Western Company sent a letter to parties indicating that Pacific Western Company would accept asphalt roofing shingles starting on April 3, 1995. The letter indicated that customers would be charged $13 per cubic yard. Some asphalt roofing shingles were accepted and deposited on the company's site at 16051 SE Highway 224, Carver, Oregon.

2. Cory-Ann Chang a representative of DEQ received a referral from the METRO Solid Waste Group in July 1996. METRO was investigating flow control and licensing issues. They contacted DEQ to follow up on any violations of DEQ rules and regulations. The DEQ representative made an initial visit on July 30, 1996. She was accompanied by representatives from METRO and from Clackamas County. The Clackamas County representatives were investigating whether Pacific Western Company had proper land use approval to accept the roofing materials. DEQ was concerned about whether Pacific Western Company had the appropriate permit and about environmental concerns, specifically whether the roofing material contained asbestos.

3. During her initial visit on July 30, 1996 Ms. Chang observed two large piles of roofing tear off material, consisting of wood, shingles, tar paper, roofing paper and other things that would have come from a roof. The roofing material was considered to be demolition wastes, a form of solid waste. Ms. Chang estimated that there was approximately 3,000 cubic yards of materials on the site. The Respondent had run some of the material through a chip grinder.

4. Pacific Western Company did not have a solid waste disposal permit. Ms Chang estimated that the cost of the permit, which would have been good for five years, would have been $5,495. Pacific Western Company never applied for a solid waste disposal permit.

5. After her July 1996 inspection, Ms. Chang contacted Lowell Patton, the President of Pacific Western Company by letter dated September 23, 1996. She requested that Pacific Western Company remove the waste within 60 days. Pacific Western Company did not remove the waste. In January 1997 Ms. Chang visited the site again and advised Mr. Patton that asbestos samples were needed.

6. The waste was not removed and no asbestos samples were obtained by January 29, 1998. The Department sent Pacific Western Company a Notice of Noncompliance for the violations on January 29, 1998. On February 12, 1998 Mr. Patton wrote Ms. Chang questioning DEQ's authority to regulate the waste. In response, on February 23, 1998, Ms. Chang provided copies of relevant statutes and rules. In the letter she asked that Mr. Patton contact her to arrange a meeting to resolve the solid waste piles.

7. In 1999 some asbestos samples were obtained from the pile containing ground-up material. There was a delay in getting the results to DEQ but eventually the results were provided. The testing results indicated there was no asbestos in the pile containing ground-up material. As of the January 19, 2000 hearing date, no samples had been taken of the other pile. Pacific Western Company feels that the sampling procedure for the large pile is too costly.

8. On April 28, 1999, DEQ notified the Respondent that it was being assessed for a civil penalty of $24,622. DEQ found that Respondent established, maintained and operated an solid waste site without a permit, in violation of Oregon Revised Statute 459.205 (1) and OAR 340-093-0050 (1). DEQ found the violation to be major because the volume of solid waste disposed of exceeded 400 cubic yards. DEQ assigned a value of "2" to the occurrence factor finding that the violation was repeated on more than one day. DEQ assigned a value of "2" to the cause of the violation finding that Respondent was negligent. DEQ assigned a value of "2" to Respondent's cooperativeness, finding that the Respondent was not cooperative in removing the waste despite many requests by the Department to do so. DEQ determined an economic benefit of $15,022 as a result of the Respondent's noncompliance and delays in proper sampling and disposal of the waste.

9. Respondent denies making a profit from business activities conducted on the site. Respondent discontinued accepting roofing materials when contacted by METRO and Clackamas County. METRO and Clackamas County took no further action against Respondent after it stopped accepting the roofing material. The Respondent filed a beneficial use request with DEQ on September 23, 1999. The Respondent asked that DEQ allow it to use the smaller pile of materials as paving materials at its site. The request was not granted because DEQ had not received the asbestos sampling results.

ULTIMATE FINDINGS

Respondent established and maintained a solid waste disposal sit at Respondent's facility without a permit by disposing of asphalt roofing debris at its facility.

APPLICABLE LAW

ORS 459.205(1) provides that 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.

OAR 340-093-0050 sets forth the requirement for a permit to establish, operate, and maintain a disposal site. It also lists the circumstances under which a permit is not required and circumstances under which the permit requirement may be waived by DEQ. OAR 340-093-0050(7) provides that failure to obtain a permit is a violation of the Oregon Administrative Rules and shall be cause for a civil penalty assessment.

OAR 340-012-0065 (1) provides that any violation of ORS Chapter 459 or any violation related to solid waste statutes, rules, permits, or orders is a Class 1 violation.

OAR 340-012-0090 (4)(a)(A) provides that the magnitude for a violation pertaining to solid waste related to operating a solid waste disposal facility without a permit is major if the volume of material disposed of exceeds 400 cubic yards.

CONCLUSIONS AND REASONS

Since at least 1996 Respondent has stored roofing waste on its property. By definition, as set forth in, OAR 340-093-0050, this constitutes establishment and maintenance of a solid waste site. Respondent has not applied for a solid waste permit. Respondent has not removed the materials from the site. As of the hearing date, Respondent had not conducted asbestos testing on the larger pile of materials or made efforts to remove the materials from the site.

The Respondent president's testimony indicates that Respondent did not intentionally set out to violate any DEQ rules, but rather entered into what was represented as a worthwhile business endeavor without conducting adequate research. Respondent began accepting roofing materials without determining what the city, county and state requirements were. By doing so and by failing to remedy the situation for the past four years, the Respondent has violated OAR 459.205 and is subject to a penalty for doing so.

As outlined in the Findings and Determination of Respondent's Civil Penalty (Exhibit 4), establishing and maintaining a solid waste site without a permit is a Class 1 violation of OAR 340-012-0065(1)(b). The magnitude of the violation is major pursuant to OAR 340-012-0090(4)(a)(A) because the volume of solid waste disposed of exceeded 400 cubic yards. A review of the other elements of the penalty indicates they are consistent with the rules and accurate based on the circumstances. The hearing officer considered adjusting the economic benefit component of the penalty but decided not to because the Respondent has had several years to remedy the situation but has not done so.

DEQ has the burden of establishing a violation by a preponderance of the evidence. DEQ has met its burden in this case. The DEQ actions were consistent with the applicable laws and the penalty is consistent with administrative law and rules.

CIVIL PENALTY

The Respondent, is liable for a civil penalty of $24,622.

DEPARTMENT ORDER

Based on the foregoing FINDINGS AND VIOLATIONS, Respondent is hereby ORDERED TO:
1. Immediately initiate actions necessary to correct all of the above-cited violations and come into full compliance with Oregon state law.
2. Dispose of all waste at a Department approved solid waste disposal site within 60 days of receipt of this order.
3. Send receipts and photographic documentation of the waste disposal within 10 days of completion of the Department-approved waste disposal.
4. All submissions required by this Order should be sent to: Cory-Ann Chang, DEQ Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon 97201.

Dated this 29th day of March 2000

ENVIRONMENTAL QUALITY COMMISSION

Linda B. Lee

Linda B. Lee
Hearing Officer

Payment of Civil Penalty

The civil penalty is due and payable ten (10) days after the order imposing the civil penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before that time. Respondent's check or money order in the amount of $24,622 should be made payable to "State Treasurer, State of Oregon" and sent to the Business Office, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon, 97204.

Finality of Order and Review Rights

The hearing officer's order will be the final order of the Commission unless a participant files a Petition for Commission Review within 30 days from the date the order is mailed. If you are not satisfied with this order, you have 30 days, following the mailing date of the order to file a Petition for Commission Review

with the Environmental Quality Commission. See Oregon Administrative Rule (OAR) 340-011-0132. The Petition for Commission Review should be filed with DEQ Rules Coordinator, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon, 97204. If you wish to appeal the Commission's decision, you have 60 days from the date the order by the Environmental Quality Commission is mailed to file a petition for review with the Oregon Court of Appeals. See ORS 183.480 et seq.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:	)	
Department of Environmental Quality,	)	**FINAL ORDER AND**
Department	)	**JUDGMENT**
	)	
vs.	)	**NO. WMC/SW-NWR-98-060**
	)	
Pacific Western Company,	)	**CLACKAMAS COUNTY**
Respondent	)	
	)	

The Commission through its hearing officer, orders that Pacific Western Company is liable to the state of Oregon for the sum of $24,622. The state has a judgment for and to recover that amount pursuant to the civil penalty assessment dated April 28, 1999.

Review of this order is by Petition for Commission Review to the Environmental Quality Commission pursuant to OAR 340-011-0132. A petition for commission review must be filed within 30 days following the mailing date of this order.

Dated this 29th day of March 2000.

ENVIRONMENTAL QUALITY COMMISSION

Linda B. Lee

Linda B. Lee
Hearing Officer

Finality of Order and Review Rights

The hearing officer's order will be the final order of the Commission unless a participant files a Petition for Commission Review within 30 days from the date the order is mailed. If you are not satisfied with this order, you have 30 days, following the mailing date of the order to file a Petition for Commission Review with the Environmental Quality Commission. See Oregon Administrative Rule (OAR) 340-011-0132. The Petition for Commission Review should be filed with DEQ Rules Coordinator, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon, 97204. If you wish to appeal the Commission's decision, you have 60 days from the date the order by the Environmental Quality Commission is mailed to file a petition for review with the Oregon Court of Appeals. See ORS 183.480 et seq.

Attachment M

Exhibits from Hearing of January 19, 2000

1. Notice of Hearing, December 16, 1999
2. Notice of Contested Case Rights and Procedures
3. Request for Hearing, May 13, 1999
4. Notice of Violation, Assessment of Civil Penalty and Department Order, April 28, 1999
5. Photographs (3)
6. Letter from Cory-Ann Chang to Lowell Patton., February 11, 1997
7. Notice of Noncompliance, January 29, 1998
8. Letter from Pacific Western Co.
9. Photograph
10. BEN Calculation Memo, March 1, 1999
11. Letter from Larry Cwik to Lowell Patton, October 28, 1999

Ref No: G60260
Agency Case No: WMCSWNWR9860
Case Type: DEQ

Date Mailed: 12/16/99
Mailed By: LMV

STATE OF OREGON

NOTICE OF HEARING

PACIFIC WESTERN CO.
LOWELL PATTON, PRESIDENT
PO BOX 85
CLACKAMAS OR 97015 0085

DEPARTMENT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE

PORTLAND OR 97204 1334

LARRY CWIK
DEQ ENFORCEMENT SECTION
811 SW 6TH AVE
PORTLAND OR 97204 1334

HEARING DATE AND TIME	*HEARING PLACE*	*ADMINISTRATIVE LAW JUDGE*
WEDNESDAY, JANUARY 19, 2000 9:30 AM PT	DEPT OF ENVIRONMENTAL QUALITY 2020 SW 4TH 4TH FLOOR - CONFERENCE ROOM C A (N) PORTLAND OREGON	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

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

EXHIBIT # 1

ISSUE FOR PACIFIC WESTERN COMPANY

Has Respondent established, maintained and operated a solid waste disposal site at Respondent's facility without a permit, by disposing of asphalt roofing debris on the ground at the facility in violation of ORS 459.205(1) and OAR 340-093-0050?

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.

EXHIBIT # 2

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 issued involved in the case;

c. The evidence is unduly repetitious and duplicates evidence already received.

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.

State of Oregon
Department of Environmental Quality

RECEIVED
MAY 17 1999

OFFICE OF THE DIRECTOR

PACIFIC WESTERN COMPANY
P.O. BOX 85
CLACKAMAS, OREGON 97015

May 13, 1999

Mr. Langdon Marsh, Director
Dept. of Environmental Quality
State of Oregon
811 S.W. Sixth Avenue
Portland, OR 97204-1390

NO. WMC/SW-NWR-98-060

Dear Mr. Marsh:

I would like to appeal the Departments financial penalty.

We want to comply with the Department order. The pile will be covered immediately. Further we would like to request that we be able to dispose of the material on site.

Metro ordered us to stop receiving the asphalt roofing material because we were not licensed by Metro. We immediately stopped.

If our site can be approved by the Department as a solid waste disposal site for the material on hand there should be no need for a contested case hearing.

Yours very truly,

PACIFIC WESTERN COMPANY

Lowell E. Patton

LEP/sp

CC: Kory Ann Chung, NWR
Neil Mullane
Ed Dubock, NWR

EXHIBIT # 3

enf file

Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

April 28, 1999

CERTIFIED MAIL

State of Oregon
Department of Environmental Quality
RECEIVED
NOV 17 1999
OFFICE OF THE DIRECTOR

Lowell E. Patton
President and Registered Agent
Pacific Western Co.
PO Box 85
Carver, Oregon 97121

Re: Notice of Violation, Assessment of Civil Penalty and Department Order
No. WMC/SW-NWR-98-060
Clackamas County

On July 30, 1996, the Department of Environmental Quality (Department) inspected Pacific Western's property at 16051 SE Highway 224, Carver, Oregon.

During the inspection, the Department's inspector, Cory Ann Chang, observed two piles containing an estimated 3000 cubic yards of asphalt roofing shingles waste. The larger of the piles was shingles, measuring about 30 feet wide, 175-200 feet long, and 14 or more feet high. The other pile was of ground-up shingles and measured 12 feet in diameter by about 4-5 feet high. The Department is particularly concerned about the pile of ground-up waste, as asphalt shingle waste has been known to contain asbestos. Any asbestos in intact roofing shingles, which would otherwise be non-friable, may be released in the grinding of shingle waste.

Pacific Western Company does not have a solid waste disposal permit for the site. The Department understands that the company started accepting roofing shingle waste at the site from contractors in April 1995, for a fee of $13.00 per cubic yard, though Pacific Western does not now and did not then have a solid waste disposal permit.

After the inspection, Ms. Chang contacted Mr. Lowell Patton, President of Pacific Western, by letter dated September 23, 1996. She requested that Pacific Western remove the waste within 60 days. Pacific Western did not remove the waste. Then Ms. Chang visited the site again in January 1997, and met with Mr. Patton. Mr. Patton agreed then that asbestos samples should be obtained from the waste. Ms. Chang wrote Mr. Patton on February 11, 1997, reiterating that the waste must be removed to a proper disposal site, and that representative sampling must be done, to determine if asbestos is present in the waste.

EXHIBIT # 4

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

Unfortunately, these attempts to gain Pacific Western's voluntary compliance with Oregon's environmental laws were not successful. The Department sent Pacific Western a Notice of Noncompliance for the violations on January 29, 1998. Mr. Patton wrote Ms. Chang on February 12, 1998, questioning DEQ's authority to regulate the waste, and noting the company's hope to use the waste as an extender for rock to be applied to logging roads, but otherwise providing no news of any progress on remedying the site. Ms. Chang responded on February 23, 1998, providing copies of relevant statutes and administrative rules, and requesting that Mr. Patton contact her to arrange a meeting to resolve the unpermitted solid waste piles. There was no response to this letter. Ms. Chang re-inspected the site on January 21, 1999, and the large solid waste piles remained on the property. Pacific Western is in continuing violation of ORS 459.205(1), through establishing, operating, and maintaining an unpermitted solid waste disposal site.

Pacific Western is liable for a civil penalty assessment for the continuing violations of Oregon's solid waste laws. In the enclosed Notice, I have assessed a civil penalty of $24,622 for Pacific Western's establishment and operation of a solid waste disposal site without a permit. Of this amount, $15,022 represents the economic benefit which the Department estimates that Pacific Western has gained until now from Pacific Western's violation. I note that Pacific Western's solid waste violation has continued for several years, however, I have chosen to only assess a civil penalty for one day of violation plus the economic benefit of the violation.

The Notice and Order formally cites the violations and orders Pacific Western to correct the violations within the deadlines specified in the Order. Specifically, Pacific Western is ordered to dispose of all waste within 60 days of receipt of the Order at a Department-approved disposal site.

Appeal procedures are outlined in the Notice. If Pacific Western fails to either pay or appeal the penalty within 20 days, a Default Order will be entered against Pacific Western. Also, violation of a Department Order would be a serious Class I violation, and would likely result in additional civil penalty assessment against Pacific Western and consideration of other enforcement options.

We look forward to Pacific Western's cooperation in correcting the violations and complying with the enclosed Order, and Oregon environmental law in the future. We are willing to assist Pacific Western with questions regarding rule interpretations or the applicability of specific regulations to Pacific Western'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 Pacific Western 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: Cory Ann Chang, Northwest Region-SW, DEQ
Waste Management and Cleanup Division, HQ, DEQ
Environmental Quality Commission
Environmental Protection Agency
Ken Spiegle, Clackamas County Department of Transportation and Development
Steve Kraten, Metropolitan Service District
Clackamas County District Attorney

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: PACIFIC WESTERN CO., an Oregon corporation, Respondent.	)	NOTICE OF VIOLATION DEPARTMENT ORDER AND ASSESSMENT OF CIVIL PENALTY No. WMC/SW-NWR-98-060 CLACKAMAS COUNTY

I. AUTHORITY

This Notice of Violation, Department Order, and Assessment of Civil Penalty (Notice and Order) is issued to Respondent, Pacific Western Co., 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 site and business located at 16051 SE Highway 224, Carver, Oregon.

2. Respondent has operated the site from at least July 1996, through the present.

3. Respondent advertised its interest in accepting asphalt roofing shingles as part of Respondent's business, for a $13.00 per cubic yard disposal fee, in April 1995.

4. On July 30, 1996, Cory Ann Chang of the Department's Northwest Region visited Respondent's site and observed two piles containing a total estimated at 3000 cubic yards of asphalt roofing shingle waste. The larger of the piles was shingles, measuring about 30 feet wide, 175-200 feet long, and 14 or more feet high. The other pile was of ground-up shingles and measured 12 feet in diameter by about 4-5 feet high. Such waste has been known to contain asbestos. Asbestos, which would otherwise be non-friable, is likely to be released in the grinding of shingle waste.

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5. Respondent does not have a solid waste disposal permit for Respondent's site.

6. Cory Chang of the Department contacted Mr. Lowell Patton of Respondent, by letter dated September 23, 1996, and requested that Respondent remove the waste within 60 days. Respondent did not remove the waste.

7. Ms. Chang visited the site and met with Mr. Patton in January 1997. Mr. Patton agreed that asbestos samples should be obtained from the waste. Ms. Chang wrote Mr. Patton on February 11, 1997, reiterating that the waste needed to be removed to a proper disposal site, and that representative sampling must be done, to determine if asbestos is present in the waste.

8. The Department sent Respondent a Notice of Noncompliance for the violations on January 29, 1998. Ms. Chang also wrote Respondent on February 23, 1998, and requested that Mr. Patton contact her to arrange a meeting to resolve the unpermitted solid waste piles. There was no response to this letter.

9. Ms. Chang re-inspected the site on January 21, 1999, and the unpermitted solid waste piles remained on Respondent's site.

III. VIOLATION

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

From at least July 1996 through the present, Respondent violated ORS 459.205(1) and OAR 340-093-050 in that Respondent has established, maintained, and operated a solid waste disposal site at Respondent's above-described facility without a permit, by disposing of asphalt roofing debris on the ground at Respondent's facility. This is a Class I violation pursuant to OAR 340-12-0065(1)(b).

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IV. DEPARTMENT ORDER

Based upon the foregoing FINDINGS AND VIOLATIONS, Respondent is hereby ORDERED TO:

1. Immediately initiate actions necessary to correct all of the above-cited violations and come into full compliance with Oregon state law.

2. Within 10 days of receipt of this Order, immediately cover securely the pile of ground-up shingle waste at the site to prevent runoff.

3. Within 60 days of receipt of this Order, dispose of all waste at a Department-approved solid waste disposal site.

4. Within 10 days of completion of the Department-approved waste disposal, send receipts and photographic documentation of this to the Department.

5. All submissions required by this Order should be sent to: Cory Ann Chang, DEQ Northwest Region, 2020 S.W. Fourth Avenue, Suite 400, Portland, Oregon 97201.

V. ASSESSMENT OF CIVIL PENALTY

The Director imposes a $24,622 civil penalty for the violation cited above.

The findings and determination of Respondent's civil penalty pursuant to OAR 340-012-0045 are attached and incorporated as Exhibit No. 1.

VI. OPPORTUNITY FOR CONTESTED CASE HEARING

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

In the written Answer, Respondent shall admit or deny each allegation of fact contained in this Notice and Order, and shall affirmatively allege any and all affirmative

claims or defenses to the assessment of this civil penalty that Respondent may have and the reasoning in support thereof. Except for good cause shown:

1. Factual matters not controverted shall be presumed admitted;

2. Failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense;

3. New matters alleged in the Answer shall be presumed to be denied unless admitted in subsequent pleading or stipulation by the Department or Commission.

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

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

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

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

VII. OPPORTUNITY FOR INFORMAL DISCUSSION

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

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VIII. PAYMENT OF CIVIL PENALTY

The civil penalty is due and payable ten (10) days after the Order imposing the civil penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before that time. Respondent's check or money order in the amount of $24,622 should be made payable to "State Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204**.

4-28-99
Date

Langdon Marsh
Langdon Marsh, Director

EXHIBIT 1

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

VIOLATION: Establishing and maintaining an unpermitted solid waste 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 has allowed others to dump the waste there, for money, causing the establishment of a disposal site. Respondent is aware of the Department's solid waste regulatory requirements, from Department meetings and letters to Respondent in September 1996, January 1997, February 1997, January 1998, and February 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 -2, as Respondent has not been cooperative in removing the waste despite many requests by the Department to do so.

"EB" is the approximate dollar sum of the economic benefit that the Respondent has gained through noncompliance, from a delay in proper sampling and disposal of the waste from July 1996 to the present, and receives a value of $15,022, the economic benefit Respondent gained by delaying the disposal of the solid waste to an authorized site, at an estimated cost of $82,500 in tipping fees, from July 1996 to the present. The total amount of tipping fees is calculated at 3000 cubic yards of waste x 1100 pounds/cubic yard of waste divided by 2000

pounds/ton = 1650 tons x $50/ton for tipping fees = $82,500. When this is run through the EPA BEN computer model for economic benefit, pursuant to OAR 340-012-0045(1)(c)(F)(iii), the economic benefit for the delay is $15,022. Failure to complete an approved disposal of the waste to an authorized disposal site prior to July 1999 may result in an additional civil penalty for additional economic benefit to the Respondent.

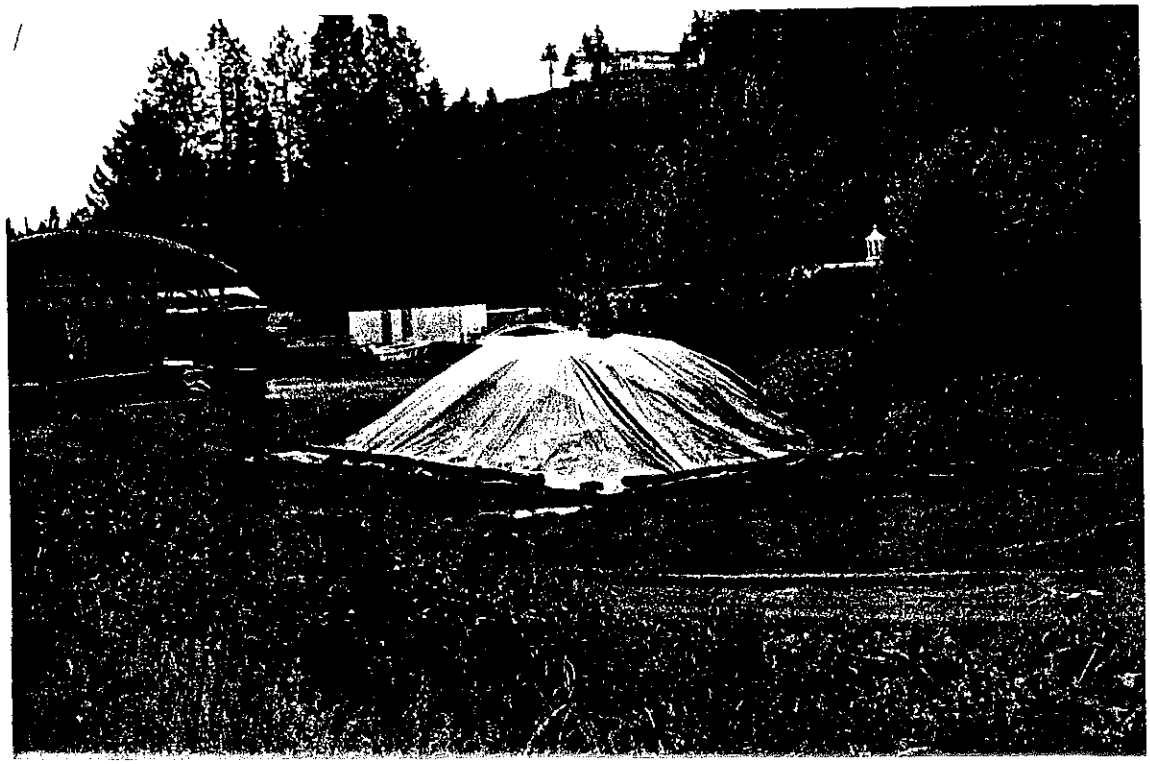
PENALTY CALCULATION:

Penalty = BP + [(0.1 x BP) x (P + H + O + R + C)] + EB
= $6000 + [(0.1 x $6000) x (0 + 0 + 2 + 2 + 2)] + $15,022
= $6000 + [$600 x 6] + $15,022
= $6000 + $3600 + $15,022
= $24,622

The maximum daily civil penalty for this violation is $10,000 pursuant to ORS 459.995(1)(a). Pursuant to OAR 340-012-0045(1)(c)(F)(iv), the Department can assess a civil penalty for more than one day to capture the full economic benefit of the violation. Therefore the Department assesses a $10,000 penalty for two of the days of violation and a $4,622 penalty for a third day of violation. Respondent's total penalty for this violation is $24,622.

- Exhibit 5 -

- Exhibit 5 -



- Exhibit 5 -

EXHIBIT 6

Oregon

February 11, 1997

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

NORTHWEST REGION

Mr. Lowell E. Patton
Pacific Western Co.
P.O. Box 85
Carver, OR 97015

RE: SW - Clackamas County
Pacific Western Co.

Dear Mr. Lowell Patton:

The Department has received the results of our laboratory analysis done on the ground-up roofing materials taken from your site. Although our analysis showed that no asbestos was present in the sample we took, the amount of samples that we took does not allow us to make an outright determination that there is no asbestos throughout the pile. Because the roofing material is ground so fine, the Department must be absolutely sure that there is no asbestos in the pile before we can allow the material to be considered a solid waste as opposed to a special waste.

To make such a determination, you must sample more of the pile. The Department suggests that you take a minimum of twelve (12) more samples from the small pile of ground-up roofing materials and have them analyzed by a laboratory for the presence of asbestos. You must have your consultant take the samples in several different areas of the pile so that we can consider it to be a scientifically representative sample of the pile. The pile is estimated to be approximately 6 feet high and 10 feet in diameter. The Department advises that you should have three (3) samples taken from each of the 1, 3, 4, and 5 foot levels of the pile.

Other roofing material contained in the larger piles that have not been ground up are also suspected to contain asbestos. If you have written documentation, in the form of laboratory analysis results, that these materials have been tested and do not contain asbestos, then our asbestos regulations would not apply to them. However, if you do not have this documentation, you must either test the piles yourself using a sampling protocol similar to that described above, or dispose of the material as demolition waste at a permitted demolition waste landfill.

In addition, if you wish accept additional roofing material in the future, you must require written documentation, in the form of laboratory analysis results, from your suppliers that shows the material is asbestos free.

John A. Kitzhaber
Governor

2020 SW Fourth Avenue
Suite 400
Portland, OR 97201-4987
(503) 229-5263 Voice
TTY (503) 229-5471
DEQ-1

If you have any further questions about asbestos, please feel free to contact Dave Wall at 229-5364. If you have any further questions about solid waste, please feel free to contact me at 229-5567.

Sincerely,

Cory-Ann Chang
Environmental Specialist
Northwest Region

CAC:cac
Cc: Solid Waste Section, DEQ
Dave Wall, Asbestos Section, NWR, DEQ
Ken Spiegle, Clackamas County
Andy Sloop, Metro

EXHIBIT 7

Oregon

January 29, 1998

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

NORTHWEST REGION

Mr. Lowell E. Patton
Pacific Western Co.
P.O. Box 85
Carver, OR 97015

RE: SW - Clackamas County
Pacific Western Co.
NWR-SW-98-001
NOTICE OF NONCOMPLIANCE

Dear Mr. Lowell Patton:

On January 15, 1998, the Department visited your property located at 16051 SE Hwy 224. During this visit, two large piles of whole asphalt shingles as well as a small pile of ground shingles were observed.

The shingles were generated as part of a business accepting the material from contractors in exchange for a disposal fee. This material has never been properly disposed of. Moreover, you have previously stated that you wish to make a useable product out of the material, though you have yet to conduct the asbestos sampling as required in a letter to you from the Department dated February 11, 1997. In addition, you have not received written permission from the Department in order to use the material after it is processed.

These piles have been present on your property from at least July 30, 1996 when the Department first visited the site. Site visits were also conducted in the winter and summer of 1997. The Department initially offered its assistance in helping you explore disposal or management options for this material, and has continued to offer its assistance to work with you. However, no progress has ever been made towards removing of the material from the site.

Oregon Administrative Rules (OAR) 340-93-050 states that "no person shall establish, operate, maintain,...a disposal site...until the person owning or controlling the disposal site obtains a permit therefor from the Department." You have not obtained or applied for a permit from the Department thus far.

John A. Kitzhaber
Governor

2020 SW Fourth Avenue
Suite 400
Portland, OR 97201-4987
(503) 229-5263 Voice
TTY (503) 229-5471
DEQ-1

This is a Class I violation and is considered to be a significant violation of Oregon environmental law. Should you fail to correct the violation in accordance with a schedule that both parties can agree to or should you fail to contact me to set up a meeting, we will refer your file to the Department's Enforcement Section with a recommendation to proceed with a formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

Please call me at 229-5567 by February 12, 1998 to set up a meeting to discuss the conditions of your compliance order.

Sincerely,

Cory-Ann Chang
Environmental Specialist
Northwest Region

CAC:cac
Cc: Enforcement Section, DEQ
Ken Spiegle, Clackamas County
Steve Kraten, Metro

EXHIBIT 8

Pacific Western Company
16050 S.E. HWY. 224 - Carver
P.O. BOX 85
Clackamas, Oregon 97015
PHONE:(503)658-5151
FAX:(503)658-3156

Dear Sir:

We at the Carver facility located at 16050 S.E. Highway 224, Carver, Oregon 97015, will accept asphalt roofing shingles starting on April 3,1995, between the hours of 8:00 am and 5:00 pm. Monday thru Saturday.

Loads should contain no more than 3% wood. Nails or staples are accepted with the loads.

To speed accepting loads we are enclosing a credit applications for setting up your account. All accounts are payable within 10 days after our billing date.

Customers without first establishing an account with us will have to pay at our receiving area prior to unloading.

Presently we do not have any scales, so we will be charging on a cubic yard basis of $13.00 per cubic yard.

If you have any questions please call Joseph at (360)256-4971. or Lowell at (503)658-5151.

Regards,

The Management

- Exhibit 9

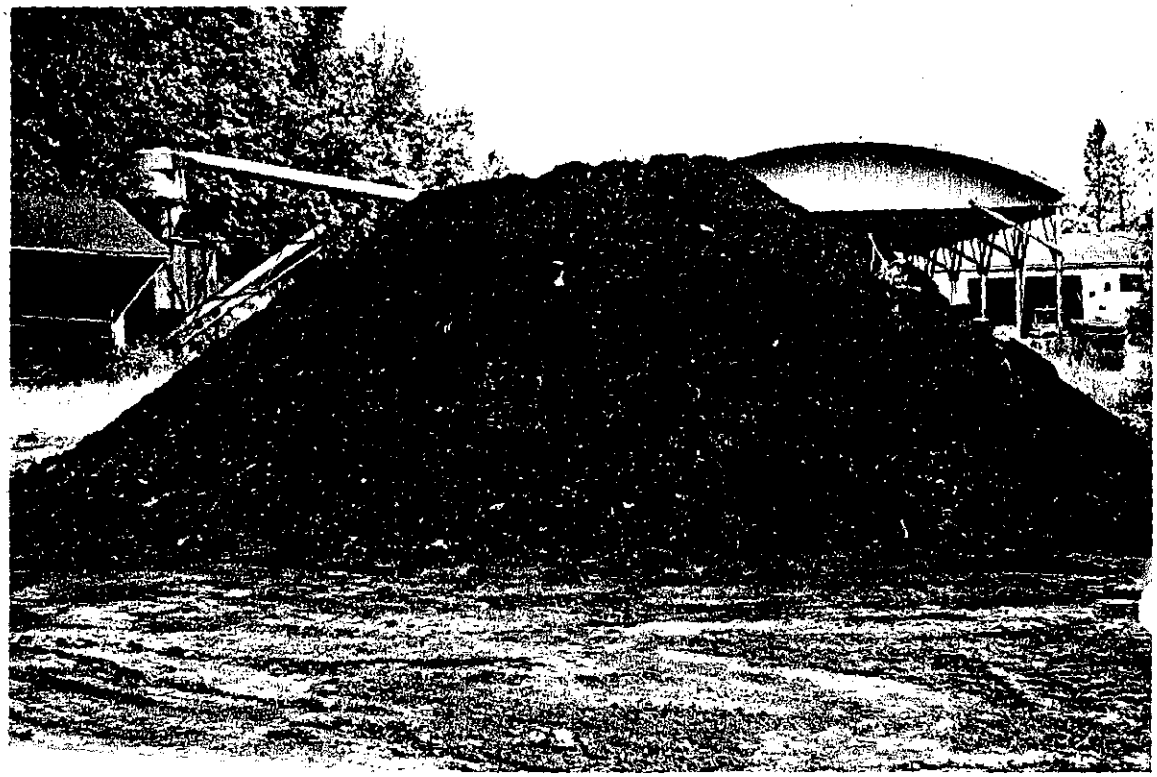


EXHIBIT 10

State of Oregon
Department of Environmental Quality — Memorandum

Date: March 1, 1999

To: Larry Cwik

From: Roger Dilts

Subject: BEN calculation for Pacific Western Company

The economic benefit portion of the civil penalty formula is simply the monetary benefit that the violator gained by not complying with the law. It is not designed to punish the violator, but to (1) "level the playing field" by taking away any economic advantage the violator gained over its competitors through noncompliance, and (2) deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance.

DEQ uses EPA's "BEN" computer model which considers interest rates, tax rates and deductions, and other factors in determining an estimated benefit, pursuant to OAR 340-12-045(1)(c)(F)(iii).

In this case, Respondent gained an economic benefit by not paying tipping fees of $82,500 for waste disposal. By delaying payment of this expense, Respondent gained an EB of $15,022.

Data submitted to support the calculation and a printout of the BEN run are attached.

I recognize that this may not completely circumscribe the economic benefit the Respondent received to date because it does not include uncertain advantage-of-risk and competitive-advantage benefits. However, I consider these economic benefits to be *de minimis* in light of the difficulties in calculation. Pursuant to OAR 340-12-045(1)(F)(ii), the Department need not calculate an economic benefit if that benefit is *de minimis*.

PACIFIC WESTERN CO. BEN VERSION 4.4 MARCH 1, 1999

A.	VALUE OF EMPLOYING POLLUTION CONTROL ON-TIME AND OPERATING IT FOR ONE USEFUL LIFE IN 1996 DOLLARS	$ 49995
B.	VALUE OF EMPLOYING POLLUTION CONTROL ON-TIME AND OPERATING IT FOR ONE USEFUL LIFE PLUS ALL FUTURE REPLACEMENT CYCLES IN 1996 DOLLARS	$ 49995
C.	VALUE OF DELAYING EMPLOYMENT OF POLLUTION CONTROL EQUIPMENT BY 36 MONTHS PLUS ALL FUTURE REPLACEMENT CYCLES IN 1996 DOLLARS	$ 38862
D.	ECONOMIC BENEFIT OF A 36 MONTH DELAY IN 1996 DOLLARS (EQUALS B MINUS C)	$ 11133
E.	THE ECONOMIC BENEFIT AS OF THE PENALTY PAYMENT DATE, 36 MONTHS AFTER NONCOMPLIANCE	$ 15022

->->->->->-> THE ECONOMIC BENEFIT CALCULATION ABOVE <-<-<-<-<-<-
USED THE FOLLOWING VARIABLES:

USER SPECIFIED VALUES

1A.	CASE NAME =	PACIFIC WESTERN CO.	
1B.	PROFIT STATUS =	FOR-PROFIT	
1C.	FILING STATUS =	C-CORPORATION	
2.	INITIAL CAPITAL INVESTMENT =	$ 0	
3.	ONE-TIME NONDEPRECIABLE EXPENDITURE (TAX-DEDUCTIBLE EXPENSE) =	$ 82500	1996 DOLLARS
4.	ANNUAL EXPENSE =	$ 0	
5.	FIRST MONTH OF NONCOMPLIANCE =	7, 1996	
6.	COMPLIANCE DATE =	7, 1999	
7.	PENALTY PAYMENT DATE =	7, 1999	
8.	USEFUL LIFE OF POLLUTION CONTROL EQUIPMENT =	15 YEARS	
9.	MARGINAL INCOME TAX RATE FOR 1986 AND BEFORE =	50.1 %	
10.	MARGINAL INCOME TAX RATE FOR 1987 TO 1992 =	38.4 %	
11.	MARGINAL INCOME TAX RATE FOR 1993 AND BEYOND =	39.4 %	
12.	ANNUAL INFLATION RATE =	1.6 %	
13.	DISCOUNT RATE: WEIGHTED-AVERAGE COST OF CAPITAL	10.5 %	

EXHIBIT 11

OCT 28 1999

Oregon

Via Fax to: (503) 658-3156

Lowell E. Patton
President and Registered Agent
Pacific Western Co.
PO Box 85
Carver, Oregon 97121

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

ENFORCEMENT SECTION

Re: Notice of Violation, Assessment
of Civil Penalty and Department Order
No. WMC/SW-NWR-98-060
Clackamas County

The Department has received your beneficial use request dated September 23, 1999 for the smaller pile of asphalt shingle waste on your property.

As mentioned on the telephone when we talked earlier this month, the Department needs to receive and review the results of your sampling of that pile for asbestos. To date, no sampling results have been received. We will need to receive and review these results before we can consider your beneficial use request. Also, the Department needs a written proposal and plan for sampling of the large pile of asphalt shingle waste on your property.

Please submit the sampling results obtained to date, and the sampling plan for the larger pile, by November 6, 1999. If this information and plan is not received on or before that date, we will request that a contested case hearing be scheduled.

Thank you for your cooperation to date. If you have questions, please feel free to call me at (503) 229-5728 or toll-free at 1-800-452-4011, Enforcement Section ext. 5728.

Sincerely,

Larry Cwik
Environmental Law Specialist
State-wide Enforcement Section

cc: Cory Chang/Ed Druback, Northwest Region

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

********** -IND. XMT JOURNAL- ********** DATE OCT-28-1999 ***** TIME 16:17 *******

DATE/TIME = OCT-28-1999 16:16

JOURNAL No. = 28

COMM.RESULT = OK

PAGE(S) = 001/001

DURATION = 00:00'39

FILE No. = 232

MODE = MEMORY TRANSMISSION

DESTINATION = 915036583156

RECEIVED ID = / 658 3156

RESOLUTION = STD

-DEQ NWR PORTLAND,OR -

********** -DEQ NWR PORTLAND- ***** - 503 229 6945- *********

Approved_____
Approved with Corrections ☒

Minutes are not final until approved by the EQC

Environmental Quality Commission
Minutes of the Two Hundred and Ninety-Second Meeting

January 11-12, 2001
Regular Meeting[1]

The Environmental Quality Commission (EQC) held a regular meeting on January 11-12, 2001, in Bend, Oregon. In addition to the regular meeting, the EQC toured the Old Mill site and Beaver Coaches on January 11. The following EQC 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); Stephanie Hallock, Director, Department of Environmental Quality (DEQ); and other DEQ staff.

Before the regular meeting began, the Commission honored Kitty Purser for her many years of service to the EQC. This was her last Commission meeting.

Chair Eden called the meeting to order at 3:10 p.m. on January 11. Agenda items were taken in the following order.

E. Action Item: Contested Case No. WMC/T-ER-99-107 Re: Dan's Ukiah Service

Larry Knudsen, Assistant Attorney General, explained the Vincents request that this item be moved to the March 8-9, 2001, meeting to enable their attendance. Commissioner Bennett listened to tapes from the December EQC meeting regarding this case, and was prepared to take action on this item. After discussion Commissioner Bennett motioned to set this agenda item over to the March 8-9 EQC meeting. It was seconded by Commissioner Malarkey and carried with four "yes" votes. Chair Eden voted "no." The Commission directed Mr. Knudsen to phone the Vincents to inform them of the Commission's action and remind them they would not be able to testify before the Commission at the March meeting.

A. Informational Item: Chemical Demilitarization Program Update

Wayne Thomas, DEQ Chemical Demilitarization Program Administrator, provided a brief update to the Commission on the status of DEQ's Chemical Demilitarization Program. Mr. Thomas discussed the Hazardous Waste Storage and Treatment Permit (HW Permit) for the Umatilla Chemical Agent Disposal Facility (UMCDF) issued in February 1997. As of January 11, 2001, DEQ received a total of 101 Permit Modification Requests, of which 88 have been approved and two have been denied. The UMCDF is 93% complete.

During 2001, DEQ will review Facility Construction Certification (FCC) documents prepared by an independent engineer. The FCC process is required to verify construction in accordance with facility permit requirements. If equipment is replaced during the operational life of the facility, DEQ will require re-certification of new equipment.

The current Army schedule indicates construction will be completed by May 2001, with thermal testing beginning in October 2001, and Agent operations in July 2002. DEQ does not believe the Army and Washington Demilitarization Company will meet this schedule, which will soon be revised to reflect thermal testing in spring 2002, and agent

[1] Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204.

operations in winter 2003. In April 2001, DEQ will issue a report of the readiness of the facility to commence operations as measured against a 31-item checklist developed by DEQ in April 2000. DEQ will assess readiness on a quarterly basis until the facility becomes operational to assist the Commission in reaching a final decision as to whether the facility may begin thermal testing and ultimately, agent or toxic operations.

The Commission discussed the definition of "agent free" as required by the UMCDF HW Permit, which is also currently being discussed by DEQ and the permittees. The definition is critical for Army verification that only wastes not containing chemical agents are sent offsite for disposal at a permitted hazardous waste facility. Significant progress has been made and DEQ expects a Class 2 Permit Modification Request related to "agent free" in April 2001.

The Commission discussed status of the ongoing Chemical Munitions Rulemaking. DEQ concluded that bringing all stockpiled chemical weapons under regulatory authority is necessary for enforcement of an adequate level of protection of human health and the environment. The Army provided written comments that appear contrary to positions previously offered by Army personnel. On November 17, 2000, DEQ commenced a rulemaking to allow the State to regulate all chemical agent munitions within Oregon as hazardous wastes. A public hearing was held on January 4, 2001, and a public comment period ended on January 10, 2001. Under the existing regulatory program, DEQ regulates only the storage of those chemical munitions and bulk containers declared by the Army to be hazardous wastes (under RCRA rules, the generator of hazardous material determines whether or not material is "waste"). At the Umatilla Chemical Depot, only the M-55 rockets and other leaking munitions (17 percent of the stockpile) have been declared wastes. Remaining munitions are managed under Army regulations in accordance with the Military Munitions Rule (as adopted by Oregon).

At the Commission's request, staff spoke briefly on the status of the Dunnage Incinerator and discussed different strategies for treatment of secondary waste being tested at the Johnston Atoll Chemical Agent Disposal Facility (JACADS). JACADS is currently testing treatment technologies for carbon used in filters and Demilitarization Protection Ensemble (DPE) used to protect workers in agent-contaminated areas. DEQ staff plan to observe these tests.

Commissioners were updated on DEQ's review of the Army's chemical agent monitoring results in response to worker claims that they were exposed to chemical agents at the construction site during a September 15, 1999, industrial accident. DEQ's review did not support worker claims. In conjunction with the Oregon Health Division, DEQ requested the Center for Disease Control (CDC) conduct a review of the effectiveness of the Depot monitoring program to protect workers and the surrounding communities. DEQ expects a response from CDC in three to four months.

The Chemical Stockpile Emergency Preparedness Program (CSEPP) made significant progress over the past few months. In December 2000, the Executive Review Panel issued an interim report to the Governor, which identified work that must be completed to provide an adequate level of preparedness. The final report is due to the Governor in June 2001.

B. Action Item: Review of Class 3 Permit Requests for the Umatilla Chemical Depot Facility (UMCDF)

Wayne Thomas, DEQ Chemical Demilitarization Program Administrator, introduced Thomas Beam, Senior Environmental Engineer, to brief the Commission on the status of four Class 3 Permit Modification Requests (PMR) currently under review. The Commission has final decision authority on all Class 3 PMR, unless authority is designated to DEQ on a case-by-case basis. These are the first Class 3 Permit Modification Requests since the 1997 request to add Raytheon Company as a Co-Permittee on the UMCDF HW Permit. The four PMRs currently under review are "Permitted Storage in J-Block," "Secondary Waste Compliance Schedule," "Dunnage Incinerator and Associated Pollution Abatement System Improvements," and the "Incorporation of 40 CFR 264 Air Emission Standards."

Commission considered deferring decision authority to DEQ for the "Incorporation of 40 CFR 264 Air Emission Standards" Permit Modification Request. This PMR is only being handled as a Class 3 because it incorporates regulations that were not in effect when the original Permit was issued. It primarily deals with fugitive organic emissions from processing equipment, and only has impacts at UMCDF inside the Munitions Demilitarization Building. This PMR is being processed alongside an identical application submitted to the Environmental Protection Agency (EPA) Region X. The EPA will issue a separate Permit, which will be terminated once Oregon has been

delegated authority for these regulations. The Commission discussed political ramifications associated with the title of the PMR and DEQ agreed to change the title to reflect the Commission's concerns.

A motion was made by Vice-Chair Van Vliet to delegate final decision authority for the Class 3 PMR "Incorporation of 40 CFR 264 Air Emission Standards" to DEQ, while retaining the final decision authority for the other Class 3 PMRs. It was seconded by Commissioner Malarkey and carried with five "yes" votes.

C. Informational Item: Environmental Cleanup Financing Committee Report

Paul Slyman, DEQ Environmental Cleanup Division Administrator, described the following DEQ initiatives to improve effectiveness of environmental cleanup programs.

- Created a new headquarters division to focus more attention on environmental cleanup and spill prevention and response. The 2001-03 budget proposes to make this change permanent.
- Formalized the Independent Cleanup Pathway to assist people in cleaning up contaminated property without ongoing DEQ oversight. This successful program provides more flexibility and reduces oversight costs.
- Developed an Alternative Dispute Resolution process, which provides a forum for DEQ and participants in the Independent Cleanup Pathway to resolve contested "No Further Action" determinations.
- Prioritized actions to address program issues identified in an independently conducted survey of cleanup program participants.
- Establish a special Environmental Cleanup Financing Committee to advise DEQ on creative financial solutions to assist and promote cleanup.

Admins. in part time — Establish

D. Approval of Minutes

The following corrections were made to the November 29, 30 and December 1, 2000, minutes: Agenda Item A, the first sentence beginning in line 5 should read "The Proposed Order would ~~dismiss~~ *uphold* ~~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*ing a penalty* ..." and in Agenda Item A, last sentence, the words both parties should be replaced with "arguments from the Department and Mr. Vincent." On page 5, first line, affect should be *effect* and under Agenda Item G, third paragraph, first line it's should be *its*. A motion was made by Vice-Chair Van Vliet to approve the minutes from the November 29, 30, and December 1, 2000, meeting as corrected. Commissioner Malarkey seconded the motion and it passed with five "yes" votes.

A motion was made by Commissioner Malarkey to approve the minutes from the December 19, 2000, meeting as written. Commissioner Reeve seconded the motion and it carried with five "yes" votes.

The meeting was recessed at 5:00 p.m. From 6:30 to 8:30 p.m., the Commission met with local officials over dinner at the Deschutes Brewery. On Friday, the Commission held an executive session at 8:00 a.m. on pending litigation involving the Agency. The regular meeting resumed at 8:40 a.m.

F. Rule Adoption: Air Quality Nuisance Control Rules

Andy Ginsburg, DEQ Air Quality Division Administrator, and Kevin Downing, Air Quality planning staff, presented this item. The rules are part of a larger effort in the air quality program to increase efficiency, and are intended to improve evaluation and response to the approximately 1,500 complaints DEQ receives each year regarding potential nuisances. Proposed changes include a revised definition of nuisance, criteria for determining nuisance and a new, voluntary resolution tool called a Best Work Practices Agreement that outlines specific practices to abate nuisance. This approach would provide an easier, less demanding method of ensuring compliance as compared to traditional enforcement tools.

Regarding the application of nuisance rules to noise, DEQ has not enforced noise rules since the early 1990s and thus would not be subject to the nuisance rule. However, DEQ plans to engage local governments in discussions regarding coordination of state and local nuisance programs, and noise issues may be raised. When asked how these rules might apply to cattle feedlots, staff replied that feedlots are an agricultural operation and are thus exempt from air quality regulation, including nuisance issues. DEQ field staff conducted sampling studies to characterize the problem and encourage the Oregon Department of Agriculture to address complaints associated with feedlots. DEQ reported that some Portland area residents feel the rule is not stringent enough, a concern related to potential heightened exposure to air toxics produced by Northwest Portland industry. The proposed nuisance rule may never provide the relief those residents envision because of inherent limitations of a nuisance approach, e.g., the need in a nuisance case to show harm originating back to a source while many toxics are diffuse and the impacts may be expressed only chronically. The 250-micron rule would apply to both permitted and

unpermitted sources, but the actual enforcement of the rule would still depend upon enforcement discretion by DEQ staff to ensure it is effectively applied.

Commissioner Reeve made a motion to adopt the rules as presented in Attachment A and include these rules as an amendment to the State Implementation Plan. Commissioner Malarkey seconded the motion and it carried with five "yes" votes.

G. Informational Item: Remote Sensing of Vehicle Exhaust

Andy Ginsburg, DEQ Air Quality Division Administrator; Peter Brewer, Eastern Region Air Quality Manager; and John Head, Bend Clean Air Committee, presented this item. Presenters described the remote sensing project that occurred in Oregon in 2000, with emphasis on the planning and results of the Central Oregon phase of the project. The Commission discussed results of the project and potential future use of equipment in rural and metropolitan areas of Oregon.

H. Informational Item: Overview of Revisions to Point Source Air Management Rules

Andy Ginsburg, DEQ Air Quality Division Administrator, and Scott Manzano and Dave Kauth, Air Quality staff, presented this item. Presenters described rule development history and stakeholder involvement related to a current rulemaking process to simplify the air quality point source permitting program. This proposal is the centerpiece of other streamlining elements that Air Quality recently completed.

Five main components of the rulemaking with examples are as follows:

- Permit Restructuring - more than half of a permitted source will go to simpler general permits.
- Permit Modification - eliminating modification requirements for Plant Site Emissions Limit (PSEL) increases less than the significant emission rate, and adjustments to Baseline.
- Public participation - tiered public involvement relative to the significance of the permitting action.
- Fees and Billing - change from 75 separate fee categories to six, and annual fees instead of periodic fees that lead to more difficult budget management.
- Improved Permitting Procedures - including reduction of unassigned emissions, defining the term "adjacent," and developing a sound procedure for determining potential source impacts.

Staff presented an overview of the public comments received to date. DEQ plans to re-open the public comment period to take further comment on 1) reducing unassigned emissions, 2) defining the term "adjacent;" 3) Air Contaminant Discharge Permit (ACDP) Applicability (Table 1), and 4) Ozone Precursor Impact Distance.

Because of the amount of material in the rulemaking proposal, the Commission requested an additional week to review the package before the May EQC meeting.

J. Informational Item: Briefing on LaPine National On Site Demonstration Project

Mike Llewelyn, DEQ Water Quality Division Administrator; Barbara Rich, DEQ Project Coordinator; and Rodney Weick, Water Quality staff, presented objectives and activities of the LaPine National On Site Demonstration Project. Presenters discussed new technologies and accomplishments in monitoring and modeling pollutant plumes in groundwater by United States Geological Service (USGS). The project was done in conjunction with Deschutes County and USGS.

Public Comment: Ray Johnson, City of Redmond Public Works presented public comment.

I. Rule Adoption: Repeal of OAR 340-41-0470(9) The Tualatin Sub-basin Rule for Total Phosphorous and Ammonia

Neil Mullane, DEQ Northwest Region Administrator, and Rob Burkhart, Tualatin Basin Coordinator, presented a proposed repeal of OAR 340-41-0470(9), effective with EPA approval of the revised Tualatin Subbasin Total Maximum Daily Load (TMDL) for phosphorus and ammonia, which was established in rule in 1988. DEQ is currently recommending the TMDLs be revised. Program requirements described by rule are outdated and now covered under other authorities. DEQ plans to submit revised TMDLs to EPA in the form of Department Order by the end of January 2001.

Noting that DEQ plans to submit revised TMDLs to EPA in January, the Commission asked whether action could be taken prior to the March 8-9, 2001, EQC meeting. Staff responded that it is likely DEQ will know of EPA's action by the March EQC meeting because EPA has 30 days to take action on the TMDL.

The Commission felt it would be better to know whether EQP approved revised TMDLs prior to repealing the rule. Commissioner Reeve made a motion to defer Commission action until the March 8-9, 2001, meeting. It was seconded by Commissioner Bennett and carried with five "yes" votes.

K. Rule Adoption: Amend Tax Credit Rules to Include Nonpoint Source Pollution Control Facilities as an Eligible Facility for Tax Credit Purposes

Helen Lottridge, DEQ Management Services Division Administrator; Mike Llewelyn, DEQ Water Quality Division Administrator; and Andy Ginsburg, DEQ Air Quality Division Administrator, presented proposed rule amendments to extend tax credit eligibility to nonpoint source control facilities as directed by House Bill 2181, passed in 1999. The nonpoint source tax credit would cover expenditures for on-the-ground management practices and improvements. Eligible projects include those associated with one of the following elements of the State's federally-approved nonpoint source control plan (which satisfies requirements of the Clean Water Act and Clean Air Act):

- Agricultural plans developed in response to Senate Bill 1010,
- Forest management practices plans,
- TMDL implementation plans,
- Groundwater management area action plans,
- Estuary plans,
- Expenditures to supplement a Clean Water Act section 319 grant project, or
- Any other watershed restoration plan approved by a state or federal agency.

Commissioner Van Vliet questioned the eligibility of wood-chippers, which were included to provide an alternative to communities to open burning. Presenters responded that DEQ anticipates most tax credit applications relating to wood-chippers will be ones DEQ initiates while working with communities in pollution prevention projects. Chair Eden asked if there were estimates of costs for wood-chippers and retrofitting diesel engines. Presenters replied that DEQ expects a limited number of applications for wood-chipper and diesel engines. Commissioner Reeve asked whether bio-swales and retention ponds would be eligible. Mr. Llewelyn answered that under proposed rules, such facilities would be eligible if the primary purpose was protection of water quality from nonpoint pollution sources.

The Commission discussed the sunset date for proposed rules and asked staff to report back to the Commission on how the sunset would be implemented.

Commissioner Reeve made a motion to adopt the rule amendments as proposed. Commissioner Malarkey seconded the motion and it carried with five "yes" votes.

L. Informational Item: Budget Update

Helen Lottridge, DEQ Management Services Division Administrator, gave the Commission a report on the budget process for the 2001 legislative session.

M. Commissioners' Reports

There were no Commissioners' reports.

N. Director's Report

DEQ is working with the Governor's office and other agencies to address the emerging energy shortage. DEQ's Air Quality Division is working on a strategy to facilitate permitting emergency energy generators while protecting air quality.

DEQ and Oregon Department of Forestry released a draft sufficiency analysis report on stream temperature. The draft report analyses the sufficiency of current Forest Practices Act rules in meeting water quality standards for temperature. The process will result in DEQ's evaluation of whether Forest Practices Act rules need to be revised in order to meet DEQ's temperature standards and/or load allocations driven by the TMDL program.

The Waste Policy Leadership Group has made the following recommendations to DEQ regarding future policy and program directions in solid waste management.

- A legislative proposal that sets new recovery goals for wastesheds and extends the 50% recovery goal to 2009, with an interim goal of 45% by 2005. This proposal also sets waste prevention goals: 0% annual increase in waste generation per capita by 2005 and 0% annual increase in total waste generation by 2009. Finally, the proposal calls for keeping PBT-containing products out of landfills by 2009.
- A product stewardship legislative proposal covering electronics, mercury-containing products and carpet. This proposal creates a stakeholder process to develop goals, strategies and timelines for increasing producer responsibility for the life cycle impacts of these products.
- DEQ should increase its efforts in waste prevention and target the commercial sector, toxicity and PBTs, greenhouse gas emissions, and large waste sources.

In August 2000, a DEQ compliance inspection determined that piping at the Jackson Oil bulk plant on US 395 in Canyon City was not in compliance with state release detection requirements. As a result, Jackson Oil replaced the entire piping system in November 2000. That same month, gasoline contamination was found in soil and groundwater at the bulk plant after gasoline fumes forced a resident living next to the bulk plant to be evacuated from his home. One-week later, gasoline fumes forced evacuation of a second resident down gradient from the bulk plant. DEQ, Canyon City, Grant County, and Jackson Oil coordinated to determine that 5,100 gallons of gasoline were released before the faulty piping system was replaced. A gasoline plume currently extends 500 feet north of the bulk plant (toward John Day) impacting residential and commercial property. The plume is being diluted and dispersed by groundwater flow. No contamination was found in recent air and water samples taken at the down-gradient residence. The resident was returned to her home December 28, 2000. A corrective action plan to address the risk caused by contamination at the bulk plant and the two remaining impacted properties should be completed by February 2001.

Stephanie Hallock will meet with Chuck Findley at EPA Region 10 in January to discuss EPA-DEQ issues.

DEQ signed a Memorandum of Agreement with EPA, Oregon, Idaho, and Washington for coordinated development of Columbia and Snake River mainstem TMDLs. The agreement gives EPA the lead on temperature TMDLs and gives states the lead on total dissolved gas and other parameters for the lower river. At the time of the Commission meeting, Oregon, Idaho and EPA had signed the MOA; Washington had not signed.

Director Hallock reported the following administrative changes:
- Neil Mullane, Northwest Region Administrator, will serve as acting Deputy Director upon Lydia Taylor's retirement. Andy Schaedel will serve as acting Northwest Regional Administrator.
- Initial interviews for Lab Administrator will be held in late January and early February.
- Three finalists for Special Assistant to the Commission & Director will be interviewed on January 23.

The retirement party for Rick Gates and Lydia Taylor, commemorating almost 50 years of combined service, will be held on March 1 at the World Trade Center in Portland from 4:30 to 7:30pm. All current and former employees and other colleagues are invited.

There being no further business, the meeting was adjourned at 1:30 p.m.

Approved____
Approved with Corrections X

Minutes are not final until approved by the EQC

Environmental Quality Commission
Minutes of the Two Hundred and Ninety-Third Meeting

March 8-9, 2001
Regular Meeting[1]

The Environmental Quality Commission (EQC) held a regular meeting on March 8-9, 2001, at the Hermiston Community Center, 415 South Highway 395, Hermiston, Oregon. In addition to the regular meeting, the EQC toured the Umatilla Chemical Storage Facility and held dinner with local officials at the Oxford Suites, Walleye Room, 1050 N. First, Hermiston, Oregon. The following EQC members were present.

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

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

Chair Eden called the meeting to order at 2:30 p.m. on March 8. Agenda items were taken in the following order.

A. Informational Item: Energy and the Environment

Russell Harding, DEQ Columbia River Coordinator, introduced a panel of speakers to present this item, including Jeff King, Northwest Power Planning Council (NWPPC); Pat Vernon, DEQ Air Quality Program Development Manager; Therese Lamb, Bonneville Power Administration (BPA); Wayne Lei, Portland General Electric (PGE); and Dave Ponganis, U.S. Army Corps of Engineers (USACE). The panel presented information on current challenges for balancing energy production, endangered species protection, and water quality in the Columbia River system.

Jeff King, NWPPC, provided an overview of energy production and use in the Pacific Northwest, including electricity sales, changes in supply and consumption, natural gas generation, additions and retirements to the power system, and imminent energy issues. Chair Eden questioned the costs and benefits of new approaches the aluminum industry is taking to use and conserve power under current energy conditions. Mr. King confirmed that industry is now taking new approaches, but was unable to comment on specific the costs and benefits realized. Commissioner Van Vliet asked whether emerging natural gas production plants would be competitive in the current market if natural gas prices increase. Mr. King answered that they would likely be competitive because they would be selling to a market that will continue to be capacity short. Mr. King continued with a description of energy production development activity and potential near term problems. Commissioner Van Vliet asked whether the Northwest has abandoned geothermal development. Mr. King responded that we have not, but the resource may prove less promising than once thought. Commissioner Bennett questioned the status of energy production deregulation in Washington state. Mr. King answered that for the most part, Washington is not actively pursuing deregulation because most production facilities are permitted by independent developers who sell directly to the market and are less affected by deregulation. Commissioner Malarkey commented that of the various energy sources described by Mr. King, she understood cooperative sources to be a part of federal sources. Mr. King confirmed that most cooperatives are prescribed by Bonneville Power Administration.

[1] Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204.

verb: 'questioned' – negative connotation? or 'challenged' – not much – Δ to 'asked' or 'ask the question'. } all.

Pat Vernon, DEQ Air Quality Program Development Manager, explained air quality issues associated with expected energy production shortages and efforts of Oregon utilities to generate needed power. Issues include the threat of potential nuisance posed by emergency power generators, many of which are located in densely populated areas. Also, industry is considering high efficiency generation, a new approach that produces electricity and steam from a single power source. In general, it appears that new these generation approaches will not be renewable and will have air quality impacts. DEQ is proactively working with industry to understand potential impacts, streamline permitting, and protect air quality while responding to urgent energy production needs. In addition, DEQ continues ongoing efforts to reduce air pollution from transportation and other industries as Oregon experiences rapid population growth.

Russell Harding, DEQ Columbia River Coordinator, provided an overview of the federal Clean Water Act as it relates to power production. Mr. Harding described the scope of beneficial water uses designated for the Columbia River system. While the Commission has previously considered the balance between hydropower production and fish passage in the system, this year poses new challenges. Water has previously been available to support both power production and water spill for fish passage. This year, Columbia Basin snow pack is approaching lowest recorded levels, and will likely not provide sufficient water to support both beneficial uses. Commissioner Van Vliet questioned potential impacts and alternatives associated with inadequate water spill for fish passage. Mr. Harding responded that protected fish species will be impacted by inadequate flow, and will likely be transported downriver via barge. Commissioner Van Vliet questioned whether cost-benefit analyses have assessed this situation. Mr. Harding suggested Therese Lamb address this question in her presentation. Commissioner Reeve questioned the status of Total Maximum Daily Load (TMDL) development for the Columbia River system. Mr. Harding answered that a TMDL has been done. Commissioner Reeve asked whether TMDL development accounted for the impact of dams on total dissolved gas (TDG) levels and temperature. Mr. Harding answered that the TMDL includes these factors. Commissioner Reeve recognized an potential conflict in management of the Columbia River system for complying with TMDL standards for both TDG and temperature. Mr. Harding agreed that there may indeed be a conflict between meeting the two standards.

Therese Lamb, BPA, described options for controlling spill in the Columbia River system considering TDG standards, constraints of electricity contracts and stability of the transmission system. Ms. Lamb explained the relationship between spill for fish passage, uncontrolled spill and electricity generation. Hydraulic capacity of the river system determines levels of spill that BPA may permit to assist fish passage. BPA must consider spill within the context of maintaining a balance between power supply and demand. Chair Eden recognized that it seems the region has little ability to store excess power in anticipation of shortages, and questioned the capacity of present technology and emerging research to improve storage of excess power. Ms. Lamb explained BPA tools for mid and short-term power marketing that provide some ability to store excess power but are not always sufficient.

Dave Ponganis, USACE, continued with a description of voluntary spill options in the Columbia River mainstem and associated systems. Commissioner Bennett questioned the time frame for development of flow deflectors at Chief Joseph and Grand Coulee Dams. Mr. Ponganis responded construction is planned for 2002. Commissioner Bennett questioned the time frame for other deflectors. Mr. Ponganis responded that because of fish passage protections, others would generally be constructed in two years. Ms. Lamb continued with a summary of current conditions and BPA objectives for management of the system. Commissioner Bennett referenced an earlier comparison of price of power and price of water runoff, noted that costs of water and power are different issues, and questioned the rationale for trying to solve problems associated with power prices by focusing only on water prices.

Chair Eden interrupted the presentation at 4:00 p.m. to ask whether anyone was in attendance to be involved in agenda item B. Seeing no one present, Chair Eden invited Ms. Lamb to continue.

Ms. Lamb continued with a summary of issues now faced by BPA, including options for operating the system under conditions of greater and less than 53 million acre feet (MAF) of water. If a 53 MAF condition does not materialize, BPA will not be able to simultaneously maintain financial solvency, meet is power production demands, provide spill for fish and keep reservoirs from drafting below summer limits. Commissioner Van Vliet asked whether the 53 MAF threshold accounts for all water rights in mainstem system and tributaries, and whether negotiation of the current irrigation load has been considered. Ms. Lamb responded that BPA is negotiating to buy some irrigation loads to reduce the amount of water pumped from the river. Commissioner Van Vliet recognized that many stakeholders in the farm industry may oppose this option. Ms. Lamb responded that BPA has approached some irrigators and anticipates potential win-win results. Mr. Ponganis described the development of spill priorities and control of TDG increases. Chair Eden questioned when BPA and USACE would know whether water would be available for spill. Ms. Lamb responded that the April volume forecast would provide the first indication of spill potential.

Wayne Lei, PGE, described how electricity load is forecast, how the energy market works, and PGE's Electricity Exchange Program, which is designed to provide additional peak power generation. PGE has been in the market for power since 1992 and has an aggressive conservation program that utilizes distributed resources (i.e., backup facilities for standby generation) and demand exchange. Demand exchange allows PGE to buy back power from industrial users to relieve demand when power prices rise. Commissioner Van Vliet commented that conservation measures and demand exchange is used in non-crisis situations also because it is an economically sound management practice. Mr. Lei confirmed and thanked the Commissioner for his comment. Commissioner Van Vliet asked how various types of power production facilities, particularly nuclear and wind, are effected by potential price increases and deregulation approaches. Mr. Lei did not know exactly how different facilities were affected. Commissioner Van Vliet questioned whether these were viable issues for public consideration. Mr. Lei responded that these issues do raise the opportunity for public consideration of new energy regulation options, such as converting manure to a methane energy source.

Commissioner Reeve questioned the amount of power lost in transmission to California and elsewhere. Mr. King responded that total losses associated with transmission and distribution to the end user are approximately 8 percent. Mr. Lei added that this loss explains the preference for locating distribution sites near production sites. Noting current capacity limitations and high production costs, Commissioner Reeve asked whether we seek to purchase power outside the region where capacity may be greater or prices lower. Ms. Lamb responded that power availability of outside the region is factored into BPA's plans for power purchase and sale. Commissioner Bennett HB asked whether we have evaluated historical trends in power production, use and conservation in seeking solutions to current power issues. Mr. Lei answered that yes, we have looked historically, and trends indicate that solutions lie in the ability of industry, businesses and individuals to consider all resource use and conservation holistically. Commissioner Malarkey commented that no simple answers exist to assist the Commission in the difficult task of weighing issues associated with power production, the recent federal Biological Opinion for the Columbia River system, and other environmental protections. Chair Eden agreed, adding that the Commission might soon learn whether the option to spill water for fish passage exists and asking where the April volume forecast can be found. Ms. Lamb responded that it will be available on the National Oceanic and Atmospheric Administration web site (http://www.nwrfc.noaa.gov). Commissioner Bennett asked whether we would be considering these issues if the current situation was viewed and anticipated as a regular part of a long-term moisture cycle in this region. Ms. Lamb responded that the severity of the dry situation we now face was not anticipated, particularly because we are currently experiencing La Nina weather conditions, which we expected to be wet. Commissioner Reeve questioned the basis of projected 2001 storage levels for the river system. Mr. Ponganis answered that it varies for each reservoir, but in general, storage expectations are based on average conditions each dam. Hearing no further questions, Chair Eden thanked the panel.

B. Action Item: Contested Case No. WMC/T-ER-99-107 regarding Dan's Ukiah Service

Larry Knudsen, Assistant Attorney General, provided background on this case. In 1999, DEQ assessed civil penalty of $63,800 against Daniel Vincent, doing business as Dan's Ukiah Service, for failure to obtain an underground storage tank general operating permit registration and failure to provide required records. Mr. Vincent appealed the penalty and following a contested case hearing, the Hearings Officer found in favor of DEQ. Mr. Vincent appealed the Hearings Officer decision to the Commission. In November 2000, the Commission considered the case and decided to defer action to the January 2001 meeting to allow the participation of Commissioner Bennett and to offer the Vincents an opportunity to provide additional documentary evidence to the Hearings Officer. In January, the Commission approved the Vincents' request to defer the case to the March meeting by four "yes" votes; Chair Eden voted "no." Mr. Knudsen did not received written or verbal indication of the Vincents' intent to provide documentary evidence. The Vincents and DEQ were notified that the Commission did not intend to hear testimony on this case in March.

Commissioner Bennett confirmed his review of the tapes from the November 2000 EQC meeting. Mr. Knudsen asked Commissioners to declare any ex parte contacts that occurred or conflicts of interest that developed since the January meeting. Chair Eden stated she received two telephone messages from Ms. Vincent, which she did not return because of this contested case, and thus has not had ex parte contact. No Commissioners declared ex parte contact.

Mr. Knudsen summarized options for Commission action. Commissioner Van Vliet questioned the Commission's latitude to consider various ways for the fine to be paid over time. Mr. Knudsen described a rule provision that allows payment over time, which the Commission may consider. Chair Eden clarified that DEQ regularly pursues this option after Commission consideration of the Hearings Officer decision. Mr. Knudsen explained the penalty

mitigation rule allows DEQ or the Commission to lower the penalty if the respondent provides documentary evidence that they're unable to pay the fine. In making those determinations, may consider whether a long term payment schedule would enable payment of the penalty and or mitigate hardship of penalty. Commissioner Bennett noted that the Commission may affirm the decision and request long-term payment options be explored, recognizing the possibility of economic hardship and lack of documentary information from the respondent regarding ability to pay the fine. Mr. Knudsen confirmed this option, adding that if the penalty is not paid, a rule provision allows the payment to become a lien on the property.

Commissioner Van Vliet suggested the Commission uphold the Hearing Officer decision, impose the penalty, and direct DEQ to offer a long-term payment schedule for the fine. Commissioner Bennett asked whether DEQ would work with the respondent to establish a long-term payment schedule. Director Hallock and Neil Mullane, DEQ Acting Deputy Director, responded that yes, the Commission could direct DEQ to work with the respondent to establish a payment program. Commissioner Van Vliet suggested to the Commission levy an immediate fine of $6,600 representing a portion of the violation that the respondent may be able to pay, and explore payment options for the remaining fine. Chair Eden and Commissioner Reeve both noted again that the Commission received no information from the respondent regarding ability to pay. Commissioner Reeve made a motion to uphold the Hearings Officer's findings and recommendations. Commissioner Malarkey seconded the motion. Commissioner Van Vliet noted the Commission's disappointment in receiving no information on the from the respondent regarding ability to pay the fine. Commissioner Bennett asked that the final order reflect the Commission's efforts to be responsive and flexible in considering this case. Commissioner Reeve amended the motion to uphold the Hearings Officer's findings and recommendations and reflect in the final order the Commission's procedural history and reasons for deferring action on this case to this meeting. The motion as amended was seconded by Commissioner Malarkey and carried with four "yes" votes. Commissioner Bennett voted "no." Mr. Knudsen was directed to include a cover letter to the order to reflect the Commission's efforts to be responsive and flexible in hearing this case.

The meeting was recessed for the evening at 5:00 p.m. From 6:30 to 8:30 p.m., the Commission met with local officials over dinner at the Oxford Suites Hotel. On Friday, March 9, the Commission held an Executive Session from 8:00 to 8:30 a.m. on pending litigation involving DEQ and Ballot Measure 7.

C. Approval of Minutes

Approval of minutes was deferred to the May 3-4, 2001, meeting, at which time the Commission will consider approval of January 11-12, March 8-9, and March 30, meeting minutes.

D. Consideration of Tax Credit Requests

Helen Lottridge, DEQ Management Services Division Administrator, and Maggie Vandehey, DEQ Tax Credit Manager, presented eight applications for pollution control facility tax credit, one for transfer, and one for reissue. DEQ recommends the Commission approve six of the eight tax credit applications for a facility cost that is less than the claimed facility cost presented on the applications, two of the eight tax credit applications at the claimed facility cost, transfer of certificate number 4399, and reissue of certificate number 4215. The Commission discussed and deliberated the applications.

Commissioner Reeve motioned to approve eight applications for pollution control facility tax credit as recommended by DEQ. Commissioner Malarkey seconded the motion and it carried with five "yes" votes. Commissioner Van Vliet motioned to approve transfer of certificate number 4399 and reissue of certificate number 4215. Commissioner Bennett seconded the motion and it carried by five "yes" votes. Commission action is shown below.

Commission Action	App #	Media	Applicant	Claimed Facility Cost	Certified Cost	Percent Allocable	Value
Approve	5465	Air	Deschutes Brewery, Inc.	$ 8,922	$ 8,922	100%	$ 4,461
Approve	5478	Water	Teledyne: TDY Industries, Inc.	$ 65,069	$ 49,033	100%	$ 24,517
Approve	5503	Air	Smucker Pelleting	$ 20,816	$ 18,731	100%	$ 9,366
Approve	5505	Water	Myrtle Lane Dairy	$ 45,458	$ 24,477	100%	$ 12,239
Approve	5506	Water	Skyport Properties of Oregon	$ 47,916	$ 39,214	100%	$ 19,607
Approve	5508	FB	Peter Brentano	$ 14,076	$ 14,076	100%	$ 7,038
Approve	5520	SW	Western Pulp Products Co.	$ 45,159	$ 45,065	100%	$ 22,533
Approve	5521	SW	Western Pulp Products Co.	$ 46,000	$ 44,755	100%	$ 22,378

Commission Action	Cert #						
Transfer	4399	From:	Rexam Graphics, Inc., dba Rexam Image Products				
		To:	Rexam Image Products, Inc.				
Reissue	4215	From:	Intel Corporation		$1,858,452		
		To:	Intel Corporation		$ 941,815		

E. Rule Adoption: Storage and Management of Chemical Agent Munitions and Bulk Items

Wayne Thomas, DEQ Chemical Demilitarization Program Administrator, and Thomas Beam, DEQ Senior Environmental Engineer, presented the proposed rulemaking. Mr. Beam summarized the need for rulemaking, rule development process and effect of the proposed rule, which (1) declares chemical agent munitions and bulk items to be solid and hazardous waste, (2) establishes additional requirements for storage and management of these wastes, (3) provides strict interpretation of the "no migration" standard, and (4) clarifies reporting requirements for releases of chemical agent.

Commissioner Van Vliet asked whether DEQ was aware of any locations in Oregon, other than the U.S. Army Umatilla Chemical Depot, where chemical agent munitions and bulk items are stored. Mr. Beam replied that DEQ is aware of no other storage locations. Commissioner Bennett asked how the proposed rule might affect future development of chemical production facilities. Mr. Beam answered that the rule would not affect development of chemical production facilities. The scope of the rule as initially proposed was narrowed to apply only to agent munitions and bulk items presently stored in Oregon.

Commissioner Van Vliet asked for confirmation that although the U.S. Army has sovereign immunity regarding the Depot under the Resource Conservation and Recovery Act (RCRA), the proposed rule would apply to Depot munitions and bulk items because DEQ considers these items to be discarded and therefore, a solid waste. Mr. Beam confirmed this as correct, adding that EPA enables states to adopt rules more stringent than federal rules. Mr. Beam explained environmental and public health reasons for proposing a more stringent rule, in response to a request from Director Hallock.

Commissioner Bennett asked how defining agent munitions and bulk items as hazardous waste might affect chemical storage facilities in Oregon, other than the U.S. Army Umatilla Chemical Depot. Mr. Thomas answered that DEQ is aware of no other facilities storing chemicals or items to which this rule would apply. Larry Edelman, Assistant Attorney General representing DEQ, explained RCRA requirements regarding management of hazardous waste and chemical products, in response to a request from Director Hallock. Specifically, Mr. Edelman clarified the definition of agent munitions and bulk items as hazardous waste subjects these items to much more stringent regulation than other chemical products (such as common fertilizers).

Commissioner Van Vliet asked what efforts had DEQ taken to develop agreement with the U.S. Army for management of agent items before initiating rulemaking. Mr. Thomas answered that DEQ and the U.S. Army discussed entering an agreement or consent order, but decided against these options because they do not provide formal mechanisms for public involvement as provided in rulemaking. Chair Eden added that a strong working relationship and general agreement for agent management had developed between local DEQ and U.S. Army staff through this process.

Commissioner Malarkey asked for confirmation that although little public comment resulted from the over 600 public notices that were sent for this rulemaking, the local community has indicated support for the proposed rules. Mr. Beam responded that based on prior rulemaking experience, silence may be interpreted as support for the proposed action. Every attempt was made to notify potentially interested parties, and the local community has indicated support. Director Hallock added that based on her experience with this issue over time, the local community is supportive of proposed rules. Commissioner Reeve commented that the environmental and public health rationale for proposed rules is as applicable now as it would have been years ago, and questioned why rules have not been developed earlier. Mr. Thomas explained DEQ efforts have focused on developing the permit for U.S. Army agent incinerator. As our understanding of management and disposal of these items developed, we became aware of the need for these rules. Commissioner Reeve and Mr. Thomas discussed scope of the permit

and rules on storage and disposal of agent items. Mr. Thomas and Mr. Beam provided concluding clarification and summary of application of the proposed rule.

Commissioner Reeve moved the Commission adopt proposed rules regarding storage and management of chemical agent munitions and bulk items. Commissioner Malarkey seconded the motion. Chair Eden noted her appreciation for the increase in public protection offered by the proposed rule and clarified that proposed rules are in no way a criticism of local U.S. Army operations or officers. Chair Eden also commended local DEQ staff for their work with the community and U.S. Army. The motion carried with five "yes" votes. Mr. Thomas recognized the U.S. Army's outstanding response to a recent earthquake, including rapid notification and cooperative work with DEQ to ensure the safety of the local community.

F. Informational Item: Endangered Species Act Coordination Including Proposed Agreement on Water Quality Standards

Mike Llewelyn, DEQ Water Quality Division Administrator, and Steve Greenwood, Endangered Species Act Coordinator, presented this item. Mr. Greenwood described emerging working agreements that coordinate the DEQ, U.S. Environmental Protection Agency (EPA), National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) in implementation of the federal Clean Water Act (CWA) and Endangered Species Act (ESA). The Commission reviewed a draft of the first working agreement designed to ensure Oregon's water quality standards protect ESA-listed species. The agreement reaffirms triennial review of water quality standards, utilizes the work of consultation processes in other states and at the national level to the full extent possible, and proposes a "Conservation Review" prior to the next triennial review of Oregon's standards, which have caused concern regarding species protection. DEQ anticipates signature of this agreement in approximately one month.

Commissioner Reeve questioned the difference between Conservation Review and the established consultation process. Mr. Greenwood responded that conservation review is anticipated to be a faster process than consultation, providing greater flexibility and responsiveness in reviewing water quality standards. Commissioner Reeve asked how the upcoming regional review of the temperature standard, involving Oregon, Washington, Idaho and NMFS, relates to the draft agreement. Mr. Greenwood responded that the approaches in the agreement are separate from the regional review process. Any changes to standards resulting from regional review must progress through the triennial review process, which is reaffirmed in by draft agreement. Mr. Llewelyn confirmed, explaining that an intent of the regional temperature standard review is to maintain state opportunity to adopt the standard that emerges from the review or a different standard than is recommended by the federal agencies, which would involve the complex consultation process. Chair Eden thanked the presenters.

G. Rule Adoption: Repeal of OAR 340-41-0470(9), The Tualatin Sub-basin Rule for Total Phosphorous and Ammonia

Andy Schaedel, DEQ Acting Northwest Region Administrator, and Neil Mullane, DEQ Interim Deputy Director, presented the proposed rule repeal. Mr. Schaedel explained that 1988 rules established total maximum daily loads (TMDLs) for total phosphorus and ammonia concentrations in the Tualatin River system. Tualatin TMDLs were the first of many developed in Oregon and the first of few adopted by rule. In 1990, the Commission adopted a new approach of establishing TMDLs by Department Order rather than rule. Standards addressed by Tualatin TMDLs have been successfully met, and DEQ is now working on new Tualatin TMDLs to be adopted through Department Order consistent with others throughout the state. In October 2000, DEQ initiated rulemaking to repeal Tualatin TMDL rules, which would otherwise need to be modified or repealed with the approval of new TMDLs submitted to the Environmental Protection Agency (EPA) in a Department Order.

Tualatin TMDLs were submitted to EPA in Department Order in January, 2001. DEQ had hoped to have EPA approval by the date of this meeting, but recently learned of a delay in EPA action due to staff illness and the need for additional time to prepare a record for approval. In addition, a recent EPA policy shift has called into question the requirement for federal consultation on TMDLs, a process which federal agencies are now working to streamline. EPA has indicated they hope to act on the Order by mid-April. DEQ recommends Commission repeal of Tualatin TMDL rules at this time, as opposed to repeal pending EPA approval of the Order. Rule repeal at this time would enable DEQ to continue development of implementation plans and begin modification of permits based on the new Tualatin TMDLs. In particular, DEQ anticipates moving forward on a recently received EPA grant for facilitated, collaborative development of a basin stormwater permit.

Commissioner Van Vliet asked whether Commission repeal at this time would result in a period of no effective TMDL standards for the Tualatin until EPA approval of the pending Order. Mr. Schaedel answered that the TMDLs currently in rule would remain effective with rule repeal because they have been approved by EPA , incorporated

into permits and were the basis of implementation plans (such as under SB1010). Commissioner Van Vliet asked how changes in EPA administration may affect federal review of TMDLs. Mr. Schaedel responded that the effects of change in EPA administration are somewhat unknown, but DEQ is moving forward with TMDLs as directed by a court order requiring completion by 2007. Larry Knudsen, Assistant Attorney General, added that the majority of EPA action is currently driven more by litigation than administration priority for TMDL review.

Chair Eden asked what would happen if EPA does not approve new TMDLs in the Order. Mr. Knudsen answered that with respect to permits, DEQ anticipates that EPA would take action on the TMDLs before new permits are issued. If new permits are developed prior to EPA action, they would reflect the more protective waste load allocation. DEQ intends to avoid this situation if possible.

Commissioner Reeve asked whether the Municipal Separate Storm Water Sewer System (MS4) Discharge permit, which will be developed through a collaborative process, applies only to incorporated areas or to the basin generally. Mr. Mullane responded that the MS4 permit covers the area within the urban growth boundary within Washington County and parts of Multnomah and Clackamas County that discharge to the Tualatin. DEQ has three permits with individual sub-applicants. Commissioner Reeve asked whether significant change in wasteload allocations is proposed. Mr. Mullane answered yes, the wasteload allocation is not contained in the current permit but would be addressed in a new permit. Current wasteload management practices, monitoring, education efforts will be continued in the new permit but made more specific to achieve new TMDL wasteload allocations.

Commissioner Reeve motioned that the Commission repeal OAR 340-41-0470(9) effective upon filing with Secretary of State. Commissioner Bennett seconded the motion and it carried with five "yes" votes.

H. Rule Adoption: Revision of Medford Carbon Monoxide Maintenance Plan and Redesignation Request

Andy Ginsburg, DEQ Air Quality Division Administrator, and Dave Nordberg, DEQ Air Quality Division, presented this item. When the Medford Carbon Monoxide Maintenance Plan was developed in 1998, projections indicated oxygenated fuel was needed to protect air quality. Emerging computer models of vehicle emissions were expected to show that 1996 and newer vehicles would experience little added benefit from oxygenated fuel. As a result, the Medford-Ashland Air Quality Advisory Committee asked DEQ to reevaluate the need for oxygenated fuel based on new computer analyses. Subsequent evaluation led to a revised Carbon Monoxide Maintenance Plan that eliminates the oxygenated fuel requirement and provides for reinstatement of oxy-fuel if CO standards are violated.

Chair Eden recalled the Commission's discussion in Medford regarding the oxygenated fuel requirement and stated her pleasure that the Commission is able to consider revising the rule. Chair Eden recognized the Rogue Valley Council of Governments, Medford-Ashland Air Quality Advisory Committee, Oregon Department of Transportation and DEQ staff for their work on this rulemaking. Commissioner Van Vliet motioned that the Commission adopt proposed rule amendments and revisions to the Medford Carbon Monoxide Maintenance Plan as a modification to the State Implementation Plan. Commissioner Malarkey seconded the motion and it carried with five "yes" votes.

I. Director's Report

Stephanie Hallock, DEQ Director, reported the following items to the Commission:

- DEQ and the Environmental Protection Agency (EPA) signed a Memorandum of Understanding for clean-up of Portland Harbor.
- The Supreme Court upheld EPA's authority to establish national ambient air quality standards necessary to protect public health.
- EPA announced advancement of the 2007 heavy-duty diesel rule to reduce particulate, No_x and toxics from on-road diesel trucks and busses.
- DEQ and EPA will hold a public workshop on temperature standards to protect fish.
- The City of Portland is continuing efforts to implement its Clean River Plan, which calls for extending the deadline for capturing combined sewer overflow volume from 2011 to 2020.
- DEQ initiated a Willamette River TMDL Council to address issues and build consensus around TMDL development.
- Tillamook TMDLs for bacteria and temperature are open for public comment.
- EQC will consider action on air quality permitting rules in May.
- DEQ is working to streamline staff reports to the EQC.
- DEQ continues work to assess impacts of the January 27 Yaquina River Oil Spill.

The Director's legislative updated included:

- DEQ begins an agency overview and budget presentation to the Ways and Means Subcommittee on Natural Resources on March 19.
- HB 2264: The DEQ Underground Storage Tank fee increase has stakeholder support.
- HB 2150: The DEQ spill response and marine spill fee bill has stakeholder support and has had positive hearings.
- HB 2149: DEQ staff is working with stakeholders to build support for DEQ's bill to expand low-interest loans for nonpoint source water quality projects to private landowners.
- HB 2156: Hearings have been held on this bill, which would strengthen ODA's authority to regulate confined animal feeding operations under the Clean Water Act.
- Several bills that would undermine Senate Bill 1010 and Agricultural Water Quality Management Plans are getting significant attention. The agriculture lobby and others are working to protect and improve SB 1010.
- Significant interest exists for doing something to address Willamette River environmental issues.
- DEQ is tracking upwards of 50 bills that could impact the agency and/or state government.

The Director's administrative updates included:

- Anne Price was named administrator of the Office of Compliance and Enforcement on February 13.
- Mary Abrams was named new Lab Administrator on February 22 to replace Rick Gates, who is retiring.
- Mikell O'Mealy has replaced Kitty Purser as Assistant to the Director and EQC.

J. Action Item: Order Approving the 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

Larry Knudsen, Assistant Attorney General, presented a draft order regarding this item. In September 2000, a majority of the Commission voted to preliminarily approve in part Portland General Electric Company's (PGE) application for preliminary tax credit certification of its independent spent fuel storage installation at the Trojan Nuclear Power Plant site. The Commission directed counsel to develop a draft order based on the Commission's vote.

Commissioner Reeve noted that he did not vote in support of the Commission's approval in September 2000, and questioned the appropriateness of his potential support of the draft order at this time. Mr. Knudsen responded that it is appropriate for all Commissioners to discuss and vote on the substance of the draft order at this time. Chair Eden noted the Commission has not yet voted finally whether to approve preliminary tax credit certification. Chair Eden added her opposition to the substance of the order, questioned the appropriateness of outside input to an order drafted by the Commission's legal counsel, and stated her expectations for continued discussion and evaluation of this procedure.

Chair Eden interrupted the meeting at 11:30 to recognize Denise Saunders, the only party indicating interest in providing pubic comment. Chair Eden confirmed that Ms. Saunders intended to speak on this issue, and respectfully declined that offer on behalf of the Commission.

Commissioner Van Vliet motioned that the Commission approve the March 5, 2001 version of the draft order approving preliminary tax credit certification of PGE's independent spent fuel storage installation at the Trojan Nuclear Power Plant site. Commissioner Bennett seconded the motion. Director Hallock, per Chair Eden's request, called a Commission roll call vote. Commissioner Malarkey voted "yes." Commissioner Van Vliet voted "yes." Commissioner Reeve voted "no." Commissioner Bennett voted "yes." Chair Eden voted "no." The motion passed.

K. Informational Item: Underground Injection Rules

Mike Llewelyn, DEQ Water Quality Division Administrator, and Karla Urbanowicz, DEQ Water Quality Rules Coordinator, presented information on the DEQ Underground Injection Control (UIC) program and provided a preview of rulemaking to be proposed to the Commission in May 2001. The UIC program protects groundwater resources through regulation of underground injection into wells, sewage drain holes, dry wells, sumps, underground piping systems, septic systems and various other systems. DEQ is currently revising UIC rules to incorporate 1999 federal regulations into the state program and update rules in other ways. Commissioners discussed the UIC program with staff.

Commissioner Bennett asked whether there was a way to map water quality problems related to wells throughout the state. Commissioner added personal knowledge that periodic testing of wells is not mandatory, only voluntary at

Malarkey

this point. Mr. Llewelyn responded that DEQ does not have a direct regulatory role regarding sampling of drinking water because the Oregon Health Division is the responsible agency for implementation of other programs under the Safe Drinking Water Act. Chair Eden asked whether monitoring requirements set forth in permits would be significantly different than monitoring requirements established by authorization through rule adoption. Mr. Llewelyn responded that not all systems authorized by rule would require monitoring. Additional monitoring may be required for permitted facilities, in part because of the diversity of facilities that exist. Commissioner Malarkey questioned whether the concept of injection implies not only injection into a specific system but also to filtration into an aquifer. Ms. Urbanowicz responded that the UIC program covers injection into a specific system and infiltration of waste fluids from a pipe into the ground. Infiltration from the ground surface down, such as from the bottom of a pond or swale, is not covered by the UIC program. Commissioner Reeve noted that most large cities currently have permits for management of stormwater, and asked whether existing permits could be broadened to include elements for control of underground injection. Mr. Llewelyn confirmed that large municipalities such as Portland do have Municipal Separate Storm Water Sewer System (MS4) NPDES permits as required by the federal Clean Water Act for stormwater systems discharging to surface water. By the year 2003, DEQ plans to enter phase two of the stormwater program, which will require MS4 permits for smaller cities. The UIC program operates under the Safe Drinking Water Act, and Oregon uses state Water Pollution Control Facility (WPCF) permits for stormwater discharge to land. Thus, both NPDES and WPCF permits are required to discharge stormwater to surface water and to land. DEQ is encouraging communities to use one planning process for all stormwater discharge to look comprehensively at stormwater management. Commissioner Reeve suggested that combining these issues and associated permit requirements could be more productive and generate greater support from municipalities. Mr. Llewelyn responded that DEQ will explore opportunities for consolidating requirements under one permit vehicle. Chair Eden thanked presenters.

M. Commissioners' Reports

No Commissioners gave reports.

L. Informational Item: Report on Persistent Bioaccumulative Toxics (PBTs)

Stephanie Hallock, DEQ Director, updated the Commission on steps DEQ has taken to implement Governor Kitzhaber's 1999 Executive Order on Persistent, Bioaccumulative and Toxic Pollutants (PBTs). PBTs are long lived in the environment, accumulating and concentrating in biological organisms, and causing morbidity and/or mortality in biological organisms. The Governor's Order directed DEQ to be the lead state agency in eliminating releases of PBTs, including mercury, pesticides such as DDT, and industrial products such as polychlorinated biphenyls (PCBs). DEQ has taken the following steps:

- Established an internal technical advisory group
- Briefed potential impacted state agencies
- Selected a subset of ten of 12 priority PBTs identified by EPA to focus on based on review all our environmental monitoring databases, including mercury and compounds, PCB's, PCDD (dioxins) and PCDF (furans), benzo(a)pyrene, aldrin/dieldrin, chlordane, DDT+DDD+DDE, hexachlorobenzene, mirex, and toxaphene
- Established an internal strategy advisory group
- Is preparing to go out for public comment

The Oregon Environmental Council has been active in addressing PBTs and recently introduced a legislative bill to reduce mercury releases, of which DEQ supports the intent but has concerns about some components. DEQ recently selected Kathleen Craig to advance the Department's PBT efforts and consider potential immediate actions. Ms. Craig will report to Neil Mullane, Interim Deputy Director. Commissioner Malarkey commented that a Eugene-based board of city and county representatives established stringent reporting requirements for toxics, and asked whether similar boards exist for other municipalities. Director Hallock responded that there do not, adding that the Eugene reporting requirement emerged from significant legislative debate during the 1999 session. DEQ maintains a toxic release inventory, implements a toxic use reduction program and has various other mechanisms to address toxics statewide, but Eugene's effort is unique. Commissioner Reeve commented that Eugene's efforts developed prior to legislative consideration of broad toxic reporting requirements, which gave rise to a task force focused on the issue. Sally Puent, Acting Waste Prevention and Management Administrator, added that the State Fire Marshall's Office has led efforts since the 1999 session on statewide toxics reporting or "community right to know." Recent DEQ studies have also investigated this issues and those reports are available to the Commission.

There being no further business, the meeting was adjourned at 1:30 p.m.

Approved_____
Approved with Corrections ✓

Minutes are not final until approved by the EQC

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

March 30, 2001
Special Phone Meeting[1]

On March 30, 2001, the Environmental Quality Commission (EQC) held a special phone meeting at the Department of Environmental Quality (DEQ), 811 SW Sixth Ave, Portland, OR. The following EQC members were present.

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

Also present were Michael Huston, Oregon Department of Justice (DOJ); Stephanie Hallock, Director, Department of Environmental Quality (DEQ); and other DEQ staff.

Chair Eden called the meeting to order at 9:00 a.m. on March 30. Agenda items were taken in the following order.

A. Action Item: U.S. Army Corps of Engineers Request for a Variance to the Total Dissolved Gas Water Quality Standard

Russell Harding, DEQ Columbia River Coordinator, presented the U.S. Army Corps of Engineers (USACE) petition for a variance to Oregon's total dissolved gas water quality standard to enable water to be spilled at all four Lower Columbia River dams (McNary, John Day, The Dalles and Bonneville) to assist outmigrating threatened and endangered salmonid smolts. The petition requests a variance from the standard of 110 percent of saturation relative to atmospheric pressure, between April 10, 2001 and August 31, 2001. For this period, USACE seeks a total dissolved gas standard of 115 percent saturation as measured in the forebay of each dam, and 120 percent saturation as measured in the tailrace. The Commission approved similar variances each year since 1994, but considers this year's petition in the context of unusually low Columbia Basin water levels and high demand for electricity production. Mr. Harding summarized the 2000 spill season, explained plans for 2001 spill, described alternatives for Commission action and presented a draft order. Representatives from USACE and the National Marine Fisheries Service (NMFS) were present to respond to questions.

Chair Eden asked whether timing of the March 2000, spill at Spring Creek National Fish Hatchery was based on the need for electricity production or water to support smolt migration. Mr. Harding answered that timing of the spill was coordinated with both. Chair Eden asked whether the degree to which the spill benefited smolt migration was known. Mr. Harding answered that benefits fish survival are not yet known. Commissioner Van Vliet asked whether the effects of barging on survival are known. Mr. Harding answered that research indicates barging reduces survival by causing disease and straying of spawning adults upon return to the river. Commissioner Van Vliet asked why more public comment on the variance request was not received from the public or consumer groups, given the current demands for electricity production. Mr. Harding answered that he did not know, considering DEQ efforts to involve the public and consumer groups. Commissioner Van Vliet asked whether the Northwest Power Planning Council (NWPPC) commented on the request. Mr. Harding answered that the Council did not comment, but a recent newspaper article reported the Council's support for operation of the Columbia hydropower system primarily for power production. Commissioner Van Vliet asked whether spill for fish might be jeopardized this year by continued power provision to aluminum companies, which may choose to sell excess power on the power grid. Mr. Harding was not sure, noting these sales would likely be dictated by contracts between the Bonneville Power

[1] Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204.

Administration and direct service industry. Mr. Harding added that the requirement to send power South to California during summer is triggered only when Northwest power supplies exceed demand. In general, the Northwest expects to send minimal power to California this year.

Commissioner Bennett asked whether the Commission would be considering taking the proposed action if we knew this year to be the first of ten to eighteen years of drought. Mr. Harding was not sure, noting various efforts of many state and federal entities to balance power production and species protection, of which the proposed action is apart. Director Hallock added that the issue of potential drought and long-term implications for river flow, species and water quality are of high priority to the Governor's Office and all natural resource state agencies. Commissioner Bennett asked what other states, particularly Washington, are doing to address these issues. Mr. Harding answered that Washington adopted multiple-year provisions for similar variances, which are scheduled for reconsideration in 2003. Idaho has not granted a similar variance, in part to protect reservoir levels.

Commissioner Reeve, asked whether the goal of 80% smolt migration via bypass systems of spill over dams, called for in the NMFS 2000 Biological Opinion, was consistent with previous years. Mr. Harding answered that 80% has been the goal for previous years and has given rise to past variance requests. Commissioner Reeve asked whether the 80% goal is in line with flow levels in previous years, if so, whether it is an appropriate goal for this low-flow year. Mr. Harding received indication from NMFS that because the Biological Opinion is based on the biological needs of fish as opposed to physical river conditions, it is applicable in the current low-water situation. Commissioner Reeve questioned potential levels of smolt mortality associated with biological monitoring planned for the spill. Mr. Harding answered that mortality associated with smolt monitoring is extremely minimal, especially in comparison to predation and other mortality factors. Commissioner Reeve added that the data record indicates a strong correlation between biological and physical monitoring, enabling us to reduce any mortality associated with biological monitoring by relying on physical monitoring to support decisions as much as possible. Noting that approximately 20,000 fish were sampled last year, Commissioner Reeve asked whether the same sample level was planned for 2001. Mr. Harding responded that while the number of fish sampled has declined each year, NMFS anticipates nearly 20,000 fish will be sampled in 2001.

Commissioner Reeve referenced suggestions provided by Dr. Wesley J. Ebel during the public comment period, which support for the proposed spill but question likely benefits, advise maximum use of smolt collection and transportation, and recommend spill levels at certain dams. Commissioner Reeve asked whether Dr. Ebel's suggestions are being seriously considered by operators of the river system. Mr. Harding confirmed that Dr. Ebel's comments are being taken into account by the action agencies. To assist the Commission with this decision for 2002, Commissioner Reeve asked that the 2001 spill report provide more critique of the spill, including rationale for spill decisions, effects of the spill on smolt migration, and lessons learned to apply to future spill decisions. Mr. Harding agreed that such a critique would be valuable to the Commission and DEQ efforts to develop a Total Maximum Daily Load (TMDL) for total dissolved gas. Commissioner Van Vliet suggested for 2002, this decision be considered in light of all of the Columbia Basin variables and actions that fall within the Commission's jurisdiction, in addition to total dissolved gas. In support of the suggestion, Chair Eden noted a tribal recommendation that the Commission ask USACE to submit a waiver request for temperature standards in dam bypass facilities.

Chair Eden asked for more information on reported conditions at Rock Island, Washington, where relatively low levels of dissolved gas were detected alongside relatively high levels of gas bubble disease in fish. Chair Eden asked whether this due to temperature or something else. Mr. Harding was not sure but will get more information on the situation.

Commissioner Bennett asked how numbers of fish in the river are determined to evaluate the expected benefits of sporadic, spontaneous spill. In particular, Commissioner Bennett questioned whether the benefits of spill in a year of sever drought might be negligible. Mr. Harding responded that tracking tags carried by smolts downriver help determine benefits of spill, and Director Hallock suggested for a future meeting, the Commission may want to hear more about biological monitoring or revisit a dam facility. Commissioner Bennett agreed these would be valuable topics for the future.

Chair Eden expressed the Commission's discontent with considering this belated request on a last-minute basis over the phone. The Commission has discussed partial approval of the variance through early May, to require the USACE to present and discuss the request at the regular Commission meeting May 3-4, 2001. Chair Eden asked for a verbal assurance from USACE that they will comply with the requirements and conditions of the proposed order. Specifically, the order requires USACE to provide (1) notice to DEQ within 24 hours of any violations of the variance related to voluntary spill, (2) a 2001 report of the spill program to DEQ by December 31, 2001, and (3) any request for this operation in 2002 to DEQ no later than December 31, 2001. Dave Ponganis, USACE, assured that

USACE is working with DEQ to improve coordination on this yearly request and on a potential multi-year agreement providing the variance. Mr. Ponganis confirmed the intent to comply with all conditions in the Commission's order.

The Commission made slight modifications to the draft order. Commissioner Reeve motioned the Commission approve the USACE request for a variance to the total dissolved gas water quality standard and approve the draft order provided in Appendix C of this agenda item as modified by the Commission. Commissioner Van Vliet seconded the motion and it carried with four "yes" votes.

B. Consideration of Tax Credits

Maggie Vandehey, DEQ Tax Credit Manager, presented two applications for pollution control facility tax credit from Salem Black Top & Asphalt Paving, Inc. DEQ recommends the Commission approve both applications. The Commission discussed and deliberated the applications.

Commissioner Van Vliet motioned to approve both applications for pollution control facility tax credit as recommended by DEQ. Commissioner Bennett seconded the motion and it carried with four "yes" votes. Commission action is shown below.

Commission Action	App #	Media	Applicant	Claimed Facility Cost	Certified Cost	Percent Allocable	Value
Approve	5535	Air (Noise)	Salem Black Top & Asphalt Paving, Inc.	$ 11,950	$ 11,950	100%	$ 5,975
Approve	5536	Air	Salem Black Top & Asphalt Paving, Inc.	$ 271,343	$ 271,343	100%	$ 135,672

There being no further business, the meeting was adjourned at 10:30 a.m.

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Environmental Quality Commission
Minutes of the Two Hundred and Ninety-Third Meeting

March 8-9, 2001
Regular Meeting[1]

The Environmental Quality Commission (EQC) held a regular meeting on March 8-9, 2001, at the Hermiston Community Center, 415 South Highway 395, Hermiston, Oregon. In addition to the regular meeting, the EQC toured the Umatilla Chemical Storage Facility and held dinner with local officials at the Oxford Suites, Walleye Room, 1050 N. First, Hermiston, Oregon. The following EQC members were present.

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

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

Chair Eden called the meeting to order at 2:30 p.m. on March 8. Agenda items were taken in the following order.

A. Informational Item: Energy and the Environment

Russell Harding, DEQ Columbia River Coordinator, introduced a panel of speakers to present this item, including Jeff King, Northwest Power Planning Council (NWPPC); Pat Vernon, DEQ Air Quality Program Development Manager; Therese Lamb, Bonneville Power Administration (BPA); Wayne Lei, Portland General Electric (PGE); and Dave Ponganis, U.S. Army Corps of Engineers (USACE). The panel presented information on current challenges for balancing energy production, endangered species protection, and water quality in the Columbia River system.

Jeff King, NWPPC, provided an overview of energy production and use in the Pacific Northwest, including electricity sales, changes in supply and consumption, natural gas generation, additions and retirements to the power system, and imminent energy issues. Chair Eden questioned the costs and benefits of new approaches the aluminum industry is taking to use and conserve power under current energy conditions. Mr. King confirmed that industry is now taking new approaches, but was unable to comment on specific the costs and benefits realized. Commissioner Van Vliet asked whether emerging natural gas production plants would be competitive in the current market if natural gas prices increase. Mr. King answered that they would likely be competitive because they would be selling to a market that will continue to be capacity short. Mr. King continued with a description of energy production development activity and potential near term problems. Commissioner Van Vliet asked whether the Northwest has abandoned geothermal development. Mr. King responded that we have not, but the resource may prove less promising than once thought. Commissioner Bennett questioned the status of energy production deregulation in Washington state. Mr. King answered that for the most part, Washington is not actively pursuing deregulation because most production facilities are permitted by independent developers who sell directly to the market and are less affected by deregulation. Commissioner Malarkey commented that of the various energy sources described by Mr. King, she understood cooperative sources to be a part of federal sources. Mr. King confirmed that most cooperatives are prescribed by Bonneville Power Administration.

[1] Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204.

Pat Vernon, DEQ Air Quality Program Development Manager, explained air quality issues associated with expected energy production shortages and efforts of Oregon utilities to generate needed power. Issues include the threat of potential nuisance posed by emergency power generators, many of which are located in densely populated areas. Also, industry is considering high efficiency generation, a new approach that produces electricity and steam from a single power source. In general, it appears that new these generation approaches will not be renewable and will have air quality impacts. DEQ is proactively working with industry to understand potential impacts, streamline permitting, and protect air quality while responding to urgent energy production needs. In addition, DEQ continues ongoing efforts to reduce air pollution from transportation and other industries as Oregon experiences rapid population growth.

Russell Harding, DEQ Columbia River Coordinator, provided an overview of the federal Clean Water Act as it relates to power production. Mr. Harding described the scope of beneficial water uses designated for the Columbia River system. While the Commission has previously considered the balance between hydropower production and fish passage in the system, this year poses new challenges. Water has previously been available to support both power production and water spill for fish passage. This year, Columbia Basin snow pack is approaching lowest recorded levels, and will likely not provide sufficient water to support both beneficial uses. Commissioner Van Vliet questioned potential impacts and alternatives associated with inadequate water spill for fish passage. Mr. Harding responded that protected fish species will be impacted by inadequate flow, and will likely be transported downriver via barge. Commissioner Van Vliet questioned whether cost-benefit analyses have assessed this situation. Mr. Harding suggested Therese Lamb address this question in her presentation. Commissioner Reeve questioned the status of Total Maximum Daily Load (TMDL) development for the Columbia River system. Mr. Harding answered that a TMDL has been done. Commissioner Reeve asked whether TMDL development accounted for the impact of dams on total dissolved gas (TDG) levels and temperature. Mr. Harding answered that the TMDL includes these factors. Commissioner Reeve recognized an potential conflict in management of the Columbia River system for complying with TMDL standards for both TDG and temperature. Mr. Harding agreed that there may indeed be a conflict between meeting the two standards.

Therese Lamb, BPA, described options for controlling spill in the Columbia River system considering TDG standards, constraints of electricity contracts and stability of the transmission system. Ms. Lamb explained the relationship between spill for fish passage, uncontrolled spill and electricity generation. Hydraulic capacity of the river system determines levels of spill that BPA may permit to assist fish passage. BPA must consider spill within the context of maintaining a balance between power supply and demand. Chair Eden recognized that it seems the region has little ability to store excess power in anticipation of shortages, and questioned the capacity of present technology and emerging research to improve storage of excess power. Ms. Lamb explained BPA tools for mid and short-term power marketing that provide some ability to store excess power but are not always sufficient.

Dave Ponganis, USACE, continued with a description of voluntary spill options in the Columbia River mainstem and associated systems. Commissioner Bennett questioned the time frame for development of flow deflectors at Chief Joseph and Grand Coulee Dams. Mr. Ponganis responded construction is planned for 2002. Commissioner Bennett questioned the time frame for other deflectors. Mr. Ponganis responded that because of fish passage protections, others would generally be constructed in two years. Ms. Lamb continued with a summary of current conditions and BPA objectives for management of the system. Commissioner Bennett referenced an earlier comparison of price of power and price of water runoff, noted that costs of water and power are different issues, and questioned the rationale for trying to solve problems associated with power prices by focusing only on water prices.

Chair Eden interrupted the presentation at 4:00 p.m. to ask whether anyone was in attendance to be involved in agenda item B. Seeing no one present, Chair Eden invited Ms. Lamb to continue.

Ms. Lamb continued with a summary of issues now faced by BPA, including options for operating the system under conditions of greater and less than 53 million acre feet (MAF) of water. If a 53 MAF condition does not materialize, BPA will not be able to simultaneously maintain financial solvency, meet is power production demands, provide spill for fish and keep reservoirs from drafting below summer limits. Commissioner Van Vliet asked whether the 53 MAF threshold accounts for all water rights in mainstem system and tributaries, and whether negotiation of the current irrigation load has been considered. Ms. Lamb responded that BPA is negotiating to buy some irrigation loads to reduce the amount of water pumped from the river. Commissioner Van Vliet recognized that many stakeholders in the farm industry may oppose this option. Ms. Lamb responded that BPA has approached some irrigators and anticipates potential win-win results. Mr. Ponganis described the development of spill priorities and control of TDG increases. Chair Eden questioned when BPA and USACE would know whether water would be available for spill. Ms. Lamb responded that the April volume forecast would provide the first indication of spill potential.

Wayne Lei, PGE, described how electricity load is forecast, how the energy market works, and PGE's Electricity Exchange Program, which is designed to provide additional peak power generation. PGE has been in the market for power since 1992 and has an aggressive conservation program that utilizes distributed resources (i.e., backup facilities for standby generation) and demand exchange. Demand exchange allows PGE to buy back power from industrial users to relieve demand when power prices rise. Commissioner Van Vliet commented that conservation measures and demand exchange is used in non-crisis situations also because it is an economically sound management practice. Mr. Lei confirmed and thanked the Commissioner for his comment. Commissioner Van Vliet asked how various types of power production facilities, particularly nuclear and wind, are effected by potential price increases and deregulation approaches. Mr. Lei did not know exactly how different facilities were affected. Commissioner Van Vliet questioned whether these were viable issues for public consideration. Mr. Lei responded that these issues do raise the opportunity for public consideration of new energy regulation options, such as converting manure to a methane energy source.

Commissioner Reeve questioned the amount of power lost in transmission to California and elsewhere. Mr. King responded that total losses associated with transmission and distribution to the end user are approximately 8 percent. Mr. Lei added that this loss explains the preference for locating distribution sites near production sites. Noting current capacity limitations and high production costs, Commissioner Reeve asked whether we seek to purchase power outside the region where capacity may be greater or prices lower. Ms. Lamb responded that power availability of outside the region is factored into BPA's plans for power purchase and sale. Commissioner Bennett HB asked whether we have evaluated historical trends in power production, use and conservation in seeking solutions to current power issues. Mr. Lei answered that yes, we have looked historically, and trends indicate that solutions lie in the ability of industry, businesses and individuals to consider all resource use and conservation holistically. Commissioner Malarkey commented that no simple answers exist to assist the Commission in the difficult task of weighing issues associated with power production, the recent federal Biological Opinion for the Columbia River system, and other environmental protections. Chair Eden agreed, adding that the Commission might soon learn whether the option to spill water for fish passage exists and asking where the April volume forecast can be found. Ms. Lamb responded that it will be available on the National Oceanic and Atmospheric Administration web site (http://www.nwrfc.noaa.gov). Commissioner Bennett asked whether we would be considering these issues if the current situation was viewed and anticipated as a regular part of a long-term moisture cycle in this region. Ms. Lamb responded that the severity of the dry situation we now face was not anticipated, particularly because we are currently experiencing La Nina weather conditions, which we expected to be wet. Commissioner Reeve questioned the basis of projected 2001 storage levels for the river system. Mr. Ponganis answered that it varies for each reservoir, but in general, storage expectations are based on average conditions each dam. Hearing no further questions, Chair Eden thanked the panel.

B. Action Item: Contested Case No. WMC/T-ER-99-107 regarding Dan's Ukiah Service

Larry Knudsen, Assistant Attorney General, provided background on this case. In 1999, DEQ assessed civil penalty of $63,800 against Daniel Vincent, doing business as Dan's Ukiah Service, for failure to obtain an underground storage tank general operating permit registration and failure to provide required records. Mr. Vincent appealed the penalty and following a contested case hearing, the Hearings Officer found in favor of DEQ. Mr. Vincent appealed the Hearings Officer decision to the Commission. In November 2000, the Commission considered the case and decided to defer action to the January 2001 meeting to allow the participation of Commissioner Bennett and to offer the Vincents an opportunity to provide additional documentary evidence to the Hearings Officer. In January, the Commission approved the Vincents' request to defer the case to the March meeting by four "yes" votes; Chair Eden voted "no." Mr. Knudsen did not received written or verbal indication of the Vincents' intent to provide documentary evidence. The Vincents and DEQ were notified that the Commission did not intend to hear testimony on this case in March.

Commissioner Bennett confirmed his review of the tapes from the November 2000 EQC meeting. Mr. Knudsen asked Commissioners to declare any ex parte contacts that occurred or conflicts of interest that developed since the January meeting. Chair Eden stated she received two telephone messages from Ms. Vincent, which she did not return because of this contested case, and thus has not had ex parte contact. No Commissioners declared ex parte contact.

Mr. Knudsen summarized options for Commission action. Commissioner Van Vliet questioned the Commission's latitude to consider various ways for the fine to be paid over time. Mr. Knudsen described a rule provision that allows payment over time, which the Commission may consider. Chair Eden clarified that DEQ regularly pursues this option after Commission consideration of the Hearings Officer decision. Mr. Knudsen explained the penalty

mitigation rule allows DEQ or the Commission to lower the penalty if the respondent provides documentary evidence that they're unable to pay the fine. In making those determinations, may consider whether a long term payment schedule would enable payment of the penalty and or mitigate hardship of penalty. Commissioner Bennett noted that the Commission may affirm the decision and request long-term payment options be explored, recognizing the possibility of economic hardship and lack of documentary information from the respondent regarding ability to pay the fine. Mr. Knudsen confirmed this option, adding that if the penalty is not paid, a rule provision allows the payment to become a lien on the property.

Commissioner Van Vliet suggested the Commission uphold the Hearing Officer decision, impose the penalty, and direct DEQ to offer a long-term payment schedule for the fine. Commissioner Bennett asked whether DEQ would work with the respondent to establish a long-term payment schedule. Director Hallock and Neil Mullane, DEQ Acting Deputy Director, responded that yes, the Commission could direct DEQ to work with the respondent to establish a payment program. Commissioner Van Vliet suggested to the Commission levy an immediate fine of $6,600 representing a portion of the violation that the respondent may be able to pay, and explore payment options for the remaining fine. Chair Eden and Commissioner Reeve both noted again that the Commission received no information from the respondent regarding ability to pay. Commissioner Reeve made a motion to uphold the Hearings Officer's findings and recommendations. Commissioner Malarkey seconded the motion. Commissioner Van Vliet noted the Commission's disappointment in receiving no information on the from the respondent regarding ability to pay the fine. Commissioner Bennett asked that the final order reflect the Commission's efforts to be responsive and flexible in considering this case. Commissioner Reeve amended the motion to uphold the Hearings Officer's findings and recommendations and reflect in the final order the Commission's procedural history and reasons for deferring action on this case to this meeting. The motion as amended was seconded by Commissioner Malarkey and carried with four "yes" votes. Commissioner Bennett voted "no." Mr. Knudsen was directed to include a cover letter to the order to reflect the Commission's efforts to be responsive and flexible in hearing this case.

The meeting was recessed for the evening at 5:00 p.m. From 6:30 to 8:30 p.m., the Commission met with local officials over dinner at the Oxford Suites Hotel. On Friday, March 9, the Commission held an Executive Session from 8:00 to 8:30 a.m. on pending litigation involving DEQ and Ballot Measure 7.

C. Approval of Minutes

Approval of minutes was deferred to the May 3-4, 2001, meeting, at which time the Commission will consider approval of January 11-12, March 8-9, and March 30, meeting minutes.

D. Consideration of Tax Credit Requests

Helen Lottridge, DEQ Management Services Division Administrator, and Maggie Vandehey, DEQ Tax Credit Manager, presented eight applications for pollution control facility tax credit, one for transfer, and one for reissue. DEQ recommends the Commission approve six of the eight tax credit applications for a facility cost that is less than the claimed facility cost presented on the applications, two of the eight tax credit applications at the claimed facility cost, transfer of certificate number 4399, and reissue of certificate number 4215. The Commission discussed and deliberated the applications.

Commissioner Reeve motioned to approve eight applications for pollution control facility tax credit as recommended by DEQ. Commissioner Malarkey seconded the motion and it carried with five "yes" votes. Commissioner Van Vliet motioned to approve transfer of certificate number 4399 and reissue of certificate number 4215. Commissioner Bennett seconded the motion and it carried by five "yes" votes. Commission action is shown below.

Commission Action	App #	Media	Applicant	Claimed Facility Cost	Certified Cost	Percent Allocable	Value
Approve	5465	Air	Deschutes Brewery, Inc.	$ 8,922	$ 8,922	100%	$ 4,461
Approve	5478	Water	Teledyne: TDY Industries, Inc.	$ 65,069	$ 49,033	100%	$ 24,517
Approve	5503	Air	Smucker Pelleting	$ 20,816	$ 18,731	100%	$ 9,366
Approve	5505	Water	Myrtle Lane Dairy	$ 45,458	$ 24,477	100%	$ 12,239
Approve	5506	Water	Skyport Properties of Oregon	$ 47,916	$ 39,214	100%	$ 19,607
Approve	5508	FB	Peter Brentano	$ 14,076	$ 14,076	100%	$ 7,038
Approve	5520	SW	Western Pulp Products Co.	$ 45,159	$ 45,065	100%	$ 22,533
Approve	5521	SW	Western Pulp Products Co.	$ 46,000	$ 44,755	100%	$ 22,378

Commission Action	Cert #						
Transfer	4399	From: To:	Rexam Graphics, Inc., dba Rexam Image Products Rexam Image Products, Inc.				
Reissue	4215	From: To:	Intel Corporation Intel Corporation		$1,858,452 $ 941,815		

E. Rule Adoption: Storage and Management of Chemical Agent Munitions and Bulk Items

Wayne Thomas, DEQ Chemical Demilitarization Program Administrator, and Thomas Beam, DEQ Senior Environmental Engineer, presented the proposed rulemaking. Mr. Beam summarized the need for rulemaking, rule development process and effect of the proposed rule, which (1) declares chemical agent munitions and bulk items to be solid and hazardous waste, (2) establishes additional requirements for storage and management of these wastes, (3) provides strict interpretation of the "no migration" standard, and (4) clarifies reporting requirements for releases of chemical agent.

Commissioner Van Vliet asked whether DEQ was aware of any locations in Oregon, other than the U.S. Army Umatilla Chemical Depot, where chemical agent munitions and bulk items are stored. Mr. Beam replied that DEQ is aware of no other storage locations. Commissioner Bennett asked how the proposed rule might affect future development of chemical production facilities. Mr. Beam answered that the rule would not affect development of chemical production facilities. The scope of the rule as initially proposed was narrowed to apply only to agent munitions and bulk items presently stored in Oregon.

Commissioner Van Vliet asked for confirmation that although the U.S. Army has sovereign immunity regarding the Depot under the Resource Conservation and Recovery Act (RCRA), the proposed rule would apply to Depot munitions and bulk items because DEQ considers these items to be discarded and therefore, a solid waste. Mr. Beam confirmed this as correct, adding that EPA enables states to adopt rules more stringent than federal rules. Mr. Beam explained environmental and public health reasons for proposing a more stringent rule, in response to a request from Director Hallock.

Commissioner Bennett asked how defining agent munitions and bulk items as hazardous waste might affect chemical storage facilities in Oregon, other than the U.S. Army Umatilla Chemical Depot. Mr. Thomas answered that DEQ is aware of no other facilities storing chemicals or items to which this rule would apply. Larry Edelman, Assistant Attorney General representing DEQ, explained RCRA requirements regarding management of hazardous waste and chemical products, in response to a request from Director Hallock. Specifically, Mr. Edelman clarified the definition of agent munitions and bulk items as hazardous waste subjects these items to much more stringent regulation than other chemical products (such as common fertilizers).

Commissioner Van Vliet asked what efforts had DEQ taken to develop agreement with the U.S. Army for management of agent items before initiating rulemaking. Mr. Thomas answered that DEQ and the U.S. Army discussed entering an agreement or consent order, but decided against these options because they do not provide formal mechanisms for public involvement as provided in rulemaking. Chair Eden added that a strong working relationship and general agreement for agent management had developed between local DEQ and U.S. Army staff through this process.

Commissioner Malarkey asked for confirmation that although little public comment resulted from the over 600 public notices that were sent for this rulemaking, the local community has indicated support for the proposed rules. Mr. Beam responded that based on prior rulemaking experience, silence may be interpreted as support for the proposed action. Every attempt was made to notify potentially interested parties, and the local community has indicated support. Director Hallock added that based on her experience with this issue over time, the local community is supportive of proposed rules. Commissioner Reeve commented that the environmental and public health rationale for proposed rules is as applicable now as it would have been years ago, and questioned why rules have not been developed earlier. Mr. Thomas explained DEQ efforts have focused on developing the permit for U.S. Army agent incinerator. As our understanding of management and disposal of these items developed, we became aware of the need for these rules. Commissioner Reeve and Mr. Thomas discussed scope of the permit

and rules on storage and disposal of agent items. Mr. Thomas and Mr. Beam provided concluding clarification and summary of application of the proposed rule.

Commissioner Reeve moved the Commission adopt proposed rules regarding storage and management of chemical agent munitions and bulk items. Commissioner Malarkey seconded the motion. Chair Eden noted her appreciation for the increase in public protection offered by the proposed rule and clarified that proposed rules are in no way a criticism of local U.S. Army operations or officers. Chair Eden also commended local DEQ staff for their work with the community and U.S. Army. The motion carried with five "yes" votes. Mr. Thomas recognized the U.S. Army's outstanding response to a recent earthquake, including rapid notification and cooperative work with DEQ to ensure the safety of the local community.

F. Informational Item: Endangered Species Act Coordination Including Proposed Agreement on Water Quality Standards

Mike Llewelyn, DEQ Water Quality Division Administrator, and Steve Greenwood, Endangered Species Act Coordinator, presented this item. Mr. Greenwood described emerging working agreements that coordinate the DEQ, U.S. Environmental Protection Agency (EPA), National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) in implementation of the federal Clean Water Act (CWA) and Endangered Species Act (ESA). The Commission reviewed a draft of the first working agreement designed to ensure Oregon's water quality standards protect ESA-listed species. The agreement reaffirms triennial review of water quality standards, utilizes the work of consultation processes in other states and at the national level to the full extent possible, and proposes a "Conservation Review" prior to the next triennial review of Oregon's standards, which have caused concern regarding species protection. DEQ anticipates signature of this agreement in approximately one month.

Commissioner Reeve questioned the difference between Conservation Review and the established consultation process. Mr. Greenwood responded that conservation review is anticipated to be a faster process than consultation, providing greater flexibility and responsiveness in reviewing water quality standards. Commissioner Reeve asked how the upcoming regional review of the temperature standard, involving Oregon, Washington, Idaho and NMFS, relates to the draft agreement. Mr. Greenwood responded that the approaches in the agreement are separate from the regional review process. Any changes to standards resulting from regional review must progress through the triennial review process, which is reaffirmed in by draft agreement. Mr. Llewelyn confirmed, explaining that an intent of the regional temperature standard review is to maintain state opportunity to adopt the standard that emerges from the review or a different standard than is recommended by the federal agencies, which would involve the complex consultation process. Chair Eden thanked the presenters.

G. Rule Adoption: Repeal of OAR 340-41-0470(9), The Tualatin Sub-basin Rule for Total Phosphorous and Ammonia

Andy Schaedel, DEQ Acting Northwest Region Administrator, and Neil Mullane, DEQ Interim Deputy Director, presented the proposed rule repeal. Mr. Schaedel explained that 1988 rules established total maximum daily loads (TMDLs) for total phosphorus and ammonia concentrations in the Tualatin River system. Tualatin TMDLs were the first of many developed in Oregon and the first of few adopted by rule. In 1990, the Commission adopted a new approach of establishing TMDLs by Department Order rather than rule. Standards addressed by Tualatin TMDLs have been successfully met, and DEQ is now working on new Tualatin TMDLs to be adopted through Department Order consistent with others throughout the state. In October 2000, DEQ initiated rulemaking to repeal Tualatin TMDL rules, which would otherwise need to be modified or repealed with the approval of new TMDLs submitted to the Environmental Protection Agency (EPA) in a Department Order.

Tualatin TMDLs were submitted to EPA in Department Order in January, 2001. DEQ had hoped to have EPA approval by the date of this meeting, but recently learned of a delay in EPA action due to staff illness and the need for additional time to prepare a record for approval. In addition, a recent EPA policy shift has called into question the requirement for federal consultation on TMDLs, a process which federal agencies are now working to streamline. EPA has indicated they hope to act on the Order by mid-April. DEQ recommends Commission repeal of Tualatin TMDL rules at this time, as opposed to repeal pending EPA approval of the Order. Rule repeal at this time would enable DEQ to continue development of implementation plans and begin modification of permits based on the new Tualatin TMDLs. In particular, DEQ anticipates moving forward on a recently received EPA grant for facilitated, collaborative development of a basin stormwater permit.

Commissioner Van Vliet asked whether Commission repeal at this time would result in a period of no effective TMDL standards for the Tualatin until EPA approval of the pending Order. Mr. Schaedel answered that the TMDLs currently in rule would remain effective with rule repeal because they have been approved by EPA , incorporated

into permits and were the basis of implementation plans (such as under SB1010). Commissioner Van Vliet asked how changes in EPA administration may affect federal review of TMDLs. Mr. Schaedel responded that the effects of change in EPA administration are somewhat unknown, but DEQ is moving forward with TMDLs as directed by a court order requiring completion by 2007. Larry Knudsen, Assistant Attorney General, added that the majority of EPA action is currently driven more by litigation than administration priority for TMDL review.

Chair Eden asked what would happen if EPA does not approve new TMDLs in the Order. Mr. Knudsen answered that with respect to permits, DEQ anticipates that EPA would take action on the TMDLs before new permits are issued. If new permits are developed prior to EPA action, they would reflect the more protective waste load allocation. DEQ intends to avoid this situation if possible.

Commissioner Reeve asked whether the Municipal Separate Storm Water Sewer System (MS4) Discharge permit, which will be developed through a collaborative process, applies only to incorporated areas or to the basin generally. Mr. Mullane responded that the MS4 permit covers the area within the urban growth boundary within Washington County and parts of Multnomah and Clackamas County that discharge to the Tualatin. DEQ has three permits with individual sub-applicants. Commissioner Reeve asked whether significant change in wasteload allocations is proposed. Mr. Mullane answered yes, the wasteload allocation is not contained in the current permit but would be addressed in a new permit. Current wasteload management practices, monitoring, education efforts will be continued in the new permit but made more specific to achieve new TMDL wasteload allocations.

Commissioner Reeve motioned that the Commission repeal OAR 340-41-0470(9) effective upon filing with Secretary of State. Commissioner Bennett seconded the motion and it carried with five "yes" votes.

H. Rule Adoption: Revision of Medford Carbon Monoxide Maintenance Plan and Redesignation Request

Andy Ginsburg, DEQ Air Quality Division Administrator, and Dave Nordberg, DEQ Air Quality Division, presented this item. When the Medford Carbon Monoxide Maintenance Plan was developed in 1998, projections indicated oxygenated fuel was needed to protect air quality. Emerging computer models of vehicle emissions were expected to show that 1996 and newer vehicles would experience little added benefit from oxygenated fuel. As a result, the Medford-Ashland Air Quality Advisory Committee asked DEQ to reevaluate the need for oxygenated fuel based on new computer analyses. Subsequent evaluation led to a revised Carbon Monoxide Maintenance Plan that eliminates the oxygenated fuel requirement and provides for reinstatement of oxy-fuel if CO standards are violated.

Chair Eden recalled the Commission's discussion in Medford regarding the oxygenated fuel requirement and stated her pleasure that the Commission is able to consider revising the rule. Chair Eden recognized the Rogue Valley Council of Governments, Medford-Ashland Air Quality Advisory Committee, Oregon Department of Transportation and DEQ staff for their work on this rulemaking. Commissioner Van Vliet motioned that the Commission adopt proposed rule amendments and revisions to the Medford Carbon Monoxide Maintenance Plan as a modification to the State Implementation Plan. Commissioner Malarkey seconded the motion and it carried with five "yes" votes.

I. Director's Report

Stephanie Hallock, DEQ Director, reported the following items to the Commission:

- DEQ and the Environmental Protection Agency (EPA) signed a Memorandum of Understanding for clean-up of Portland Harbor.
- The Supreme Court upheld EPA's authority to establish national ambient air quality standards necessary to protect public health.
- EPA announced advancement of the 2007 heavy-duty diesel rule to reduce particulate, No_x and toxics from on-road diesel trucks and busses.
- DEQ and EPA will hold a public workshop on temperature standards to protect fish.
- The City of Portland is continuing efforts to implement its Clean River Plan, which calls for extending the deadline for capturing combined sewer overflow volume from 2011 to 2020.
- DEQ initiated a Willamette River TMDL Council to address issues and build consensus around TMDL development.
- Tillamook TMDLs for bacteria and temperature are open for public comment.
- EQC will consider action on air quality permitting rules in May.
- DEQ is working to streamline staff reports to the EQC.
- DEQ continues work to assess impacts of the January 27 Yaquina River Oil Spill.

The Director's legislative updated included:

- DEQ begins an agency overview and budget presentation to the Ways and Means Subcommittee on Natural Resources on March 19.
- HB 2264: The DEQ Underground Storage Tank fee increase has stakeholder support.
- HB 2150: The DEQ spill response and marine spill fee bill has stakeholder support and has had positive hearings.
- HB 2149: DEQ staff is working with stakeholders to build support for DEQ's bill to expand low-interest loans for nonpoint source water quality projects to private landowners.
- HB 2156: Hearings have been held on this bill, which would strengthen ODA's authority to regulate confined animal feeding operations under the Clean Water Act.
- Several bills that would undermine Senate Bill 1010 and Agricultural Water Quality Management Plans are getting significant attention. The agriculture lobby and others are working to protect and improve SB 1010.
- Significant interest exists for doing something to address Willamette River environmental issues.
- DEQ is tracking upwards of 50 bills that could impact the agency and/or state government.

The Director's administrative updates included:

- Anne Price was named administrator of the Office of Compliance and Enforcement on February 13.
- Mary Abrams was named new Lab Administrator on February 22 to replace Rick Gates, who is retiring.
- Mikell O'Mealy has replaced Kitty Purser as Assistant to the Director and EQC.

J. Action Item: Order Approving the 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

Larry Knudsen, Assistant Attorney General, presented a draft order regarding this item. In September 2000, a majority of the Commission voted to preliminarily approve in part Portland General Electric Company's (PGE) application for preliminary tax credit certification of its independent spent fuel storage installation at the Trojan Nuclear Power Plant site. The Commission directed counsel to develop a draft order based on the Commission's vote.

Commissioner Reeve noted that he did not vote in support of the Commission's approval in September 2000, and questioned the appropriateness of his potential support of the draft order at this time. Mr. Knudsen responded that it is appropriate for all Commissioners to discuss and vote on the substance of the draft order at this time. Chair Eden noted the Commission has not yet voted finally whether to approve preliminary tax credit certification. Chair Eden added her opposition to the substance of the order, questioned the appropriateness of outside input to an order drafted by the Commission's legal counsel, and stated her expectations for continued discussion and evaluation of this procedure.

Chair Eden interrupted the meeting at 11:30 to recognize Denise Saunders, the only party indicating interest in providing pubic comment. Chair Eden confirmed that Ms. Saunders intended to speak on this issue, and respectfully declined that offer on behalf of the Commission.

Commissioner Van Vliet motioned that the Commission approve the March 5, 2001 version of the draft order approving preliminary tax credit certification of PGE's independent spent fuel storage installation at the Trojan Nuclear Power Plant site. Commissioner Bennett seconded the motion. Director Hallock, per Chair Eden's request, called a Commission roll call vote. Commissioner Malarkey voted "yes." Commissioner Van Vliet voted "yes." Commissioner Reeve voted "no." Commissioner Bennett voted "yes." Chair Eden voted "no." The motion passed.

K. Informational Item: Underground Injection Rules

Mike Llewelyn, DEQ Water Quality Division Administrator, and Karla Urbanowicz, DEQ Water Quality Rules Coordinator, presented information on the DEQ Underground Injection Control (UIC) program and provided a preview of rulemaking to be proposed to the Commission in May 2001. The UIC program protects groundwater resources through regulation of underground injection into wells, sewage drain holes, dry wells, sumps, underground piping systems, septic systems and various other systems. DEQ is currently revising UIC rules to incorporate 1999 federal regulations into the state program and update rules in other ways. Commissioners discussed the UIC program with staff.

Commissioner Bennett asked whether there was a way to map water quality problems related to wells throughout the state. Commissioner added personal knowledge that periodic testing of wells is not mandatory, only voluntary at

this point. Mr. Llewelyn responded that DEQ does not have a direct regulatory role regarding sampling of drinking water because the Oregon Health Division is the responsible agency for implementation of other programs under the Safe Drinking Water Act. Chair Eden asked whether monitoring requirements set forth in permits would be significantly different than monitoring requirements established by authorization through rule adoption. Mr. Llewelyn responded that not all systems authorized by rule would require monitoring. Additional monitoring may be required for permitted facilities, in part because of the diversity of facilities that exist. Commissioner Malarkey questioned whether the concept of injection implies not only injection into a specific system but also to filtration into an aquifer. Ms. Urbanowicz responded that the UIC program covers injection into a specific system and infiltration of waste fluids from a pipe into the ground. Infiltration from the ground surface down, such as from the bottom of a pond or swale, is not covered by the UIC program. Commissioner Reeve noted that most large cities currently have permits for management of stormwater, and asked whether existing permits could be broadened to include elements for control of underground injection. Mr. Llewelyn confirmed that large municipalities such as Portland do have Municipal Separate Storm Water Sewer System (MS4) NPDES permits as required by the federal Clean Water Act for stormwater systems discharging to surface water. By the year 2003, DEQ plans to enter phase two of the stormwater program, which will require MS4 permits for smaller cities. The UIC program operates under the Safe Drinking Water Act, and Oregon uses state Water Pollution Control Facility (WPCF) permits for stormwater discharge to land. Thus, both NPDES and WPCF permits are required to discharge stormwater to surface water and to land. DEQ is encouraging communities to use one planning process for all stormwater discharge to look comprehensively at stormwater management. Commissioner Reeve suggested that combining these issues and associated permit requirements could be more productive and generate greater support from municipalities. Mr. Llewelyn responded that DEQ will explore opportunities for consolidating requirements under one permit vehicle. Chair Eden thanked presenters.

M. Commissioners' Reports

No Commissioners gave reports.

L. Informational Item: Report on Persistent Bioaccumulative Toxics (PBTs)

Stephanie Hallock, DEQ Director, updated the Commission on steps DEQ has taken to implement Governor Kitzhaber's 1999 Executive Order on Persistent, Bioaccumulative and Toxic Pollutants (PBTs). PBTs are long lived in the environment, accumulating and concentrating in biological organisms, and causing morbidity and/or mortality in biological organisms. The Governor's Order directed DEQ to be the lead state agency in eliminating releases of PBTs, including mercury, pesticides such as DDT, and industrial products such as polychlorinated biphenyls (PCBs). DEQ has taken the following steps:

- Established an internal technical advisory group
- Briefed potential impacted state agencies
- Selected a subset of ten of 12 priority PBTs identified by EPA to focus on based on review all our environmental monitoring databases, including mercury and compounds, PCB's, PCDD (dioxins) and PCDF (furans), benzo(a)pyrene, aldrin/dieldrin, chlordane, DDT+DDD+DDE, hexachlorobenzene, mirex, and toxaphene
- Established an internal strategy advisory group
- Is preparing to go out for public comment

The Oregon Environmental Council has been active in addressing PBTs and recently introduced a legislative bill to reduce mercury releases, of which DEQ supports the intent but has concerns about some components. DEQ recently selected Kathleen Craig to advance the Department's PBT efforts and consider potential immediate actions. Ms. Craig will report to Neil Mullane, Interim Deputy Director. Commissioner Malarkey commented that a Eugene-based board of city and county representatives established stringent reporting requirements for toxics, and asked whether similar boards exist for other municipalities. Director Hallock responded that there do not, adding that the Eugene reporting requirement emerged from significant legislative debate during the 1999 session. DEQ maintains a toxic release inventory, implements a toxic use reduction program and has various other mechanisms to address toxics statewide, but Eugene's effort is unique. Commissioner Reeve commented that Eugene's efforts developed prior to legislative consideration of broad toxic reporting requirements, which gave rise to a task force focused on the issue. Sally Puent, Acting Waste Prevention and Management Administrator, added that the State Fire Marshall's Office has led efforts since the 1999 session on statewide toxics reporting or "community right to know." Recent DEQ studies have also investigated this issues and those reports are available to the Commission.

There being no further business, the meeting was adjourned at 1:30 p.m.

Approved_____
Approved with Corrections_____

Minutes are not final until approved by the EQC

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

March 30, 2001
Special Phone Meeting[1]

On March 30, 2001, the Environmental Quality Commission (EQC) held a special phone meeting at the Department of Environmental Quality (DEQ), 811 SW Sixth Ave, Portland, OR. The following EQC members were present.

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

Also present were Michael Huston, Oregon Department of Justice (DOJ); Stephanie Hallock, Director, Department of Environmental Quality (DEQ); and other DEQ staff.

Chair Eden called the meeting to order at 9:00 a.m. on March 30. Agenda items were taken in the following order.

A. Action Item: U.S. Army Corps of Engineers Request for a Variance to the Total Dissolved Gas Water Quality Standard

Russell Harding, DEQ Columbia River Coordinator, presented the U.S. Army Corps of Engineers (USACE) petition for a variance to Oregon's total dissolved gas water quality standard to enable water to be spilled at all four Lower Columbia River dams (McNary, John Day, The Dalles and Bonneville) to assist outmigrating threatened and endangered salmonid smolts. The petition requests a variance from the standard of 110 percent of saturation relative to atmospheric pressure, between April 10, 2001 and August 31, 2001. For this period, USACE seeks a total dissolved gas standard of 115 percent saturation as measured in the forebay of each dam, and 120 percent saturation as measured in the tailrace. The Commission approved similar variances each year since 1994, but considers this year's petition in the context of unusually low Columbia Basin water levels and high demand for electricity production. Mr. Harding summarized the 2000 spill season, explained plans for 2001 spill, described alternatives for Commission action and presented a draft order. Representatives from USACE and the National Marine Fisheries Service (NMFS) were present to respond to questions.

Chair Eden asked whether timing of the March 2000, spill at Spring Creek National Fish Hatchery was based on the need for electricity production or water to support smolt migration. Mr. Harding answered that timing of the spill was coordinated with both. Chair Eden asked whether the degree to which the spill benefited smolt migration was known. Mr. Harding answered that benefits fish survival are not yet known. Commissioner Van Vliet asked whether the effects of barging on survival are known. Mr. Harding answered that research indicates barging reduces survival by causing disease and straying of spawning adults upon return to the river. Commissioner Van Vliet asked why more public comment on the variance request was not received from the public or consumer groups, given the current demands for electricity production. Mr. Harding answered that he did not know, considering DEQ efforts to involve the public and consumer groups. Commissioner Van Vliet asked whether the Northwest Power Planning Council (NWPPC) commented on the request. Mr. Harding answered that the Council did not comment, but a recent newspaper article reported the Council's support for operation of the Columbia hydropower system primarily for power production. Commissioner Van Vliet asked whether spill for fish might be jeopardized this year by continued power provision to aluminum companies, which may choose to sell excess power on the power grid. Mr. Harding was not sure, noting these sales would likely be dictated by contracts between the Bonneville Power

[1] Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204.

Administration and direct service industry. Mr. Harding added that the requirement to send power South to California during summer is triggered only when Northwest power supplies exceed demand. In general, the Northwest expects to send minimal power to California this year.

Commissioner Bennett asked whether the Commission would be considering taking the proposed action if we knew this year to be the first of ten to eighteen years of drought. Mr. Harding was not sure, noting various efforts of many state and federal entities to balance power production and species protection, of which the proposed action is apart. Director Hallock added that the issue of potential drought and long-term implications for river flow, species and water quality are of high priority to the Governor's Office and all natural resource state agencies. Commissioner Bennett asked what other states, particularly Washington, are doing to address these issues. Mr. Harding answered that Washington adopted multiple-year provisions for similar variances, which are scheduled for reconsideration in 2003. Idaho has not granted a similar variance, in part to protect reservoir levels.

Commissioner Reeve, asked whether the goal of 80% smolt migration via bypass systems of spill over dams, called for in the NMFS 2000 Biological Opinion, was consistent with previous years. Mr. Harding answered that 80% has been the goal for previous years and has given rise to past variance requests. Commissioner Reeve asked whether the 80% goal is in line with flow levels in previous years, if so, whether it is an appropriate goal for this low-flow year. Mr. Harding received indication from NMFS that because the Biological Opinion is based on the biological needs of fish as opposed to physical river conditions, it is applicable in the current low-water situation. Commissioner reeve questioned potential levels of smolt mortality associated with biological monitoring planned for the spill. Mr. Harding answered that mortality associated with smolt monitoring is extremely minimal, especially in comparison to predation and other mortality factors. Commissioner Reeve added that the data record indicates a strong correlation between biological and physical monitoring, enabling us to reduce any mortality associated with biological monitoring by relying on physical monitoring to support decisions as much as possible. Noting that approximately 20,000 fish were sampled last year, Commissioner Reeve asked whether the same sample level was planned for 2001. Mr. Harding responded that while the number of fish sampled has declined each year, NMFS anticipates nearly 20,000 fish will be sampled in 2001.

Commissioner Reeve referenced suggestions provided by Dr. Wesley J. Ebel during the public comment period, which support for the proposed spill but question likely benefits, advise maximum use of smolt collection and transportation, and recommend spill levels at certain dams. Commissioner Reeve asked whether Dr. Ebel's suggestions are being seriously considered by operators of the river system. Mr. Harding confirmed that Dr. Ebel's comments are being taken into account by the action agencies. To assist the Commission with this decision for 2002, Commissioner Reeve asked that the 2001 spill report provide more critique of the spill, including rationale for spill decisions, effects of the spill on smolt migration, and lessons learned to apply to future spill decisions. Mr. Harding agreed that such a critique would be valuable to the Commission and DEQ efforts to develop a Total Maximum Daily Load (TMDL) for total dissolved gas. Commissioner Van Vliet suggested for 2002, this decision be considered in light of all of the Columbia Basin variables and actions that fall within the Commission's jurisdiction, in addition to total dissolved gas. In support of the suggestion, Chair Eden noted a tribal recommendation that the Commission ask USACE to submit a waiver request for temperature standards in dam bypass facilities.

Chair Eden asked for more information on reported conditions at Rock Island, Washington, where relatively low levels of dissolved gas were detected alongside relatively high levels of gas bubble disease in fish. Chair Eden asked whether this due to temperature or something else. Mr. Harding was not sure but will get more information on the situation.

Commissioner Bennett asked how numbers of fish in the river are determined to evaluate the expected benefits of sporadic, spontaneous spill. In particular, Commissioner Bennett questioned whether the benefits of spill in a year of sever drought might be negligible. Mr. Harding responded that tracking tags carried by smolts downriver help determine benefits of spill, and Director Hallock suggested for a future meeting, the Commission may want to hear more about biological monitoring or revisit a dam facility. Commissioner Bennett agreed these would be valuable topics for the future.

Chair Eden expressed the Commission's discontent with considering this belated request on a last-minute basis over the phone. The Commission has discussed partial approval of the variance through early May, to require the USACE to present and discuss the request at the regular Commission meeting May 3-4, 2001. Chair Eden asked for a verbal assurance from USACE that they will comply with the requirements and conditions of the proposed order. Specifically, the order requires USACE to provide (1) notice to DEQ within 24 hours of any violations of the variance related to voluntary spill, (2) a 2001 report of the spill program to DEQ by December 31, 2001, and (3) any request for this operation in 2002 to DEQ no later than December 31, 2001. Dave Ponganis, USACE, assured that

USACE is working with DEQ to improve coordination on this yearly request and on a potential multi-year agreement providing the variance. Mr. Ponganis confirmed the intent to comply with all conditions in the Commission's order.

The Commission made slight modifications to the draft order. Commissioner Reeve motioned the Commission approve the USACE request for a variance to the total dissolved gas water quality standard and approve the draft order provided in Appendix C of this agenda item as modified by the Commission. Commissioner Van Vliet seconded the motion and it carried with four "yes" votes.

B. Consideration of Tax Credits

Maggie Vandehey, DEQ Tax Credit Manager, presented two applications for pollution control facility tax credit from Salem Black Top & Asphalt Paving, Inc. DEQ recommends the Commission approve both applications. The Commission discussed and deliberated the applications.

Commissioner Van Vliet motioned to approve both applications for pollution control facility tax credit as recommended by DEQ. Commissioner Bennett seconded the motion and it carried with four "yes" votes. Commission action is shown below.

Commission Action	App #	Media	Applicant	Claimed Facility Cost	Certified Cost	Percent Allocable	Value
Approve	5535	Air (Noise)	Salem Black Top & Asphalt Paving, Inc.	$ 11,950	$ 11,950	100%	$ 5,975
Approve	5536	Air	Salem Black Top & Asphalt Paving, Inc.	$ 271,343	$ 271,343	100%	$ 135,672

There being no further business, the meeting was adjourned at 10:30 a.m.

Approved_____
Approved with Corrections____

Minutes are not final until approved by the EQC

Environmental Quality Commission
Minutes of the Two Hundred and Ninety-Second Meeting

January 11-12, 2001
Regular Meeting[1]

The Environmental Quality Commission (EQC) held a regular meeting on January 11-12, 2001, in Bend, Oregon. In addition to the regular meeting, the EQC toured the Old Mill site and Beaver Coaches on January 11. The following EQC 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); Stephanie Hallock, Director, Department of Environmental Quality (DEQ); and other DEQ staff.

Before the regular meeting began, the Commission honored Kitty Purser for her many years of service to the EQC. This was her last Commission meeting.

Chair Eden called the meeting to order at 3:10 p.m. on January 11. Agenda items were taken in the following order.

E. Action Item: Contested Case No. WMC/T-ER-99-107 Re: Dan's Ukiah Service

Larry Knudsen, Assistant Attorney General, explained the Vincents request that this item be moved to the March 8-9, 2001, meeting to enable their attendance. Commissioner Bennett listened to tapes from the December EQC meeting regarding this case, and was prepared to take action on this item. After discussion Commissioner Bennett motioned to set this agenda item over to the March 8-9 EQC meeting. It was seconded by Commissioner Malarkey and carried with four "yes" votes. Chair Eden voted "no." The Commission directed Mr. Knudsen to phone the Vincents to inform them of the Commission's action and remind them they would not be able to testify before the Commission at the March meeting.

A. Informational Item: Chemical Demilitarization Program Update

Wayne Thomas, DEQ Chemical Demilitarization Program Administrator, provided a brief update to the Commission on the status of DEQ's Chemical Demilitarization Program. Mr. Thomas discussed the Hazardous Waste Storage and Treatment Permit (HW Permit) for the Umatilla Chemical Agent Disposal Facility (UMCDF) issued in February 1997. As of January 11, 2001, DEQ received a total of 101 Permit Modification Requests, of which 88 have been approved and two have been denied. The UMCDF is 93% complete.

During 2001, DEQ will review Facility Construction Certification (FCC) documents prepared by an independent engineer. The FCC process is required to verify construction in accordance with facility permit requirements. If equipment is replaced during the operational life of the facility, DEQ will require re-certification of new equipment.

The current Army schedule indicates construction will be completed by May 2001, with thermal testing beginning in October 2001, and Agent operations in July 2002. DEQ does not believe the Army and Washington Demilitarization Company will meet this schedule, which will soon be revised to reflect thermal testing in spring 2002, and agent

[1] Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204.

operations in winter 2003. In April 2001, DEQ will issue a report of the readiness of the facility to commence operations as measured against a 31-item checklist developed by DEQ in April 2000. DEQ will assess readiness on a quarterly basis until the facility becomes operational to assist the Commission in reaching a final decision as to whether the facility may begin thermal testing and ultimately, agent or toxic operations.

The Commission discussed the definition of "agent free" as required by the UMCDF HW Permit, which is also currently being discussed by DEQ and the permittees. The definition is critical for Army verification that only wastes not containing chemical agents are sent offsite for disposal at a permitted hazardous waste facility. Significant progress has been made and DEQ expects a Class 2 Permit Modification Request related to "agent free" in April 2001.

The Commission discussed status of the ongoing Chemical Munitions Rulemaking. DEQ concluded that bringing all stockpiled chemical weapons under regulatory authority is necessary for enforcement of an adequate level of protection of human health and the environment. The Army provided written comments that appear contrary to positions previously offered by Army personnel. On November 17, 2000, DEQ commenced a rulemaking to allow the State to regulate all chemical agent munitions within Oregon as hazardous wastes. A public hearing was held on January 4, 2001, and a public comment period ended on January 10, 2001. Under the existing regulatory program, DEQ regulates only the storage of those chemical munitions and bulk containers declared by the Army to be hazardous wastes (under RCRA rules, the generator of hazardous material determines whether or not material is "waste"). At the Umatilla Chemical Depot, only the M-55 rockets and other leaking munitions (17 percent of the stockpile) have been declared wastes. Remaining munitions are managed under Army regulations in accordance with the Military Munitions Rule (as adopted by Oregon).

At the Commission's request, staff spoke briefly on the status of the Dunnage Incinerator and discussed different strategies for treatment of secondary waste being tested at the Johnston Atoll Chemical Agent Disposal Facility (JACADS). JACADS is currently testing treatment technologies for carbon used in filters and Demilitarization Protection Ensemble (DPE) used to protect workers in agent-contaminated areas. DEQ staff plan to observe these tests.

Commissioners were updated on DEQ's review of the Army's chemical agent monitoring results in response to worker claims that they were exposed to chemical agents at the construction site during a September 15, 1999, industrial accident. DEQ's review did not support worker claims. In conjunction with the Oregon Health Division, DEQ requested the Center for Disease Control (CDC) conduct a review of the effectiveness of the Depot monitoring program to protect workers and the surrounding communities. DEQ expects a response from CDC in three to four months.

The Chemical Stockpile Emergency Preparedness Program (CSEPP) made significant progress over the past few months. In December 2000, the Executive Review Panel issued an interim report to the Governor, which identified work that must be completed to provide an adequate level of preparedness. The final report is due to the Governor in June 2001.

B. Action Item: Review of Class 3 Permit Requests for the Umatilla Chemical Depot Facility (UMCDF)

Wayne Thomas, DEQ Chemical Demilitarization Program Administrator, introduced Thomas Beam, Senior Environmental Engineer, to brief the Commission on the status of four Class 3 Permit Modification Requests (PMR) currently under review. The Commission has final decision authority on all Class 3 PMR, unless authority is designated to DEQ on a case-by-case basis. These are the first Class 3 Permit Modification Requests since the 1997 request to add Raytheon Company as a Co-Permittee on the UMCDF HW Permit. The four PMRs currently under review are "Permitted Storage in J-Block," "Secondary Waste Compliance Schedule," "Dunnage Incinerator and Associated Pollution Abatement System Improvements," and the "Incorporation of 40 CFR 264 Air Emission Standards."

Commission considered deferring decision authority to DEQ for the "Incorporation of 40 CFR 264 Air Emission Standards" Permit Modification Request. This PMR is only being handled as a Class 3 because it incorporates regulations that were not in effect when the original Permit was issued. It primarily deals with fugitive organic emissions from processing equipment, and only has impacts at UMCDF inside the Munitions Demilitarization Building. This PMR is being processed alongside an identical application submitted to the Environmental Protection Agency (EPA) Region X. The EPA will issue a separate Permit, which will be terminated once Oregon has been

delegated authority for these regulations. The Commission discussed political ramifications associated with the title of the PMR and DEQ agreed to change the title to reflect the Commission's concerns.

A motion was made by Vice-Chair Van Vliet to delegate final decision authority for the Class 3 PMR "Incorporation of 40 CFR 264 Air Emission Standards" to DEQ, while retaining the final decision authority for the other Class 3 PMRs. It was seconded by Commissioner Malarkey and carried with five "yes" votes.

C. Informational Item: Environmental Cleanup Financing Committee Report

Paul Slyman, DEQ Environmental Cleanup Division Administrator, described the following DEQ initiatives to improve effectiveness of environmental cleanup programs.

- Created a new headquarters division to focus more attention on environmental cleanup and spill prevention and response. The 2001-03 budget proposes to make this change permanent.
- Formalized the Independent Cleanup Pathway to assist people in cleaning up contaminated property without ongoing DEQ oversight. This successful program provides more flexibility and reduces oversight costs.
- Developed an Alternative Dispute Resolution process, which provides a forum for DEQ and participants in the Independent Cleanup Pathway to resolve contested "No Further Action" determinations.
- Prioritized actions to address program issues identified in an independently conducted survey of cleanup program participants.
- Establish a special Environmental Cleanup Financing Committee to advise DEQ on creative financial solutions to assist and promote cleanup.

D. Approval of Minutes

The following corrections were made to the November 29, 30 and December 1, 2000, minutes: Agenda Item A, the first sentence beginning in line 5 should read "The Proposed Order would ~~dismiss~~ *uphold* ~~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*ing a penalty* ..." and in Agenda Item A, last sentence, the words both parties should be replaced with "arguments from the Department and Mr. Vincent." On page 5, first line, affect should be *effect* and under Agenda Item G, third paragraph, first line it's should be *its*. A motion was made by Vice-Chair Van Vliet to approve the minutes from the November 29, 30, and December 1, 2000, meeting as corrected. Commissioner Malarkey seconded the motion and it passed with five "yes" votes.

A motion was made by Commissioner Malarkey to approve the minutes from the December 19, 2000, meeting as written. Commissioner Reeve seconded the motion and it carried with five "yes" votes.

The meeting was recessed at 5:00 p.m. From 6:30 to 8:30 p.m., the Commission met with local officials over dinner at the Deschutes Brewery. On Friday, the Commission held an executive session at 8:00 a.m. on pending litigation involving the Agency. The regular meeting resumed at 8:40 a.m.

F. Rule Adoption: Air Quality Nuisance Control Rules

Andy Ginsburg, DEQ Air Quality Division Administrator, and Kevin Downing, Air Quality planning staff, presented this item. The rules are part of a larger effort in the air quality program to increase efficiency, and are intended to improve evaluation and response to the approximately 1,500 complaints DEQ receives each year regarding potential nuisances. Proposed changes include a revised definition of nuisance, criteria for determining nuisance and a new, voluntary resolution tool called a Best Work Practices Agreement that outlines specific practices to abate nuisance. This approach would provide an easier, less demanding method of ensuring compliance as compared to traditional enforcement tools.

Regarding the application of nuisance rules to noise, DEQ has not enforced noise rules since the early 1990s and thus would not be subject to the nuisance rule. However, DEQ plans to engage local governments in discussions regarding coordination of state and local nuisance programs, and noise issues may be raised. When asked how these rules might apply to cattle feedlots, staff replied that feedlots are an agricultural operation and are thus exempt from air quality regulation, including nuisance issues. DEQ field staff conducted sampling studies to characterize the problem and encourage the Oregon Department of Agriculture to address complaints associated with feedlots. DEQ reported that some Portland area residents feel the rule is not stringent enough, a concern related to potential heightened exposure to air toxics produced by Northwest Portland industry. The proposed nuisance rule may never provide the relief those residents envision because of inherent limitations of a nuisance approach, e.g., the need in a nuisance case to show harm originating back to a source while many toxics are diffuse and the impacts may be expressed only chronically. The 250-micron rule would apply to both permitted and

unpermitted sources, but the actual enforcement of the rule would still depend upon enforcement discretion by DEQ staff to ensure it is effectively applied.

Commissioner Reeve made a motion to adopt the rules as presented in Attachment A and include these rules as an amendment to the State Implementation Plan. Commissioner Malarkey seconded the motion and it carried with five "yes" votes.

G. Informational Item: Remote Sensing of Vehicle Exhaust

Andy Ginsburg, DEQ Air Quality Division Administrator; Peter Brewer, Eastern Region Air Quality Manager; and John Head, Bend Clean Air Committee, presented this item. Presenters described the remote sensing project that occurred in Oregon in 2000, with emphasis on the planning and results of the Central Oregon phase of the project. The Commission discussed results of the project and potential future use of equipment in rural and metropolitan areas of Oregon.

H. Informational Item: Overview of Revisions to Point Source Air Management Rules

Andy Ginsburg, DEQ Air Quality Division Administrator, and Scott Manzano and Dave Kauth, Air Quality staff, presented this item. Presenters described rule development history and stakeholder involvement related to a current rulemaking process to simplify the air quality point source permitting program. This proposal is the centerpiece of other streamlining elements that Air Quality recently completed.

Five main components of the rulemaking with examples are as follows:

- Permit Restructuring - more than half of a permitted source will go to simpler general permits.
- Permit Modification - eliminating modification requirements for Plant Site Emissions Limit (PSEL) increases less than the significant emission rate, and adjustments to Baseline.
- Public participation - tiered public involvement relative to the significance of the permitting action.
- Fees and Billing - change from 75 separate fee categories to six, and annual fees instead of periodic fees that lead to more difficult budget management.
- Improved Permitting Procedures - including reduction of unassigned emissions, defining the term "adjacent," and developing a sound procedure for determining potential source impacts.

Staff presented an overview of the public comments received to date. DEQ plans to re-open the public comment period to take further comment on 1) reducing unassigned emissions, 2) defining the term "adjacent;" 3) Air Contaminant Discharge Permit (ACDP) Applicability (Table 1), and 4) Ozone Precursor Impact Distance.

Because of the amount of material in the rulemaking proposal, the Commission requested an additional week to review the package before the May EQC meeting.

J. Informational Item: Briefing on LaPine National On Site Demonstration Project

Mike Llewelyn, DEQ Water Quality Division Administrator; Barbara Rich, DEQ Project Coordinator; and Rodney Weick, Water Quality staff, presented objectives and activities of the LaPine National On Site Demonstration Project. Presenters discussed new technologies and accomplishments in monitoring and modeling pollutant plumes in groundwater by United States Geological Service (USGS). The project was done in conjunction with Deschutes County and USGS.

Public Comment: Ray Johnson, City of Redmond Public Works presented public comment.

I. Rule Adoption: Repeal of OAR 340-41-0470(9) The Tualatin Sub-basin Rule for Total Phosphorous and Ammonia

Neil Mullane, DEQ Northwest Region Administrator, and Rob Burkhart, Tualatin Basin Coordinator, presented a proposed repeal of OAR 340-41-0470(9), effective with EPA approval of the revised Tualatin Subbasin Total Maximum Daily Load (TMDL) for phosphorus and ammonia, which was established in rule in 1988. DEQ is currently recommending the TMDLs be revised. Program requirements described by rule are outdated and now covered under other authorities. DEQ plans to submit revised TMDLs to EPA in the form of Department Order by the end of January 2001.

Noting that DEQ plans to submit revised TMDLs to EPA in January, the Commission asked whether action could be taken prior to the March 8-9, 2001, EQC meeting. Staff responded that it is likely DEQ will know of EPA's action by the March EQC meeting because EPA has 30 days to take action on the TMDL.

The Commission felt it would be better to know whether EQP approved revised TMDLs prior to repealing the rule. Commissioner Reeve made a motion to defer Commission action until the March 8-9, 2001, meeting. It was seconded by Commissioner Bennett and carried with five "yes" votes.

K. Rule Adoption: Amend Tax Credit Rules to Include Nonpoint Source Pollution Control Facilities as an Eligible Facility for Tax Credit Purposes

Helen Lottridge, DEQ Management Services Division Administrator; Mike Llewelyn, DEQ Water Quality Division Administrator; and Andy Ginsburg, DEQ Air Quality Division Administrator, presented proposed rule amendments to extend tax credit eligibility to nonpoint source control facilities as directed by House Bill 2181, passed in 1999. The nonpoint source tax credit would cover expenditures for on-the-ground management practices and improvements. Eligible projects include those associated with one of the following elements of the State's federally-approved nonpoint source control plan (which satisfies requirements of the Clean Water Act and Clean Air Act):

- Agricultural plans developed in response to Senate Bill 1010,
- Forest management practices plans,
- TMDL implementation plans,
- Groundwater management area action plans,
- Estuary plans,
- Expenditures to supplement a Clean Water Act section 319 grant project, or
- Any other watershed restoration plan approved by a state or federal agency.

Commissioner Van Vliet questioned the eligibility of wood-chippers, which were included to provide an alternative to communities to open burning. Presenters responded that DEQ anticipates most tax credit applications relating to wood-chippers will be ones DEQ initiates while working with communities in pollution prevention projects. Chair Eden asked if there were estimates of costs for wood-chippers and retrofitting diesel engines. Presenters replied that DEQ expects a limited number of applications for wood-chipper and diesel engines. Commissioner Reeve asked whether bio-swales and retention ponds would be eligible. Mr. Llewelyn answered that under proposed rules, such facilities would be eligible if the primary purpose was protection of water quality from nonpoint pollution sources.

The Commission discussed the sunset date for proposed rules and asked staff to report back to the Commission on how the sunset would be implemented.

Commissioner Reeve made a motion to adopt the rule amendments as proposed. Commissioner Malarkey seconded the motion and it carried with five "yes" votes.

L. Informational Item: Budget Update

Helen Lottridge, DEQ Management Services Division Administrator, gave the Commission a report on the budget process for the 2001 legislative session.

M. Commissioners' Reports

There were no Commissioners' reports.

N. Director's Report

DEQ is working with the Governor's office and other agencies to address the emerging energy shortage. DEQ's Air Quality Division is working on a strategy to facilitate permitting emergency energy generators while protecting air quality.

DEQ and Oregon Department of Forestry released a draft sufficiency analysis report on stream temperature. The draft report analyses the sufficiency of current Forest Practices Act rules in meeting water quality standards for temperature. The process will result in DEQ's evaluation of whether Forest Practices Act rules need to be revised in order to meet DEQ's temperature standards and/or load allocations driven by the TMDL program.

The Waste Policy Leadership Group has made the following recommendations to DEQ regarding future policy and program directions in solid waste management.

- A legislative proposal that sets new recovery goals for wastesheds and extends the 50% recovery goal to 2009, with an interim goal of 45% by 2005. This proposal also sets waste prevention goals: 0% annual increase in waste generation per capita by 2005 and 0% annual increase in total waste generation by 2009. Finally, the proposal calls for keeping PBT-containing products out of landfills by 2009.
- A product stewardship legislative proposal covering electronics, mercury-containing products and carpet. This proposal creates a stakeholder process to develop goals, strategies and timelines for increasing producer responsibility for the life cycle impacts of these products.
- DEQ should increase its efforts in waste prevention and target the commercial sector, toxicity and PBTs, greenhouse gas emissions, and large waste sources.

In August 2000, a DEQ compliance inspection determined that piping at the Jackson Oil bulk plant on US 395 in Canyon City was not in compliance with state release detection requirements. As a result, Jackson Oil replaced the entire piping system in November 2000. That same month, gasoline contamination was found in soil and groundwater at the bulk plant after gasoline fumes forced a resident living next to the bulk plant to be evacuated from his home. One-week later, gasoline fumes forced evacuation of a second resident down gradient from the bulk plant. DEQ, Canyon City, Grant County, and Jackson Oil coordinated to determine that 5,100 gallons of gasoline were released before the faulty piping system was replaced. A gasoline plume currently extends 500 feet north of the bulk plant (toward John Day) impacting residential and commercial property. The plume is being diluted and dispersed by groundwater flow. No contamination was found in recent air and water samples taken at the down-gradient residence. The resident was returned to her home December 28, 2000. A corrective action plan to address the risk caused by contamination at the bulk plant and the two remaining impacted properties should be completed by February 2001.

Stephanie Hallock will meet with Chuck Findley at EPA Region 10 in January to discuss EPA-DEQ issues.

DEQ signed a Memorandum of Agreement with EPA, Oregon, Idaho, and Washington for coordinated development of Columbia and Snake River mainstem TMDLs. The agreement gives EPA the lead on temperature TMDLs and gives states the lead on total dissolved gas and other parameters for the lower river. At the time of the Commission meeting, Oregon, Idaho and EPA had signed the MOA; Washington had not signed.

Director Hallock reported the following administrative changes:
- Neil Mullane, Northwest Region Administrator, will serve as acting Deputy Director upon Lydia Taylor's retirement. Andy Schaedel will serve as acting Northwest Regional Administrator.
- Initial interviews for Lab Administrator will be held in late January and early February.
- Three finalists for Special Assistant to the Commission & Director will be interviewed on January 23.

The retirement party for Rick Gates and Lydia Taylor, commemorating almost 50 years of combined service, will be held on March 1 at the World Trade Center in Portland from 4:30 to 7:30pm. All current and former employees and other colleagues are invited.

There being no further business, the meeting was adjourned at 1:30 p.m.

ADDENDUM ONE

SOME SUGGESTIONS, ONLY:

PAGE

12-6 Do we change a statute citation if there is no change in the rule? (1)(b)(D) would change ORS 466.890 to .992 and throughout when cited in Statutory Authorities.

200-12 4th line: add period to end of sentence. Also review this page, generally you put a semi-colon when you make lists; however, under (d), you put periods at the end of each item in the major modifications.
(B) 3rd line – put comma between "source" & "and"
(d)(A) 1st line – change "which" to "that"

200-13 (35) EIS is the usual for an Environmental Impact Statement – but maybe not yours, however.

212-5 (2)(a)(F) Would read better if said: " For example, a certain surface coating line is controlled by an incinerator whose continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test. In this example . . ."

225-2 (9)(b) "This equation only applies [SHOULD READ "applies only"] to sources that are *or*? would . . ." Remove "are"?

225-8 (1) You need some kind of verb here ". . .the owner or operator must demonstrate that:"

225-8 (b) You could use some commas @ second sentence.

225-8 (c)(A) final line, change "which" to "that".

225-9 (c)(A) first line, add comma after "increases".
(c)(B) fifth line, change "area" to "areas"; remove comma afterward before "that". Actually, you usually have been saying "nonattainment area" and "maintenance area"; but in this paragraph you have not. Probably should be consistent throughout this concept.
final line: should read "are not deemed to impact the area".
(d) first and second lines: ":" after "VOC"; capitalize "Owners". You did this in previous paragraphs.
(3) sixth line: comma after "new facility"

240-8 (2) third line: correct final sentence to read: "Such reasonable measures include, but are not limited to the following:"

268-1 (1)(c)(B) remove quotation mark end of line.

268-2 (2)(b) third line, remove both commas. Put commas before "if" in this paragraph.

268-3 (3)(a) first line, add "for which" after comma – "and for which the Department "
(5)(D & E) – add semi-colons after each, as you have done previously.

ADDENDUM TWO

(i) Failure to perform testing, or monitoring, required by a permit, rule or order that results in failure to show compliance with an emission limitation or a performance standard;

(j) Systematic failure to keep records required by a permit, rule or order;

(k) Failure to submit semi-annual Compliance Certification or Oregon Title V Annual Operating Report;

(l) Failure to file a timely application for an Oregon Title V Operating Permit pursuant to OAR 340-~~028-2120~~Division 0218;

(m) ~~Exceedances of operating limitations that limit the potential to emit of a synthetic minor source and that result in emissions above the Oregon Title V Operating Permit permitting thresholds pursuant to OAR 340-028-0110;~~ Submitting a report, semi-annual Compliance Certification or Oregon Title V Annual Operating Report, or any part thereof, that does not accurately reflect the monitoring, record keeping or other documentation held or performed by the permittee;

(n) Causing emissions that are a hazard to public safety;

(o) Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;

(p) Violation of a work practice requirement for asbestos abatement projects which causes a potential for public exposure to asbestos or release of asbestos into the environment;

(q) Storage or accumulation of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which causes a potential for public exposure to asbestos or release of asbestos into the environment;

(r) Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation, or disposal of asbestos-containing waste material;

(s) Conduct of an asbestos abatement project by a person not licensed as an asbestos abatement contractor;

(t) Violation of a disposal requirement for asbestos-containing waste material which causes a potential for public exposure to asbestos or release of asbestos into the environment;

(u) Failing to hire a licensed contractor to conduct an asbestos abatement project which results in the potential for public exposure to asbestos or release of asbestos into the environment;"

(~~u~~v) Advertising to sell, offering to sell or selling a non-certified woodstove;

(~~v~~w) Open burning of materials which are prohibited from being open burned anywhere in the State by OAR 340-~~023-0042(2)~~264-0060(3);

(~~w~~x) Failure to install vapor recovery piping in accordance with standards set forth in OAR Chapter 340, Division 150;

(~~x~~y) Installing vapor recovery piping without first obtaining a service provider license in accordance with requirements set forth in OAR Chapter 340, Division 160;

(~~y~~z) Submitting falsified actual or calculated emission fee data;

(~~z~~aa) Failure to provide access to premises or records when required by law, rule, permit or order;

(~~aa~~bb) Any violation related to air quality which causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Unless otherwise classified, exceeding an emission limitation, other than an annual emission limitation, or exceeding an opacity limitation by more than five percent opacity in permits, ~~or~~ rules or order;

(b) Violating standards in permits or rules for fugitive emissions, particulate deposition, or odors;

(c) Failure to submit a complete Air Contaminant Discharge Permit application 60 days prior to permit expiration or prior to modifying a source;

(d) Failure to maintain on site records when required by a permit to be maintained on site;

(e) Exceedances of operating limitations that limit the potential to emit ~~of a synthetic minor source~~ that do not result in emissions above the Oregon Title V Operating Permit permitting thresholds pursuant to OAR 340-~~028-0110~~ Division 218;

(f) Failure to perform testing or monitoring required by a permit, rule or order unless otherwise classified.

(g) Illegal open burning of agricultural, commercial, construction, demolition, and/or industrial waste except for open burning in violation of OAR 340-~~023-0042(2)~~264-0060(3);

(h) Failing to comply with notification and reporting requirements in a permit;

(i) Failure to comply with asbestos abatement licensing, certification, or accreditation requirements;

(j) Failure to provide notification of an asbestos abatement project;

(k) Violation of a work practice requirement for asbestos abatement projects that does not cause a potential for public exposure to asbestos and does not release asbestos into the environment;

(l) Violation of a disposal requirement for asbestos-containing waste material that does not cause a potential for public exposure to asbestos and does not release asbestos into the environment;

(m) Failure to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project.

(n) Failure to display permanent labels on a certified woodstove;

(o) Alteration of a permanent label for a certified woodstove;

(p) Failure to use Department-approved vapor control equipment when transferring fuel;

(q) Operating a vapor recovery system without first obtaining a piping test performed by a licensed service provider as required by OAR Chapter 340, Division 160;

(r) Failure to obtain Department approval prior to installing a Stage II vapor recovery system not already registered with the Department as specified in Department rules;

(s) Installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons using approved recovery and recycling equipment;

(t) Selling, or offering to sell, or giving as a sales inducement any aerosol spray product which contains as a propellant any compound prohibited under ORS 468A.655;

(u) Selling any chlorofluorocarbon or halon containing product prohibited under ORS 468A.635;

(v) Failure to pay an emission fee;

(w) Submitting inaccurate emission fee data;

(x) Violation of OAR 340-~~022-0740~~ 242-0620 ~~or 340-022-0750(1),~~ by a person who has performed motor vehicle refinishing on 10 or more on-road motor vehicles in the previous 12 months~~.~~;

(y) Constructing or operating a source required to have a Basic ACDP;

(z) Any violation of the Employee Commute Option rules contained in OAR 340-242-0010 to 0290;

(~~y~~aa) Any violation related to air quality which is not otherwise classified in these rules.

(3) Class Three:

(a) Failure to perform testing, or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Illegal residential open burning;

(c) Improper notification of an asbestos abatement project;

(d) Failure to submit a completed renewal application for an asbestos abatement license in a timely manner;

(e) Failure to display a temporary label on a certified woodstove;

(f) Exceeding opacity limitation in permits or rules by five percent opacity or less.

(g) Violation of OAR 340-~~022-0740~~-242-0620 ~~or 340-022-0750(1),~~ by a person who has performed motor vehicle refinishing on fewer than 10 on-road motor vehicles in the previous 12 months.

(c) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to the Department and obtaining Department approval;

(d) Disposing of or authorizing the disposal of a solid waste at a location not permitted by the Department to receive that solid waste;

(e) Violation of the freeboard limit which results in the actual overflow of a sewage sludge or leachate lagoon;

(f) Violation of the landfill methane gas concentration standards;

(g) Violation of any federal or state drinking water standard in an aquifer beyond the solid waste boundary of the landfill, or an alternative boundary specified by the Department;

(h) Violation of a permit-specific groundwater concentration limit, as defined in OAR 340-040-0030(3) at the permit-specific groundwater concentration compliance point, as defined in OAR 340-040-0030(2)(e);

(i) Failure to perform the groundwater monitoring action requirements specified in OAR 340-040-0030(5), when a significant increase (for pH, increase or decrease) in the value of a groundwater monitoring parameter is detected;

(j) Impairment of the beneficial use(s) of an aquifer beyond the solid waste boundary or an alternative boundary specified by the Department;

(k) Deviation from the Department approved facility plans which results in an safety hazard, public health hazard or damage to the environment;

(l) Failure to properly construct and maintain groundwater, surface water, gas or leachate collection, treatment, disposal and monitoring facilities in accordance with the facility permit, the facility environmental monitoring plan, or Department rules;

(m) Failure to collect, analyze and report ground-water, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or Department rules;

(n) Violation of a compliance schedule contained in a solid waste disposal or closure permit;

(o) Failure to provide access to premises or records when required by law, rule, permit or order;

(p) Knowingly disposing, or accepting for disposal, materials prohibited from disposal at a solid waste disposal site by statute, rule, permit or order;

(q) Accepting, handling, treating or disposing of clean-up materials contaminated by hazardous substances by a landfill in violation of the facility permit and plans as approved by the Department or the provisions of OAR 340-093-0170(3);

(r) Accepting for disposal infectious waste not treated in accordance with laws and Department rules;

(s) Accepting for treatment, storage or disposal wastes defined as hazardous under ORS 466.005, et seq., or wastes from another state which are hazardous under the laws of that state without specific approval from the Department;

(t) Mixing for disposal or disposing of principal recyclable material that has been properly prepared and source separated for recycling;

(u) Receiving special waste in violation of or without a Department approved Special Waste Management Plan;

(v) Failure to follow a Department approved Construction Quality Assurance (CQA) plan when constructing a waste cell;

(w) Failure to comply with a Department approved Remedial Investigation Workplan developed in accordance with OAR 340-040-0040;

(x) Failure to establish and maintain financial assurance as required by statute, rule, permit or order;

(y) Open burning in violation of OAR 340-~~023-0042(2)~~264-0060(3);

(z) Failure to abide by the terms of a permit automatically terminated due to a failure to submit a timely application for renewal as set forth in OAR 340-093-0115(1)(c);

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item G
May 4, 2001 Meeting

Title:

Revisions to Point Source Air Management Rules

Summary:

The Department is proposing comprehensive amendments to the Air Quality point source permitting rules as part of an overall effort to improve and streamline the permitting process. The air quality permitting rules have been amended many times since they were first adopted in 1972. Past individual amendments, in addition to the very complex applicable requirements have made the exising rules difficult to implement.

This proposal contains amendments to all Air Quality permitting rule divisions and is intended to make the entire set of permitting rules more effective. Amendments are proposed to sixteen existing divisions; two new divisions have also been created. The proposed changes clarify and update existing permitting requirements to improve the efficiency of the air quality industrial source permitting program and the planning process. This rulemaking is the product of combined efforts of Department staff and EPA, and has been extensively discussed with regulated and environmental stakeholders.

Overall, this rulemaking will provide Department staff more efficient rules that simplify the permitting process for the regulated community. It will allow the Department to more effectively protect air quality using fewer resources and focus on other high priority air pollution concerns. This proposal does not increase or decrease the stringency of the air quality permitting program, and maintains the current level of environmental protection.

Department Recommendation:

The Department recommends the Commission adopt the new rules and rule amendments regarding the Air Quality permitting program as presented in Attachment A as an amendment to the State Implementation Plan. It is recommended that the Salem Offset exemption reinstatement (OAR 340-224-0050(4)) be effective upon filing, and the remaining rules and rule amendments be effective July 1, 2001.

Report Author	Division Administrator	Director
EP Kenn for Dave Kauth	Andrew Ginsburg	Stephanie Hallock

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

State of Oregon
Department of Environmental Quality Memorandum

Date: April 9, 2001

To: Environmental Quality Commission

From: Stephanie Hallock S Hallock

Subject: Agenda Item G, Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements), EQC Meeting May 4, 2001

Background

On October 12, 2000, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules to streamline Air Quality's stationary source permitting rules.

Pursuant to the authorization, Hearing Notice was published in the Secretary of State's Bulletin on November 1, 2000. On October 17, 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.

Public Hearings were held December 5th in Salem and Medford, December 6th in Pendleton, and December 7th in Bend and Portland. Workshops were conducted in conjunction with the hearings to explain and discuss key elements of the proposed rules. The comment period ended December 21, 2000. The Department reopened the public comment period from January 26 to February 26, 2001 in order to obtain additional comment on four specific issues (provided in Attachment B6). The Department conducted additional workshops in Portland and Medford to discuss the reopened rules with interested parties. The Presiding Officer's Report (Attachment C) gives an overview of the hearing process and the number of participants for each hearing. A list of commentors along with comments and Department responses are included in this staff report as Attachments D1 and D2. (A copy of the actual comments is available upon request.)

The Department evaluated comments from both public comment periods, and modified the rulemaking proposal based on that evaluation. A summary of modifications is included below, and substantive modifications are detailed in Attachment E.

Key Words and Acronyms

ACDP:	Air Contaminant Discharge Permit
AQMA:	Air Quality Maintenance Area
Baseline:	Sources actual emission rate (per pollutant) during year 1977 or 1978
ERC:	Emission Reduction Credit
NSR:	New Source Review
PSD:	Prevention of Significant Deterioration
PSEL:	Plant Site Emission Limit – emission limitation (per pollutant) contained in the ACDP or Title V permit
PTE:	Potential to Emit – maximum emission rate (per pollutant) that the source is physically capable of emitting in compliance with regulations
SIP:	State Implementation Plan (OAR 340-200-0040) required by the Clean Air Act
Title V:	Title V of the Clean Air Act - requires permits to operate for major sources of air pollution
Unassigned:	Difference between a source's rule adjusted Baseline actual emissions and its current Potential to Emit

Issue this Proposed Rulemaking Action is Intended to Address

This rulemaking is intended to streamline the air quality permitting process while maintaining the environmental protection from the program. The proposed changes are among the most comprehensive rulemaking efforts ever undertaken by the Air Quality Program. The existing Air Quality permitting rules are extremely complex, in part because of the numerous applicable requirements, but also because of the number of individual rule amendments made over the past thirty years.

To improve the rules, the Department proposes to modify sixteen existing Air Quality administrative rule divisions, and create two new divisions. These proposed changes clarify and update existing permitting requirements to improve the efficiency of the air quality industrial source permitting program and the planning process. Overall, this rulemaking is intended to provide a more effective means of protecting air quality using fewer resources, and allow the Department to focus on other high priority air pollution concerns. The rules and rule amendments proposed for adoption are included as Attachment A1. A summary of the proposed rule changes is included as Attachment A2.

Relationship to Federal and Adjacent State Rules

As provided in Attachment B4, the Environmental Protection Agency (EPA) has approved the Department's Air Quality permitting rules as part of the State Implementation Plan (SIP), making the Department's rules federally enforceable. Federal rules require states to adopt SIPs, including provisions for major and minor new source review (NSR) and prevention of significant deterioration (PSD). Federal rules also allow states to include provisions for banking, trading, and limiting potential to emit (PTE). Other states either have SIP approved programs or they have dual authority with EPA. Regardless of specific state-federal relationships, all states must adopt rules that are at least as stringent as federal rules.

Authority to Address the Issue

The Department has the statutory authority to address this issue under ORS 468A.040 and ORS 468-065. This proposal, if adopted, will be submitted to the U.S. Environmental Protection Agency as a revision to the SIP (OAR 340-200-0040), which is a requirement of the Clean Air Act. The Commission's SIP revision authority resides in ORS468A.035.

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

A work group of representatives from the Department, Lane Regional Air Pollution Authority, and EPA developed the proposed rulemaking in numerous multi-day work sessions during 1999. The work group identified permitting rule problems and recommended solutions, building on recommendations of the Oregon Industrial Source Advisory Committee in 1994-95, and an air quality process improvement team in 1998. An extensive list of rule changes were proposed by the workgroup, and then reviewed and critiqued by the Department's permit writers, inspectors, and management to develop final recommendations.

Starting in late 1999, the Department's final recommendations were discussed in detail with industrial source and environmental representatives during a variety of workgroup and roundtable meetings. In addition, the recommendations were presented and discussed with permitted sources, source representatives, and the public on two separate occasions in Portland, Salem, Bend and Medford, and once in Pendleton. Fact sheets on each of the key concepts were also prepared and provided at the presentations. This outreach effort was conducted over the course of a year, from November 1999 until the proposed rules went out for public comment in October 2000.

On September 27, 2000, a pre-public notice draft of the proposed rules was presented to members of regulated community and the public at the Department headquarters in Portland. The meeting was conducted several weeks before the formal public comment period began, and was designed to assist interested parties prepare public comment. The Department conducted a "walk through" of the proposed rules; identified the location of changes, outlined key elements, and answered questions. Subsequent discussions with stakeholders were conducted during the first public comment period, and after the Department re-noticed specific elements of the proposed rules for additional comment.

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

This rulemaking is intended to increase the efficiency of the Department's Air Quality permitting program. The proposed changes will clarify air quality permitting rules and provide additional tools to streamline the permitting and planning process. These proposed changes will allow the Department to decrease the amount of time and resources required to permit sources while obtaining the same air quality benefit as existing rules.

The proposal was designed as an integrated package of changes that work together to promote efficiency. The proposed improvements include:

- Simpler permitting procedures
- Greater use of general permits
- Less need for permit modifications
- Simpler emission trading options
- Improved construction approval procedures
- Better targeted public involvement
- Simpler fees and billings
- Clearer applications and other requirements

A full explanation of the major concepts proposed in this rulemaking package is included as Attachment A2, which also includes a division-by-division detail of the location of the proposed changes.

The Department expects resource savings of up to five full time positions once the proposed rule revisions are fully implemented over the next seven years. These resource savings in permitting will allow the Department to focus on other high priority work to protect air quality. It is important to note that the proposed rules are not intended to increase or decrease overall stringency, although some individual changes may be perceived as more or less stringent if considered alone. Therefore,

during the public involvement process, the Department stressed that the proposal must be viewed as an integrated package.

Summary of Significant Public Comment and Department Response

The Department received comments from thirty representatives of industry, the environment, and government during the original public comment period. The comments and the Department's response are included as Attachment D1. The Department addressed most of the issues raised in comments by amending the proposal or by providing additional explanation in response to the comments. However, due to extensive comments on some of the more complex elements of the proposal, the Department decided to re-notice the proposed rules for additional public comment on four issues, specifically:

- Unassigned Emission Reductions
- Definition of the term "Adjacent" as a component of the definition of "source"
- Permit Applicability and Fees
- Ozone Precursor Significant Impact Distance Determination

Attachment B6, the notice for second public comment, provides an overview, comment summary, and Department response regarding each issue above. The Department received comments from fifteen parties in response to the second notice. Those comments and the Department's response are included as Attachment D2.

For both comment periods, the regulated community conveyed concerns that the proposed rules went beyond streamlining, were more stringent than federal requirements, were missing source categories for general permits, and that the new fee structure increased costs for small business. Comments also stated that the financial impact under Measure 7 should be considered. In addition, industrial source commentors questioned unassigned emission reductions, major source impacts on ozone maintenance areas,12-month rolling PSEL, and freezing Baseline emissions. Industry supported the proposal to allow post-construction ambient monitoring in lieu of pre-construction ambient monitoring, eliminate short term PSELs, create generic PSELs, and update the Department's generic bubble authority. Industry also supported the clarifications for emission reduction credit banking, and the Salem offset exemption reinstatement.

Environmental representatives and federal land managers conveyed concerns about environmental backsliding, visibility issues related to changes in modeling procedures, fee table applicability, streamlining NSR requirements, generic PSELs, and a lack of focus to decrease or prevent air pollution. Commentors supported the reduction of unassigned emissions, freezing Baseline emissions, the tiered public notice procedure, extending the ozone precursor impact distance, and

defining the term "adjacent."

Department response to some of the more significant comments is highlighted below.

- **Comment:** Eliminate unassigned emissions reductions from the proposed rules. Reduction of unassigned emissions is not streamlining. Unassigned emissions are needed to allow for facility growth.
  Response: The reduction of unassigned emissions is necessary to streamline the SIP planning process. Without this change, the Department has had to offer expedited permit processing in exchange for "donations" of unassigned emissions needed to meet air quality standards. Expedited permit processing is inefficient for the permit program. The Department is recommending a number of changes from the original proposal based on public comment. These include a uniform date (2007) for the reduction, elimination of the need for a plan to keep unassigned emissions until the reduction date, and an exception for areas where EPA requires an attainment demonstration using dispersion modeling. In these areas the unassigned emission reduction rule should not apply because the netting basis for sources within these areas will be reduced to the level demonstrated to be acceptable through modeling.

- **Comment:** The proposed ozone precursor impact distance formula is more stringent than federal requirements, and will not allow new power generation facilities to be built in western Oregon.
  Response: The Department proposed to revise the ozone precursor significant impact distance rule because EPA indicated that the existing formula is less stringent than the federal requirement and had to be changed. Further, EPA indicated that they will veto Title V permits if the Department does not evaluate ozone precursor impacts at a distance beyond the current 30 km radius around ozone nonattainment and maintenance areas. The Department is recommending several changes from the original proposal in response to comments. These include correction of an error in the formula and allowing an alternative demonstration that a source locating within the formula distance does not impact the sensitive area because of topography, wind direction and other relevant factors. In addition, the Department is recommending that the new formula apply to complete permit applications received on and after January 1, 2003 to prevent schedule disruptions for projects, such as new power generating plants, that are currently under development.

- **Comment**: The proposal is more stringent than federal requirements, and the Department has not made a scientifically defensible statement of need; therefore the proposal is in violation of Oregon statute regarding Title V implementation.
  Response: While many of the concepts within the Oregon rules are different than their federal counterparts, the overall program is equivalent to the federal program. Some specific items may be more stringent by themselves, but these are balanced by others that are less stringent. Furthermore, the scientifically defensible statement of need only applies to the implementation of the procedural requirements of the Title V program, and not to the underlying substantive requirements of the Oregon permitting program. The proposed rule changes do not increase the stringency of implementing the Title V permitting program. Therefore, the Department is not recommending changes to the proposal in response to this comment.

- **Comment:** Fees for general permits are unfair for small business.
  Response: The proposal includes a number of changes to simplify requirements and reduce costs for small businesses. In particular, the Department expects that many small businesses will be able to take advantage of simpler permitting and lower fees available with general permits. However, because the proposed fee table compresses 75 existing fee categories based on industry classification into 6 categories based on permit type, some small businesses may have higher fees under the proposed rules. Therefore, in response to this comment, the Department recommends lowering the fees for general permits and making commensurate changes to other permit fees to maintain the existing revenue from the fee program. In addition, the Department recommends adding low-end cutoffs so that some small businesses will not require permits at all. Note that the Department has requested an increase in the ACDP fee in the 2001-2003 budget. If approved by the Legislative Assembly, this fee increase will be proposed in a separate rulemaking after July, 2001.

- **Comment**: The definition of the term "adjacent" as a component of the definition of "source" combines facilities inappropriately, and therefore applies more stringent permitting requirements.
  Response: This term "adjacent" is used in the existing definition of "source" but is not defined in rule. Therefore, the Department must rely on EPA guidance to determine if two facilities are adjacent and therefore one source. Making this determination can be very time-consuming due to the complexity of the process and consequences of the result. It should be noted that treating two facilities as one source can be more or less stringent, depending on the baseline emissions and other facility-specific factors. The proposed definition of adjacent was intended to result in the same outcomes as EPA's guidance. However, based on comments during both the original and extended public comment period, the Department believes that further work will be required to develop a definition that matches the guidance.

Therefore, the Department recommends eliminating the specifics from the proposed definition and simply indicating that "adjacent" means "interdependent and nearby." This provides notice in the rules that adjacent has a special meaning that is different than the standard English definition of the term. The Department intends to continue working on this issue, and may propose a more specific definition in a future rulemaking. However, for now, the determination of adjacent will remain a case-by-case concept as it is under existing rules.

- **Comment**: Additional time should be allowed to review and comment on the proposed rules. **Response**: The Department believes that there has been ample time to review and comment on the proposal. The Department provided significant opportunity for stakeholder involvement during the rule development process, prior to the formal public comment periods. The Department provided an extended public comment period (60 day vs. 30 day), and then reopened the comment period for another 30-day period. The Department has taken an open, pragmatic approach to develop these rules. The process has been thorough, and the final version of the rules will be improved because of public input. Due to the timeline to implement the proposed revisions (see below), the Department recommends against delay in Commission action on this rulemaking.

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

If adopted, these proposed rules will greatly simplify how sources are permitted. The proposed rules will be implemented under the ACDP, Title V and construction approval programs. Most of the concepts contained in the proposed rule will apply to existing sources when they modify or renew their permits, and new sources after the effective date. However, the ozone precursor impact distance will apply to permit applications received on or after January 1, 2003, and the unassigned emission reduction will occur in 2007.

The most significant efficiency aspect of the proposal is the expanded use of general permits to replace individual permits for more than one half of the ACDP sources. Permit drafting teams are now completing new general permits for approximately 20 source categories. The General Permits will be adopted by rule with a projected rule adoption date of August 10, 2001. Sources opting for general ACDPs will be assigned to permits with an effective date of January 1, 2002 and a life of 10 years. The proposed rule changes will be incorporated into source-specific permits for the remaining sources upon modification or renewal following rule adoption. Department staff will contact all permittees this summer to ensure they understand their options under the new permitting system. Maintaining this permitting schedule is necessary to ensure that invoicing is accurate and that fee revenue is on budget.

Over the last year, the Department has provided training to permitting staff on the proposed rule changes. Once adopted, the Department will provide additional training at each regional office and through the Inspector's Forum, a semi-annual meeting of all permit writers and inspectors. External stakeholder workshops will be conducted to educate permittees and other interested parties, if needed, to further assure the transition to the new permitting system is well understood.

The Department will continue to work with stakeholders following adoption of these proposed rules to identify any additional changes that could further improve the permitting program. This may include changes to simplify implementation of the ozone precursor impact distance, further clarify the relationship between PSEL and NSR requirements, further evaluate the term "adjacent," and address any other issues that arise during implementation. If such changes are identified, the Department will propose any needed amendments as soon as practicable.

Recommendation for Commission Action

The Department recommends the Commission adopt the new rules and rule amendments regarding the Air Quality permitting program as presented in Attachment A as an amendment to the State Implementation Plan. It is recommended that the Salem Offset exemption reinstatement (OAR 340-224-0050(4)) be effective upon filing, and the remaining rules and rule amendments be effective July 1, 2001. (Note, some rules include later dates for specific actions, but the rules themselves should be effective on July 1, 2001.)

Attachments

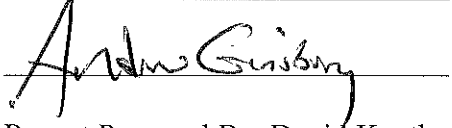
A. Proposed Rule Amendments
   1. Rules
   2. Summary of Rule Changes
B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from First Public Notice
   6. Cover Memorandum from Second Public Notice
C. Presiding Officer's Report on Public Hearing
D. Department's Evaluation of Public Comment
   1. Response to First Public Notice Comments
   2. Response to Second Public Notice Comments
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: David Kauth

Phone: (503) 229-5655

Date Prepared: April 9, 2001

Attachment A1

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)

Rule Amendments Proposed for Adoption

DIVISION 12

ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0026
Policy

(1) The goal of enforcement is to:

(a) Obtain and maintain compliance with the Department's statutes, rules, permits and orders;

(b) Protect the public health and the environment;

(c) Deter future violators and violations; and

(d) Ensure an appropriate and consistent statewide enforcement program.

(2) The Department shall endeavor by conference, conciliation and persuasion to solicit compliance.

(3) The Department shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth in section (1) of this rule.

(4) Violators who do not comply with an initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

Stat. Auth.: ORS 459.995, ORS 466, ORS 467, ORS 468.020, ORS 468.996, ORS 468A & ORS 468B

Stats. Implemented: ORS 183.090, ORS 454.635, ORS 454.645, ORS 459.376, ORS 459.995, ORS 465.900, ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.090 - ORS 468.140, ORS 468A.990, ORS 468.992, ORS 468B.025, ORS 468B.220 & ORS 468B.450

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ21-1992, f. & cert. ef. 8-11-92

340-012-0028
Scope of Applicability

Amendments to OAR 340-012-0028 to 340-012-0090 shall only apply to formal enforcement actions issued by the Department on or after the effective date of such amendments and not to any contested cases pending or formal enforcement actions issued prior to the effective date of such amendments. Any contested cases pending or formal enforcement actions issued prior to the effective date of any amendments shall be subject to OAR 340-012-0028 to 340-012-0090 as prior to amendment. The list of violations classified in these rules is intended to be used only for the purposes of setting penalties for violations of law and for other rules set forth in OAR Chapter 340.

Stat. Auth.: ORS 454, ORS 459.995, ORS 466, ORS 467, ORS 468.020 & ORS 468.996

Stats. Implemented: ORS 183.090, ORS 454.635, ORS 454.645, ORS 459.376, ORS 459.995, ORS 465.900, ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.090 - ORS 468.140, ORS 468A.990, ORS 468.992, ORS 468B.025, ORS 468B.220 & ORS 468B.450

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ15-1990, f. & cert. ef. 3-30-90; DEQ21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0080

340-012-0030
Definitions

Unless otherwise required by context, as used in this Division:

(1) "Class One Equivalent" or "Equivalent", which is used only for the purposes of determining the value of the "P" factor in the civil penalty formula, means two Class Two violations, one Class Two and two Class Three violations, or three Class Three violations.

(2) "Commission" means the Environmental Quality Commission.

(3) "Compliance" means meeting the requirements of the Commission's and Department's statutes, rules, permits or orders.

(4) "Director" means the Director of the Department or the Director's authorized deputies or officers.

(5) "Department" means the Department of Environmental Quality.

(6) "Documented Violation" means any violation which the Department or other government agency records after observation, investigation or data collection.

(7) "Flagrant" means any documented violation where the Respondent had actual knowledge of the law and had consciously set out to commit the violation.

(8) "Formal Enforcement Action" means an action signed by the Director or a Regional Administrator or authorized representatives or deputies which is issued to a Respondent for a documented violation. Formal enforcement actions may require the Respondent to take action within a specified time frame, and/or state the consequences for the violation or continued noncompliance. "Formal enforcement action" includes Notices of Permit Violation, Civil Penalty Assessments, Mutual Agreement and Orders, and other Orders that may be appealed through the contested-case process; but does not include Notices of Noncompliance issued pursuant to OAR 340-012-0041(1).

(9) "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.

(10) "Magnitude of the Violation" means the extent and effects of a violator's deviation from the Commission's and Department's statutes, rules, standards, permits or orders. In determining magnitude the Department shall consider all available applicable information, including such factors as: Concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. Deviations shall be categorized as major, moderate or minor as set forth in OAR 340-012-0045(1)(a)(B).

(11) "Negligence" or "Negligent" means failure to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation.

(12) "Order" means:

(a) Any action satisfying the definition given in ORS Chapter 183; or

(b) Any other action so designated in ORS Chapters 454, 459, 465, 466, 467, 468, 468A, or 468B.

(c) "Penalty Demand Notice" means a written notice issued by a representative of the Department to a party demanding payment of a stipulated penalty pursuant to the terms of an agreement entered into between the party and the Department.

(13) "Person" includes, but is not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the Federal Government and its agencies.

(14) "Prior Significant Action" means any violation established either with or without admission of a violation by payment of a civil penalty, or by a final order of the Commission or the Department, or by judgment of a court.

(15) "Reckless" or "Recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

(16) "Residential Open Burning" means the open burning of any domestic wastes generated by a single family dwelling and conducted by an occupant of the dwelling on the dwelling premises. This does not include the open burning of materials prohibited by OAR 340-023-0042(2).

(17) "Respondent" means the person to whom a formal enforcement action is issued.

(18) "Risk of Harm" means the individual or cumulative possibility of harm to public health or the environment caused by a violation or violations. Risk of harm shall be categorized as major, moderate or minor.

(19) "Systematic" means any documented violation which occurs on a regular basis.

(20) "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof and includes both acts and omissions. Violations shall be categorized as Class One (or I), Class Two (or II) or Class Three (or III), with Class One designating the most serious class of violation.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 459.376, ORS 459.995, ORS 465.900, ORS 468.090 – ORS 468.140, ORS 466.880 – ORS 466.895, ORS 468.996 – ORS 468.997, ORS 468A.990 – ORS 468A.992 & ORS 468B.220

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. &cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0035

Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468.997

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ21-1992, f. & cert. ef. 8-11-92

340-012-0040

Notice of Permit Violations and Exceptions

(1) Prior to assessment of a civil penalty for a violation of the terms or conditions of a National Pollutant Discharge Elimination System Permit, Water Pollution Control Facilities Permit, or Solid Waste Disposal Permit, the Department shall provide a Notice of Permit Violation to the permittee. The Notice of Permit Violation shall be in writing, specifying the violation and stating that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to the Department within five working days of receipt of the Notice of Permit Violation:

(a) A written response from the permittee acceptable to the Department certifying that the permitted facility is complying with all terms of the permit from which the violation is cited. The certification shall include a sufficient description of the information on which the permittee is certifying compliance to enable the Department to determine that compliance has been achieved; or

(b) A written proposal, acceptable to the Department, to bring the facility into compliance with the permit. An acceptable proposal under this rule shall include at least the following:

(A) A detailed plan and time schedule for achieving compliance in the shortest practicable time;

(B) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permitted facility is in compliance with the permit;

(C) A statement that the permittee has reviewed all other conditions and limitations of the permit and no other violations of the permit were discovered.

(c) In the event that any compliance schedule to be approved by the Department pursuant to subsection (1)(b) of this rule provides for a compliance period of greater than six months, the Department shall incorporate the compliance schedule into an Order described in OAR 340-012-0041(4)(b)(C) which shall provide for stipulated penalties in the event of any noncompliance therewith. The stipulated penalties shall not apply to circumstances beyond the reasonable control of the permittee. The stipulated penalties shall be set at amounts consistent with those established under OAR 340-012-0048;

(d) The certification allowed in subsection (1)(a) of this rule shall be signed by a Responsible Official based on information and belief after making reasonable inquiry. For purposes of this rule "Responsible Official" of the permitted facility means one of the following:

(A) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one of more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(C) For a municipality, State, Federal, or other public agency, either a principal executive officer or appropriate elected official.

(e) For the purposes of this section, when a regional authority issues an NPV, different acceptability criteria may apply for subsections (a) and (b) of this section.

(2) No advance notice prior to assessment of a civil penalty shall be required under section (1) of this rule and the Department may issue a Notice of Civil Penalty Assessment if:

(a) The violation is intentional;

(b) The water or air violation would not normally occur for five consecutive days; or

(c) The permittee has received a Notice of Permit Violation, or other formal enforcement action with respect to any violation of the permit within 36 months immediately preceding the documented violation;

(d) The permittee is subject to the federal operating permit program under ORS 468A.300 to 468A.320 (Title V of the Clean Air Act of 1990) and violates any rule or standard adopted or permit or order issued under ORS Chapter 468A and applicable to the permittee;

(e) The permittee is a solid waste permit holder subject to federal solid waste management requirements contained in **40 CFR, Part 258** as of the effective date of these rules ("Subtitle D"), and violates any rule or standard adopted or permit or order issued under ORS Chapter 459 and applicable to the permittee;

(f) The permittee has an air contaminant discharge permit and violates any State Implementation Plan requirement contained in the permit;

(g) The requirement to provide such notice would disqualify a state program from federal approval or delegation;

(h) For purposes of this section, "permit" includes permit renewals and modifications and no such renewal or modification shall result in the requirement that the Department provide the permittee with an additional advance warning if the permittee has received a Notice of Permit Violation, or other formal enforcement action with respect to the permit within 36 months.

[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 459.376, ORS 468.090 - ORS 468.140, ORS 468A.990 & ORS 468B.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 25-1979, f. & ef. 7-5-79; DEQ 22-1984, f. & ef. 11-8-84; DEQ 16-1985, f. & ef. 12-3-85; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ21-1992, f. & cert. ef. 8-11-92; DEQ4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0041

Enforcement Actions

(1) Notice of Noncompliance (NON):

(a) Informs a person of a violation, and the consequences of the violation or continued non-compliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated;

(b) Shall be issued under the direction of a Manager or authorized representative;

(c) Shall be issued for all classes of documented violations, unless the violation is a continuing violation for which the person has received a prior NON and the continuing violation is documented pursuant to a Department-approved investigation plan or Order, and the person is in compliance with the Department-approved investigation plan or Order.

(2) Notice of Permit Violation (NPV):

(a) Is issued pursuant to OAR 340-012-0040;

(b) Shall be issued by a Regional Administrator or authorized representative;

(c) Shall be issued for the first occurrence of a documented Class One violation which is not excepted under OAR 340-012-0040(2), or the repeated or continuing occurrence of documented Class Two or Three violations where a NON has failed to achieve compliance or satisfactory progress toward compliance. A permittee shall not receive more than three NONs for Class Two violations of the same permit within a 36 month period without being issued an NPV.

(3) Notice of Civil Penalty Assessment (CPA):

(a) Is issued pursuant to ORS 468.130, and OAR 340-012-0042 and 340-012-0045;

(b) Shall be issued by the Director;

(c) May be issued for the occurrence of any Class of documented violation that is not limited by the NPV requirement of OAR 340-012-0040(2).

(4) Order:

(a) Is issued pursuant to ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B;

(b) May be in the form of a Commission or Department Order, or any written order that has been consented to in writing by the parties adversely affected thereby including but not limited to a Mutual Agreement and Order (MAO):

(A) Commission Orders shall be issued by the Commission, or the Director on behalf of the Commission;

(B) Department Orders shall be issued by the Director;

(C) All other Orders:

(i) May be negotiated;

(ii) Shall be signed by the Director and the authorized representative of each other party.

(c) May be issued for any Class of violation.

(5) The enforcement actions described in sections (1) through (4) of this rule in no way limit the Department or Commission from seeking legal or equitable remedies as provided by ORS Chapters 454, 459, 465, 466, 467, 468, 468A, and 468B.

Stat. Auth.: ORS 454.625, ORS 459.376, ORS 465.400 - ORS 465.410, ORS 466.625, ORS 467.030, ORS 468.020, ORS 468A.025, ORS 468A.045, & ORS 468B.035

Stats. Implemented: ORS 454.635, ORS 454.645, ORS 459.376, ORS 459.995, ORS 465.900, ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.090 - ORS 468.140, ORS 468A.990, ORS 468.992, ORS 468B.025, ORS 468B.220 & ORS 468B.450

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ15-1990, f. & cert. ef. 3-30-90; DEQ21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0042

Civil Penalty Schedule Matrices

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Commission's or Department's statutes, rules, permits or orders by service of a written notice of assessment of civil penalty upon the Respondent. Except for civil penalties assessed under OAR 340-012-0048 and 340-012-0049, the amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in OAR 340-012-0045:

(1)(a) $10,000 Matrix: ~~[Matrix not included. See ED. NOTE.]~~

(A) Class I
(i) Major - $6000
(ii) Moderate - $3000
(iii) Minor - $1000
(B) Class II
(i) Major - $2000
(ii) Moderate - $1000
(iii) Minor - $500
(C) Class III
(i) Major - $500
(ii) Moderate - $250
(iii) Minor - $100

(b) No civil penalty issued by the Director pursuant to this matrix shall be less than $50 dollars or more than $10,000 dollars for each day of each violation. This matrix shall apply to the following:

(A) Any violation related to air quality statutes, rules, permits or orders, except for the selected open burning violations listed in section (3) below;

(B) Any violation related to ORS 164.785 and water quality statutes, rules, permits or orders, violations by a person having or needing a Water Pollution Control Facility Permit, violations of ORS Chapter 454 and on-site sewage disposal rules by a person performing sewage disposal services;

(C) Any violation related to underground storage tanks statutes, rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;

(D) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;

(E) Any violation related to oil and hazardous material spill and release statutes, rules, or orders, except for negligent or intentional oil spills;

(F) Any violation related to polychlorinated biphenyls management and disposal statutes;

(G) Any violation of ORS Chapter 465 or environmental cleanup rules or orders;

(H) Any violation of ORS Chapter 467 or any violation related to noise control rules or orders;

(I) Any violation of ORS Chapter 459 or any violation related to solid waste statutes, rules, permits, or orders;

(J) Any violation of ORS Chapter 459A, except as provided in section (4) of this rule and except any violation by a city, county or metropolitan service district of failing to provide the opportunity to recycle as required by law; and

(2) In addition to any other penalty provided by law, any person causing an oil spill through an intentional or negligent act shall incur a civil penalty of not less than $100 dollars or more than $20,000 dollars. The amount of the penalty shall be determined by doubling the values contained in the matrix in section (1) of this rule in conjunction with the formula contained in OAR 340-012-0045.

(3)(a) $2,500 Matrix: [~~Matrix not included. See ED. NOTE.~~]
(A) Class I
(i) Major - $2500
(ii) Moderate - $1000
(iii) Minor - $500
(B) Class II
(i) Major - $750
(ii) Moderate - $500
(iii) Minor - $200
(C) Class III
(i) Major - $250
(ii) Moderate - $100

(iii) Minor - $50

(b) No civil penalty issued by the Director pursuant to this matrix shall be less than $50. The total civil penalty may exceed $2,500 for each day of each violation, but shall not exceed $10,000 for each day of each violation. This matrix shall apply to the following:

(A) Any violation related to on-site sewage statutes, rules, permits, or orders, other than violations by a person performing sewage disposal services or by a person having or needing a Water Pollution Control Facility permit;

(B) Any violation of the Department's Division 23 open burning rules, excluding all industrial open burning violations, and violations of OAR 340-023-0042(2) where the volume of the prohibited materials burned is greater than or equal to twenty-five cubic yards. In cases of the open burning of tires, this matrix shall apply only if the number of tires burned is less than fifteen. The matrix set forth in section (1) of this rule shall be applied to the open burning violations excluded from this section.

(4)(a) $1,000 Matrix: ~~[Matrix not included. See ED. NOTE.]~~

(A) Class I

(i) Major - $1000

(ii) Moderate - $750

(iii) Minor - $500

(B) Class II

(i) Major - $750

(ii) Moderate - $500

(iii) Minor - $250

(C) Class III

(i) Major - $250

(ii) Moderate - $150

(iii) Minor - $50

(a~~b~~) No civil penalty issued by the Director pursuant to this matrix shall be less than $50 or more than $1,000 for each day of each violation.

(c~~b~~) This matrix shall apply to any violation of laws, rules or orders relating to rigid plastic containers; except for violation of the labeling requirements under OAR 459A.675 through 459A.685 and for rigid pesticide containers under OAR 340-109-0020 which shall be subject to the matrix set forth in section (1) of this rule.

(5)(a) $500 Matrix: ~~[Matrix not included. See ED. NOTE.]~~

(A) Class I

(i) Major - $400

(ii) Moderate - $300

(iii) Minor - $200

(B) Class II

(i) Major - $300

(ii) Moderate - $200

(iii) Minor - $100

(C) Class III

(i) Major - $200

(ii) Moderate - $100

(iii) Minor - $50

(b) No civil penalty issued by the Director pursuant to this matrix shall be less than $50 dollars or more than $500 dollars for each day of each violation. This matrix shall apply to the following types of violations:

(A) Any violation of laws, rules, orders or permits relating to woodstoves, except violations relating to the sale of new woodstoves;

(B) Any violation by a city, county or metropolitan service district of failing to provide the opportunity to recycle as required by law; and

(C) Any violation of ORS 468B.480 and 468B.485 and rules adopted thereunder relating to the financial assurance requirements for ships transporting hazardous materials and oil.

~~[ED. NOTE: The matrices referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]~~

Stat. Auth.: ORS 468.020 & ORS 468.090 - ORS 468.140

Stats. Implemented: ORS 459.995, ORS 459A.655, ORS 459A.660, ORS 459A.685 & ORS 468.035

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0045

Civil Penalty Determination Procedure

(1) When determining the amount of civil penalty to be assessed for any violation, other than violations of ORS 468.996, which are determined according to the procedure set forth below in OAR 340-012-0049(8), the Director shall apply the following procedures:

(a) Determine the class and the magnitude of each violation:

(A) The class of a violation is determined by consulting OAR 340-012-0050 to 340-012-0073;

(B) The magnitude of the violation is determined by first consulting the selected magnitude categories in OAR 340-012-0090. In the absence of a selected magnitude, the magnitude shall be moderate unless:

(i) If the Department finds that the violation had a significant adverse impact on the environment, or posed a significant threat to public health, a determination of major magnitude shall be made. In making a determination of major magnitude, the Department shall consider all available applicable information including such factors as: The degree of deviation from the Commission's and Department's statutes, rules, standards, permits or orders, concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In making this finding, the Department may consider any single factor to be conclusive for the purpose of making a major magnitude determination;

(ii) If the Department finds that the violation had no potential for or actual adverse impact on the environment, nor posed any threat to public health, or other environmental receptors, a determination of minor magnitude shall be made. In making a determination of minor magnitude, the Department shall consider all available applicable information including such factors as: The degree of deviation from the Commission's and Department's statutes, rules, standards, permits or orders, concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In making this finding, the Department may consider any single factor to be conclusive for the purpose of making a minor magnitude determination.

(b) Choose the appropriate base penalty (BP) established by the matrices of OAR 340-012-0042 after determining the class and magnitude of each violation;

(c) Starting with the base penalty, determine the amount of penalty through application of the formula: BP + [(.1 x BP) x (P + H + O + R + C)] + EB, where:

(A) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. A violation is deemed to have become a Prior Significant Action on the date of the issuance of the first Formal Enforcement Action in which it is cited. For the purposes of this determination, violations that were the subject of any prior significant actions that were issued before the effective date of the Division 12 rules as adopted by the Commission in March 1989, shall be classified in accordance with the classifications set forth in the March 1989 rules to ensure equitable consideration of all prior significant actions. The values for "P" and the finding which supports each are as follows:

(i) 0 if no prior significant actions or there is insufficient information on which to base a finding;
(ii) 1 if the prior significant action is one Class Two or two Class Threes;
(iii) 2 if the prior significant action(s) is one Class One or equivalent;
(iv) 3 if the prior significant actions are two Class One or equivalents;
(v) 4 if the prior significant actions are three Class Ones or equivalents;
(vi) 5 if the prior significant actions are four Class Ones or equivalents;
(vii) 6 if the prior significant actions are five Class Ones or equivalents;
(viii) 7 if the prior significant actions are six Class Ones or equivalents;
(ix) 8 if the prior significant actions are seven Class Ones or equivalents;
(x) 9 if the prior violations significant actions are eight Class Ones or equivalents;
(xi) 10 if the prior significant actions are nine Class Ones or equivalents, or if any of the prior significant actions were issued for any violation of ORS 468.996;
(xii) In determining the appropriate value for prior significant actions as listed above, the Department shall reduce the appropriate factor by:
(I) A value of 2 if the date of issuance of all the prior significant actions are greater than three years old; or
(II) A value of 4 if the date of issuance of all the prior significant actions are greater than five years old.
(III) In making the above reductions, no finding shall be less than zero.
(xiii) Any prior significant action which is greater than ten years old shall not be included in the above determination;
(xiv) A permittee, who would have received a Notice of Permit Violation, but instead received a civil penalty or Department Order because of the application of OAR 340-012-0040(2)(d), (e), (f), or (g) shall not have the violation(s) cited in the former action counted as a prior significant action, if the permittee fully complied with the provisions of any compliance order contained in the former action.
(B) "H" is Respondent's history in correcting prior significant actions or taking reasonable efforts to minimize the effects of the violation. In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:
(i) -2 if Respondent took all feasible steps to correct the majority of all prior significant actions;
(ii) 0 if there is no prior history or if there is insufficient information on which to base a finding.
(C) "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows:
(i) 0 if the violation existed for one day or less and did not recur on the same day, or if there is insufficient information on which to base a finding;
(ii) 2 if the violation existed for more than one day or if the violation recurred on the same day.
(D) "R" is whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act of the Respondent. The values for "R" and the finding which supports each are as follows:
(i) 0 if an unavoidable accident, or if there is insufficient information to make a finding;
(ii) 2 if negligent;
(iii) 6 if intentional; or
(iv) 10 if flagrant.
(E) "C" is the Respondent's cooperativeness and efforts to correct the violation. The values for "C" and the finding which supports each are as follows:
(i) -2 if Respondent was cooperative and took reasonable efforts to correct a violation, took reasonable affirmative efforts to minimize the effects of the violation, or took extraordinary efforts to ensure the violation would not be repeated;

(ii) 0 if there is insufficient information to make a finding, or if the violation or the effects of the violation could not be corrected;

(iii) 2 if Respondent was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.

(F) "EB" is the approximated dollar sum of the economic benefit that the Respondent gained through noncompliance. The Department or Commission may assess "EB" whether or not it applies the civil penalty formula above to determine the gravity and magnitude-based portion of the civil penalty, provided that the sum penalty does not exceed the maximum allowed for the violation by rule or statute. "EB" is to be determined as follows:

(i) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable;

(ii) The Department need not calculate nor address the economic benefit component of the civil penalty when the benefit obtained is de minimis;

(iii) In determining the economic benefit component of a civil penalty, the Department may use the U.S. Environmental Protection Agency's BEN computer model, as adjusted annually to reflect changes in marginal tax rates, inflation rate and discount rate. With respect to significant or substantial change in the model, the Department shall use the version of the model that the Department finds will most accurately calculate the economic benefit gained by Respondent's noncompliance. Upon request of the Respondent, the Department will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect that Respondent's actual circumstance. Upon request of the Respondent, the Department will use the model in determining the economic benefit component of a civil penalty;

(iv) As stated above, under no circumstances shall the imposition of the economic benefit component of the penalty result in a penalty exceeding the statutory maximum allowed for the violation by rule or statute. When a violation has extended over more than one day, however, for determining the maximum penalty allowed, the Director may treat the violation as extending over at least as many days as necessary to recover the economic benefit of noncompliance. When the purpose of treating a violation as extending over more than one day is to recover the economic benefit, the Department has the discretion not to impose the gravity and magnitude-based portion of the penalty for more than one day.

(2) In addition to the factors listed in section (1) of this rule, the Director may consider any other relevant rule of the Commission and shall state the effect the consideration had on the penalty. On review, the Commission shall consider the factors contained in section (1) of this rule and any other relevant rule of the Commission.

(3) In determining a civil penalty, the Director may reduce any penalty by any amount the Director deems appropriate when the person has voluntarily disclosed the violation to the Department. In deciding whether a violation has been voluntarily disclosed, the Director may take into account any conditions the Director deems appropriate, including whether the violation was:

(a) Discovered through an environmental auditing program or a systematic compliance program;

(b) Voluntarily discovered;

(c) Promptly disclosed;

(d) Discovered and disclosed independently of the government or a third party;

(e) Corrected and remedied;

(f) Prevented from recurrence;

(g) Not repeated;

(h) Not the cause of significant harm to human health or the environment; and

(i) Disclosed and corrected in a cooperative manner.

(4) The Department or Commission may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the Department or Commission documentary evidence concerning Respondent's inability to pay the full penalty amount:

(a) When the Respondent is currently unable to pay the full amount, the first option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Department or Commission may reduce the penalty only after determining that the Respondent is unable to meet a long-term payment schedule;

(b) In determining the Respondent's ability to pay a civil penalty, the Department may use the U.S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, the Department shall use the version of the model that the Department finds will most accurately calculate the Respondent's ability to pay a civil penalty. Upon request of the Respondent, the Department will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model;

(c) In appropriate circumstances, the Department or Commission may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding the ability or incentive to remain in compliance.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 454.635, ORS 454.645, ORS 459.376, ORS 459.995, ORS 465.900, ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.090 - ORS 468.140, ORS 468.992, ORS 468A.990, ORS 468B.025, ORS 468B.220 & ORS 468B.450

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0046

Written Notice of Assessment of Civil Penalty; When Penalty Payable

(1) A civil penalty shall be due and payable ten days after the order assessing the civil penalty becomes final and the civil penalty is thereby imposed by operation of law or on appeal. A person against whom a civil penalty is assessed shall be served with a notice in the form and manner provided in ORS 183.415 and OAR Chapter 340, Division 11.

(2) The written notice of assessment of civil penalty shall comply with ORS468.135(1) and 183.090, relating to notice and contested case hearing applications, and shall state the amount of the penalty or penalties assessed.

(3) The rules prescribing procedure in contested case proceedings contained in OAR Chapter 340, Division 11 shall apply thereafter.

Stat. Auth.: ORS 459.995, ORS 468.020 & ORS 468.996

Stats. Implemented: ORS 183.090

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1988, f. & cert. ef. 9-14-88; Renumbered from 340-012-0070; DEQ 21-1992, f. & cert. ef. 8-11-92

340-012-0047

Compromise or Settlement of Civil Penalty by Director

(1) Any time after service of the written notice of assessment of civil penalty, the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

(2) In determining whether a penalty should be compromised or settled, the Director may take into account the following:

(a) New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors contained in OAR340-012-0045;

(b) The effect of compromise or settlement on deterrence;

(c) Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

(d) Whether Respondent has had any previous penalties which have been compromised or settled;

(e) Whether the compromise or settlement would be consistent with the Department's goal of protecting the public health and environment;

(f) The relative strength or weakness of the Department's case.

Stat. Auth.: ORS 459.995, ORS 466, ORS 467, ORS 468.020 & ORS 468.996

Stats. Implemented: ORS 183.090 & ORS 183.415

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; Renumbered from 340-12-075; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92

340-012-0048

Stipulated Penalties

Nothing in OAR Chapter 340, Division 12 shall affect the ability of the Commission or Director to include stipulated penalties in a Mutual Agreement and Order, Consent Order, Consent Decree or any other agreement issued under ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B.

Stat. Auth.: ORS 454.625, ORS 459.995, ORS 468.020 & ORS 468.996

Stats. Implemented: ORS 183.090 & ORS 183.415

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0049

Additional Civil Penalties

In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below:

(1) Any person who wilfully or negligently causes an oil spill shall incur a civil penalty commensurate with the amount of damage incurred. The amount of the penalty shall be determined by the Director with the advice of the Director of Fish and Wildlife. In determining the amount of the penalty, the Director may consider the gravity of the violation, the previous record of the violator and such other considerations the Director deems appropriate.

(2) Any person planting contrary to the restriction of subsection (1) of ORS 468.465 pertaining to the open field burning of cereal grain acreage shall be assessed by the Department a civil penalty of $25 for each acre planted contrary to the restrictions.

(3) Whenever an underground storage tank fee is due and owing under ORS 466.785 or 466.795, the Director may issue a civil penalty not less than $25 nor more than $100 for each day the fee is due and owing.

(4) Any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 shall be assessed a civil penalty of $500.

(5) Any person who fails to pay an automobile emission fee when required by law or rule shall be assessed a civil penalty of $50.

(6) Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in this section that are property of the state:

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, $400;

(b) Each mountain sheep or mountain goat, $3,500;
(c) Each elk, $750;
(d) Each silver gray squirrel, $10;
(e) Each game bird other than wild turkey, $10;
(f) Each wild turkey, $50;
(g) Each game fish other than salmon or steelhead trout, $5;
(h) Each salmon or steelhead trout, $125;
(i) Each fur-bearing mammal other than bobcat or fisher, $50;
(j) Each bobcat or fisher, $350;
(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, $500;
(l) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this section, $25.

(7)Any person who intentionally or recklessly violates any provisions of ORS 164.785, 459.205–459.426, 459.705–459.790, ORSChapters 465, 466, 467 or 468 or any rule or standard or order of the commission adopted or issued pursuant to ORS 459.205–459.426, 459.705–459.790, ORSChapters 465, 466, 467 or 468, which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a penalty up to $100,000. When determining the civil penalty sum to be assessed under this section, the Director shall apply the following procedures:

(a) Select one of the following base penalties after determining the cause of the violation:
(A)$50,000 if the violation was caused recklessly;
(B) $75,000 if the violation was caused intentionally;
(C) $100,000 if the violation was caused flagrantly.

(b) Then determine the civil penalty through application of the formula: **BP + [(.1 x BP) (P + H + O + C)] + EB**, in accordance with OAR340-012-0045(1)(c).

Stat. Auth.: ORS 459.995, ORS 466, ORS 467, ORS 468.020 & ORS 468.996
Stats. Implemented: ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.996, ORS 468A.990, ORS 468A.992, ORS 468B.220 & ORS 468B.450
Hist.: DEQ15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92

340-012-0050
Air Quality Classification of Violations

Violations pertaining to air quality shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department Order, or variance;

(b) Constructing or operating a source required to have a permit other than a Basic ACDP without first obtaining the appropriate permit;

(c) Modifying a source with an Air Permit without first notifying and receiving approval from the Department;

(d) Failure to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340 Division ~~25~~238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 Division ~~32~~244;

(e) Violation of a compliance schedule in a permit;

(f) Exceeding a hazardous air pollutant emission limitation;

(g) Exceeding an opacity or criteria pollutant emission limitation in a permit, rule or order by a factor of greater than or equal to two times the limitation;

(h) Exceeding the ~~annual~~ yearly emission limitations of a permit, rule or order;

(i) Failure to perform testing, or monitoring, required by a permit, rule or order that results in failure to show compliance with an emission limitation or a performance standard;

(j) Systematic failure to keep records required by a permit, rule or order;

(k) Failure to submit semi-annual Compliance Certification or Oregon Title V Annual Operating Report;

(l) Failure to file a timely application for an Oregon Title V Operating Permit pursuant to OAR 340-~~028-2120~~Division 0218;

(m) ~~Exceedances of operating limitations that limit the potential to emit of a synthetic minor source and that result in emissions above the Oregon Title V Operating Permit permitting thresholds pursuant to OAR 340-028-0110;~~ Submitting a report, semi-annual Compliance Certification or Oregon Title V Annual Operating Report, or any part thereof, that does not accurately reflect the monitoring, record keeping or other documentation held or performed by the permittee;

(n) Causing emissions that are a hazard to public safety;

(o) Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;

(p) Violation of a work practice requirement for asbestos abatement projects which causes a potential for public exposure to asbestos or release of asbestos into the environment;

(q) Storage or accumulation of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which causes a potential for public exposure to asbestos or release of asbestos into the environment;

(r) Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation, or disposal of asbestos-containing waste material;

(s) Conduct of an asbestos abatement project by a person not licensed as an asbestos abatement contractor;

(t) Violation of a disposal requirement for asbestos-containing waste material which causes a potential for public exposure to asbestos or release of asbestos into the environment;

(u) Failing to hire a licensed contractor to conduct an asbestos abatement project which results in the potential for public exposure to asbestos or release of asbestos into the environment;"

(~~u~~v) Advertising to sell, offering to sell or selling a non-certified woodstove;

(~~v~~w) Open burning of materials which are prohibited from being open burned anywhere in the State by OAR 340-~~023-0042(2)~~264-0060(2);

(~~w~~x) Failure to install vapor recovery piping in accordance with standards set forth in OAR Chapter 340, Division 150;

(~~x~~y) Installing vapor recovery piping without first obtaining a service provider license in accordance with requirements set forth in OAR Chapter 340, Division 160;

(~~y~~z) Submitting falsified actual or calculated emission fee data;

(~~z~~aa) Failure to provide access to premises or records when required by law, rule, permit or order;

(~~aa~~bb) Any violation related to air quality which causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Unless otherwise classified, exceeding an emission limitation, other than an annual emission limitation, or exceeding an opacity limitation by more than five percent opacity in permits, ~~or~~ rules or order;

(b) Violating standards in permits or rules for fugitive emissions, particulate deposition, or odors;

(c) Failure to submit a complete Air Contaminant Discharge Permit application 60 days prior to permit expiration or prior to modifying a source;

(d) Failure to maintain on site records when required by a permit to be maintained on site;

(e) Exceedances of operating limitations that limit the potential to emit ~~of a synthetic minor source~~ that do not result in emissions above the Oregon Title V Operating Permit permitting thresholds pursuant to OAR 340-~~028-0110~~ Division 218;

(f) Failure to perform testing or monitoring required by a permit, rule or order unless otherwise classified.

(g) Illegal open burning of agricultural, commercial, construction, demolition, and/or industrial waste except for open burning in violation of OAR 340-~~023-0042(2)~~264-0060(2);

(h) Failing to comply with notification and reporting requirements in a permit;

(i) Failure to comply with asbestos abatement licensing, certification, or accreditation requirements;

(j) Failure to provide notification of an asbestos abatement project;

(k) Violation of a work practice requirement for asbestos abatement projects that does not cause a potential for public exposure to asbestos and does not release asbestos into the environment;

(l) Violation of a disposal requirement for asbestos-containing waste material that does not cause a potential for public exposure to asbestos and does not release asbestos into the environment;

(m) Failure to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project.

(n) Failure to display permanent labels on a certified woodstove;

(o) Alteration of a permanent label for a certified woodstove;

(p) Failure to use Department-approved vapor control equipment when transferring fuel;

(q) Operating a vapor recovery system without first obtaining a piping test performed by a licensed service provider as required by OAR Chapter 340, Division 160;

(r) Failure to obtain Department approval prior to installing a Stage II vapor recovery system not already registered with the Department as specified in Department rules;

(s) Installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons using approved recovery and recycling equipment;

(t) Selling, or offering to sell, or giving as a sales inducement any aerosol spray product which contains as a propellant any compound prohibited under ORS 468A.655;

(u) Selling any chlorofluorocarbon or halon containing product prohibited under ORS 468A.635;

(v) Failure to pay an emission fee;

(w) Submitting inaccurate emission fee data;

(x) Violation of OAR 340-~~022-0740~~ 242-0620 ~~or 340-022-0750(1),~~ by a person who has performed motor vehicle refinishing on 10 or more on-road motor vehicles in the previous 12 months~~.~~;

(y) Constructing or operating a source required to have a Basic ACDP;

(z) Any violation of the Employee Commute Option rules contained in OAR 340-242-0010 to 0290;

(~~y~~aa) Any violation related to air quality which is not otherwise classified in these rules.

(3) Class Three:

(a) Failure to perform testing, or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Illegal residential open burning;

(c) Improper notification of an asbestos abatement project;

(d) Failure to submit a completed renewal application for an asbestos abatement license in a timely manner;

(e) Failure to display a temporary label on a certified woodstove;

(f) Exceeding opacity limitation in permits or rules by five percent opacity or less.

(g) Violation of OAR 340-~~022-0740~~-242-0620-~~or 340-022-0750(1),~~ by a person who has performed motor vehicle refinishing on fewer than 10 on-road motor vehicles in the previous 12 months.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
Stat. Auth.: ORS 468.020, ORS 468A.025 & ORS 468A.045
Stats. Implemented: ORS 468.020 & ORS 468A.025
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0052
Noise Control Classification of Violations

Violations pertaining to noise control shall be classified as follows:
(1) Class One:
(a) Violation of a requirement or condition of a Commission or Department order or variance;
(b) Violations that exceed noise standards by ten decibels or more;
(c) Exceeding the ambient degradation rule by five decibels or more; or
(d) Failure to submit a compliance schedule required by OAR 340-035-0035(2);
(e) Operating a motor sports vehicle without a properly installed or well-maintained muffler or exceeding the noise standards set forth in OAR 340-035-0040(2);
(f) Operating a new permanent motor sports facility without submitting and receiving approval of projected noise impact boundaries;
(g) Failure to provide access to premises or records when required by law, rule, or order;
(h) Violation of motor racing curfews set forth in OAR 340-035-0040(6);
(i) Any violation related to noise control which causes a major harm or poses a major risk of harm to public health or the environment.
(2) Class Two:
(a) Violations that exceed noise standards by three decibels or more;
(b) Advertising or offering to sell or selling an uncertified racing vehicle without displaying the required notice or obtaining a notarized affidavit of sale;
(c) Any violation related to noise control which is not otherwise classified in these rules.
(3) Violations that exceed noise standards by one or two decibels are Class III violations.
Stat. Auth.: ORS 467.030 & ORS 468.020
Stats. Implemented: ORS 467.050 & ORS 467.990
Hist.: DEQ 101, f. & ef. 10-1-75; DEQ 22-1984, f. & ef. 11-8-84; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0055
Water Quality Classification of Violations

Violations pertaining to water quality shall be classified as follows:
(1) Class One:
(a) Violation of a requirement or condition of a Commission or Department Order;
(b) Causing pollution of waters of the State;
(c) Reducing the water quality of waters of the State below water quality standards;
(d) Any discharge of waste that enters waters of the state, either without a waste discharge permit or from a discharge point not authorized by a waste discharge permit;
(e) Failure to comply with statute, rule, or permit requirements regarding notification of a spill or upset condition which results in a non-permitted discharge to public waters;

(f) Violation of a permit compliance schedule;

(g) Any violation of any pretreatment standard or requirement by a user of a municipal treatment works which either impairs or damages the treatment works, or causes a major harm or poses a major risk of harm to public health or the environment;

(h) Operation of a disposal system without first obtaining a Water Pollution Control Facility Permit;

(i) Failure to provide access to premises or records when required by law, rule, permit or order;

(j) Failure of any ship carrying oil to have financial assurance as required in ORS 468B.300–468B.335 or rules adopted thereunder;

(k) Any violation related to water quality which causes a major harm or poses a major risk of harm to public health or the environment.

(l) Unauthorized changes, modifications, or alterations to a facility operating under a WPCF or NPDES permit.

(m) Intentionally submitting false information;

(n) Operating or supervising a wastewater treatment system without proper certification.

(2) Class Two:

(a) Failure to submit a report or plan as required by rule, permit, or license, except for a report required by permit compliance schedule;

(b) Any violation of OAR Chapter 340, Division 49 regulations pertaining to certification of wastewater system operator personnel unless otherwise classified;

(c) Placing wastes such that the wastes are likely to enter public waters by any means;

(d) Failure by any ship carrying oil to keep documentation of financial assurance on board or on file with the Department as required by ORS 468B.300–468B.335 or rules adopted thereunder;

(e) Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a Department-approved system unless otherwise classified in OAR 340-012-0055 or 340-012-0060;

(f) Any violation of a management, monitoring, or operational plan established pursuant to a waste discharge permit, that is not otherwise classified in these rules.

(g) Any violation related to water quality which is not otherwise classified in these rules.

(3) Class Three:

(a) Failure to submit a discharge monitoring report on time;

(b) Failure to submit a complete discharge monitoring report;

(c) Exceeding a waste discharge permit biochemical oxygen demand (BOD), carbonaceous biochemical oxygen demand (CBOD), or total suspended solids (TSS) limitation by a concentration of 20 percent or less, or exceeding a mass loading limitation by ten percent or less;

(d) Violation of a removal efficiency requirement by a factor of less than or equal to 0.2 times the number value of the difference between 100 and the applicable removal efficiency requirement (e.g., if the requirement is 65 percent removal, 0.2 (100-65) = 0.2(35) = 7 percent; then 7 percent would be the maximum percentage that would qualify under this rule for a permit with a 65 percent removal efficiency requirement);

(e) Violation of a pH requirement by less than 0.5 pH.

Stat. Auth.: ORS 468.020 & ORS 468B.015

Stats. Implemented: ORS 468.090 - ORS 468.140, ORS 468B.025, ORS 468B.220 & ORS 468B.305

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0060

On-Site Sewage Disposal Classification of Violations

Violations pertaining to On-Site Sewage Disposal shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department order;

(b) Performing, advertising or representing one's self as being in the business of performing sewage disposal services without first obtaining and maintaining a current sewage disposal service license from the Department;

(c) Installing or causing to be installed an on-site sewage disposal system or any part thereof, or repairing any part thereof, without first obtaining a permit;

(d) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by the Department;

(e) Operating or using an on-site sewage disposal system that is failing by discharging sewage or effluent;

(f) Failure to provide access to premises or records when required by law, rule, permit or order;

(g) Any violations related to on-site sewage disposal which cause major harm or pose a major risk of harm to public health, welfare, safety or the environment.

(2) Class Two:

(a) Installing or causing to be installed an on-site sewage disposal system, or any part thereof, or the repairing of any part thereof, which fails to meet the requirements for satisfactory completion within 30 days after written notification or posting of a Correction Notice at the site;

(b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization from the Agent;

(c) Operating or using a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion;

(d) Providing any sewage disposal service in violation of any statute, rule, license, or permit, provided that the violation is not otherwise classified in these rules;

(e) Failing to obtain an authorization notice from the Agent prior to affecting change to a dwelling or commercial facility that results in the potential increase in the projected peak sewage flow from the dwelling or commercial facility in excess of the sewage disposal system's peak design flow;

(f) Installing or causing to be installed a nonwater-carried waste disposal facility without first obtaining written approval from the Agent;

(g) Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a Department approved on-site system;

(h) Any violation related to on-site sewage disposal which is not otherwise classified in these rules.

(3) Violations where the sewage disposal system design flow is not exceeded, placing an existing system into service, or changing the dwelling or type of commercial facility, without first obtaining an authorization notice are Class Three violations.

Stat. Auth.: ORS 454.050, ORS 454.625 & ORS 468.020

Stats. Implemented: ORS 454.635, ORS 454.645 & ORS 468.090 - ORS 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 4-1981, f. & ef. 2-6-81; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. &cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0065

Solid Waste Management Classification of Violations

Violations pertaining to the management, recovery and disposal of solid waste shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Establishing, expanding, maintaining or operating a disposal site without first obtaining a registration or permit;

(c) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to the Department and obtaining Department approval;

(d) Disposing of or authorizing the disposal of a solid waste at a location not permitted by the Department to receive that solid waste;

(e) Violation of the freeboard limit which results in the actual overflow of a sewage sludge or leachate lagoon;

(f) Violation of the landfill methane gas concentration standards;

(g) Violation of any federal or state drinking water standard in an aquifer beyond the solid waste boundary of the landfill, or an alternative boundary specified by the Department;

(h) Violation of a permit-specific groundwater concentration limit, as defined in OAR 340-040-0030(3) at the permit-specific groundwater concentration compliance point, as defined in OAR 340-040-0030(2)(e);

(i) Failure to perform the groundwater monitoring action requirements specified in OAR 340-040-0030(5), when a significant increase (for pH, increase or decrease) in the value of a groundwater monitoring parameter is detected;

(j) Impairment of the beneficial use(s) of an aquifer beyond the solid waste boundary or an alternative boundary specified by the Department;

(k) Deviation from the Department approved facility plans which results in an safety hazard, public health hazard or damage to the environment;

(l) Failure to properly construct and maintain groundwater, surface water, gas or leachate collection, treatment, disposal and monitoring facilities in accordance with the facility permit, the facility environmental monitoring plan, or Department rules;

(m) Failure to collect, analyze and report ground-water, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or Department rules;

(n) Violation of a compliance schedule contained in a solid waste disposal or closure permit;

(o) Failure to provide access to premises or records when required by law, rule, permit or order;

(p) Knowingly disposing, or accepting for disposal, materials prohibited from disposal at a solid waste disposal site by statute, rule, permit or order;

(q) Accepting, handling, treating or disposing of clean-up materials contaminated by hazardous substances by a landfill in violation of the facility permit and plans as approved by the Department or the provisions of OAR 340-093-0170(3);

(r) Accepting for disposal infectious waste not treated in accordance with laws and Department rules;

(s) Accepting for treatment, storage or disposal wastes defined as hazardous under ORS 466.005, et seq., or wastes from another state which are hazardous under the laws of that state without specific approval from the Department;

(t) Mixing for disposal or disposing of principal recyclable material that has been properly prepared and source separated for recycling;

(u) Receiving special waste in violation of or without a Department approved Special Waste Management Plan;

(v) Failure to follow a Department approved Construction Quality Assurance (CQA) plan when constructing a waste cell;

(w) Failure to comply with a Department approved Remedial Investigation Workplan developed in accordance with OAR 340-040-0040;

(x) Failure to establish and maintain financial assurance as required by statute, rule, permit or order;

(y) Open burning in violation of OAR 340-~~023-0042(2)~~264-0060(2);

(z) Failure to abide by the terms of a permit automatically terminated due to a failure to submit a timely application for renewal as set forth in OAR 340-093-0115(1)(c);

(~~z~~aa) Any violation related to the management, recovery and disposal of solid waste which causes major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Violation of a condition or term of a Letter of Authorization;

(b) Failure of a permitted landfill, solid waste incinerator or a municipal solid waste compost facility operator or a metropolitan service district to report amount of solid waste disposed in accordance with the laws and rules of the Department;

(c) Failure to accurately report weight and type of material recovered or processed from the solid waste stream in accordance with the laws and rules of the Department;

(d) Failure of a disposal site to obtain certification for recycling programs in accordance with the laws and rules of the Department prior to accepting solid waste for disposal;

(e) Acceptance of solid waste by a permitted disposal site from a person that does not have an approved solid waste reduction program in accordance with the laws and rules of the Department;

(f) Failure to comply with any solid waste permit requirement pertaining to permanent household hazardous waste collection facility operations;

(g) Failure to comply with landfill cover requirements, including but not limited to daily, intermediate, and final covers, and limitation of working face size;

(h) Unless otherwise classified failure to comply with any plan approved by the Department;

(i) Failure to submit a permit renewal application 180 days prior to the expiration date of the existing permit;

(j) Failure to establish and maintain a facility operating record for a municipal solid waste landfill;

(k) Any violation related to solid waste, solid waste reduction, or any violation of a solid waste permit not otherwise classified in these rules.

(3) Class Three:

(a) Failure to post required signs;

(b) Failure to control litter;

(c) Unless otherwise classified failure to notify the Department of any name or address change of the owner or operator of the facility within ten days of the change.

Stat. Auth.: ORS. 459.045 & ORS 468.020

Stats. Implemented: ORS 459.205, ORS 459.376, ORS 459.995 & ORS 468.090 - ORS 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0066

Solid Waste Tire Management Classification of Violations

Violations pertaining to the storage, transportation and management of waste tires or tire-derived products shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Establishing, expanding, or operating a waste tire storage site without first obtaining a permit;

(c) Systematic failure to maintain written records of waste tire generation and disposal as required;

(d) Disposing of waste tires or tire-derived products at an unauthorized site;

(e) Violation of the compliance schedule or fire safety requirements of a waste tire storage site permit;

(f) Hauling waste tires or advertising or representing one's self as being in the business of a waste tire carrier without first obtaining a waste tire carrier permit as required by laws and rules of the Department;

(g) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires;

(h) Failure to establish and maintain financial assurance as required by statute, rule, permit or order;

(i) Failure to provide access to premises or records when required by law, rule, permit or order;

(j) Any violation related to the storage, transportation or management of waste tires or tire-derived products which causes major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Violation of a waste tire storage site or waste tire carrier permit other than a specified Class One or Class Three violation;

(b) Failure to submit a permit renewal application prior to the expiration date of the existing permit within the time required by statute, rule, or permit;

(c) Hauling waste tires in a vehicle not identified in a waste tire carrier permit or failing to display required decals as described in a permitee's waste tire carrier permit;

(d) Violation of a condition or term of a Letter Authorization;

(e) Any violation related to the storage, transportation or management of waste tires or tire-derived products which is not otherwise classified in these rules.

(3) Class Three:

(a) Failure to submit required annual reports in a timely manner;

(b) Failure to keep required records on use of vehicles;

(c) Failure to post required signs;

(d) Failure to submit a permit renewal application in a timely manner;

(e) Failure to submit permit fees in a timely manner;

(f) Failure to maintain written records of waste tire disposal and generation.

Stat. Auth.: ORS 459.785 & ORS 468.020

Stats. Implemented: ORS 459.705 - ORS 459.790, ORS 459.992 & ORS 468.090 - ORS 468.140

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0067

Underground Storage Tank and Heating Oil Tank Classification of Violations

Violations pertaining to Under-ground Storage Tanks and cleanup of petroleum contaminated soil at heating oil tanks shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Failure to report a release or suspected release from an underground storage tank or a heating oil tank as required by statute, rule or permit;

(c) Failure to initiate and complete the investigation or cleanup of a release from an underground storage tank or a heating oil tank;

(d) Failure to prevent a release from an underground storage tank;

(e) Failure to submit required reports from the investigation or cleanup of a release from an underground storage tank or heating oil tank;

(f) Failure to provide access to premises or records when required by law, rule, permit or order;

(g) Placement of a regulated material into an unpermitted underground storage tank;

(h) Installation of an underground storage tank in violation of the standards or procedures adopted by the Department;

(i) Failure to initiate and complete free product removal in accordance with OAR 340-122-0235;

(j) Providing installation, retrofitting, decommissioning, or testing services on an underground storage tank or providing cleanup of petroleum contaminated soil at an underground storage tank facility without first registering or obtaining an underground storage tank service providers license;

(k) Supervising the installation, retrofitting, decommissioning, or testing of an underground storage tank or supervising cleanup of petroleum contaminated soil at an underground storage tank facility without first obtaining an underground storage tank supervisors license;

(l) Any other violation related to underground storage tanks or heating oil tanks or cleanup of petroleum contaminated soil at heating oil tanks which poses a major risk of harm to public health and the environment.

(2) Class Two:

(a) Failure to conduct required underground storage tank monitoring and testing activities;

(b) Failure to conform to operational standards for underground storage tanks and leak detection systems;

(c) Failure to obtain a permit prior to the installation or operation of an underground storage tank;

(d) Decommissioning, installing, or retrofitting an underground storage tank or conducting a soil matrix cleanup without first providing the required notifications to the Department;

(e) Failure to properly decommission an underground storage tank;

(f) Providing installation, retrofitting, decommissioning or testing services on a regulated underground storage tank or providing cleanup of petroleum contaminated soil at a regulated underground storage tank that does not have a permit;

(g) Failure by a seller or distributor to obtain the tank permit number before depositing product into the underground storage tank or failure to maintain a record of the permit numbers;

(h) Allowing the installation, retrofitting, decommissioning, or testing of an underground storage tank or cleanup of petroleum contaminated soil at an underground storage tank by any person not licensed by the department;

(i) Allowing cleanup of petroleum contaminated soil at a heating oil tank by any person not licensed by the Department;

(j) Providing petroleum contaminated soil cleanup services at a heating oil tank without first registering or obtaining a soil matrix cleanup service provider license;

(k) Providing supervision of petroleum contaminated soil at a heating oil tank without first registering or obtaining a soil matrix cleanup supervision license;

(l) Supervising petroleum contaminated soil cleanup services at a heating oil tank without first registering or obtaining a soil matrix cleanup supervisor license;

(m) Failure to submit a corrective action plan (CAP) in accordance with the schedule or format established by the Department pursuant to OAR 340-122-0250;

(n) Failure by the tank owner to provide the permit number to persons depositing product into the underground storage tank;

(o) Any other violation related to underground storage tanks or heating oil tanks or cleanup of petroleum contaminated soil at a heating oil tank that is not otherwise classified in these rules.

(3) Class Three:

(a) Failure of a new owner of an underground storage tank to submit an application for a permit modification or a new permit;

(b) Failure of a tank seller or product distributor to notify a tank owner or operator of the Department's permit requirements;

(c) Failure to provide information to the Department regarding the contents of an underground storage tank;

(d) Failure to maintain adequate decommissioning records.

Stat. Auth.: ORS 466.746 & ORS 468.020

Stats. Implemented: ORS 466.760 - ORS 466.770, ORS 466.805 - ORS 466.835 & ORS 466.895

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ

21-1992, f. & cert. ef. 8-11-92;DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0068

Hazardous Waste Management and Disposal Classification of Violations

Violations pertaining to the management and disposal of hazardous waste, including universal wastes, shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Department or Commission order;

(b) Failure to make a complete and accurate hazardous waste determination of a residue as required by OAR 340-102-0011;

(c) Failure to have a waste analysis plan as required by **40 CFR 265.13**;

(d) Operation of a hazardous waste treatment, storage or disposal facility (TSD) without first obtaining a permit or without having interim status pursuant to OAR 340-105-0010(2)(a);

(e) Accumulation of hazardous waste on site for longer than twice the applicable generator allowable on-site accumulation period;

(f) Transporting or offering for transport hazardous waste for off-site shipment without first preparing a manifest;

(g) Accepting for transport hazardous waste which is not accompanied by a manifest;

(h) Systematic failure of a hazardous waste generator to comply with the manifest system requirements;

(i) Failure to submit a manifest discrepancy report or exception report;

(j) Failure to prevent the unknown entry or prevent the possibility of the unauthorized entry of person or livestock into the waste management area of a TSD facility;

(k) Failure to manage ignitable, reactive, or incompatible hazardous wastes as required under **40 CFR Part 264** and **265.17(b)(1), (2), (3), (4)** and **(5)**;

(l) Illegal disposal of hazardous waste;

(m) Disposal of hazardous waste in violation of the land disposal restrictions;

(n) Failure to contain waste pesticide or date containers of waste pesticide as required by OAR 340-109-0010(2);

(o) Treating or diluting universal wastes in violation of **40 CFR 273.11, 273.31** or OAR 340-113-0030(5);

(p) Use of empty non-rigid or decontaminated rigid pesticide containers for storage of food, fiber or water intended for human or animal consumption;

(q) Mixing, solidifying, or otherwise diluting hazardous waste to circumvent land disposal restrictions;

(r) Incorrectly certifying a hazardous waste for disposal/treatment in violation of the land disposal restrictions;

(s) Failure to submit a Land Disposal notification, demonstration or certification with a shipment of hazardous waste;

(t) Shipping universal waste to a site other than an off-site collection site, destination facility or foreign destination in violation of **40 CFR 273.18** or **273.38**;

(u) Failure to comply with the hazardous waste tank integrity assessments and certification requirements;

(v) Failure of an owner/operator of a TSD facility to have a closure and/or post closure plan and/or cost estimates;

(w) Failure of an owner/operator of a TSD facility to retain an independent registered professional engineer to oversee closure activities and certify conformity with an approved closure plan;

(x) Failure of an owner/operator of a TSD facility to establish or maintain financial assurance for closure and/or post closure care;

(y) Systematic failure of an owner/operator of a TSD facility or a generator of hazardous waste to conduct inspections;

(z) Failure of an owner/operator of a TSD facility or generator to promptly correct any hazardous condition discovered during an inspection;

(aa) Failing to prepare a Contingency Plan;

(bb) Failure to follow an emergency procedure contained in a Contingency Plan or other emergency response plan when failure could result in serious harm;

(cc) Storage of hazardous waste in a container which is leaking or presenting a threat of release;

(dd) Storing more than 100 containers of hazardous waste without complying with the secondary containment requirements at **40 CFR 264.175**;

(ee) Systematic failure to follow hazardous waste container labeling requirements or lack of knowledge of container contents;

(ff) Failure to label a hazardous waste container where such failure could cause an inappropriate response to a spill or leak and substantial harm to public health or the environment;

(gg) Failure to date a hazardous waste container with a required accumulation date or failure to document length of time hazardous waste was accumulated;

(hh) Failure to comply with the export requirements for hazardous wastes;

(ii) Violation of any TSD facility permit, provided that the violation is equivalent to any Class I violation set forth in these rules;

(jj) Systematic failure to comply with hazardous waste generator annual reporting requirements, Treatment, Storage, Disposal and Recycling facility annual reporting requirements and annual registration information;

(kk) Failure to properly install groundwater monitoring wells such that detection of hazardous waste or hazardous constituents that migrate from the waste management area cannot be immediately be detected;

(ll) Failure to install any groundwater monitoring wells;

(mm) Failure to develop and follow a groundwater sampling and analysis plan using proper techniques and procedures;

(nn) Generating and treating, storing, disposing of, transporting, and/or offering for transportation, hazardous waste without first obtaining an EPA Identification Number;

(oo) Systematic failure of a large-quantity hazardous waste generator or TSD facility to properly control volatile organic hazardous waste emissions;

(pp) Failure to provide access to premises or records when required by law, rule, permit or order;

(qq) Any violation related to the generation, management and disposal of hazardous waste which causes major harm or poses a major risk of harm to public health or the environment.

(2) Class two:

(a) Failure to keep a copy of the documentation used to determine whether a residue is a hazardous waste;

(b) Failure to label a tank or container of hazardous wastes with the words "Hazardous Waste," "Pesticide Waste," "Universal Waste" or with other words as required that identify the contents;

(c) Failure to comply with hazardous waste generator annual reporting requirements, Treatment, Storage, Disposal and Recycling facility annual reporting requirements and annual registration information, unless otherwise classified;

(d) Failing to keep a container of hazardous waste closed except when necessary to add or remove waste;

(e) Failing to inspect areas where containers of hazardous waste are stored, at least weekly;

(f) Failure of a hazardous waste generator to maintain aisle space adequate to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination;

(g) Accumulating hazardous waste on-site, without fully complying with the Personnel Training requirements;

(h) Failure to manage universal waste in a manner that prevents releases into the environment;

(i) Failure to comply with the empty pesticide container management requirements unless otherwise classified;

(j) Failure of a dry cleaner subject to ORS 465, to comply with the waste minimization requirements in ORS 465.505(1)(a-g);

(k) Failure of a dry cleaner subject to ORS 465, to comply with the waste minimization reporting requirements in ORS 465.505(3);

(l) Failure of a dry cleaner subject to ORS 465, to immediately report any release of dry cleaning solvent in excess of 1 pound;

(m) Any violation pertaining to the generation, management and disposal of hazardous waste which is not otherwise classified in these rules is a Class Two violation.

(3) Class three:

(a) Accumulation of hazardous waste on site by a large-quantity generator for less than ten days over the allowable on-site accumulation period;

(b) Accumulation of hazardous waste on site by a small-quantity generator for less than twenty days over the allowable on-site accumulation period;

(c) Failure of a large-quantity generator of hazardous waste to retain signed copies of manifests for at least three years when less than 5% of the reviewed manifests are missing and the facility is able to obtain copies during the inspection;

(d) Failure of a small-quantity generator of hazardous waste to retain signed copies of manifests for at least three years when only 3 of the reviewed manifests are missing and the facility is able to obtain copies and submit them to the Department within 10 days of the inspection;

(e) Failure to label only one container or tank which is less than 60 gallons in volume and in which hazardous waste was accumulated on site, with the required words "Hazardous Waste," "Pesticide Waste," "Universal Waste" or with other words as required that identify the contents;

(f) Failure of a large-quantity generator to retain copies of land disposal restriction notifications, demonstrations, or certifications when less than 5% of the reviewed land disposal restriction notices are missing and the facility is able to obtain copies during the inspection;

(g) Failure of a small-quantity generator to retain copies of land disposal restriction notifications, demonstrations, or certifications when 3 or fewer of the reviewed land disposal restriction notices missing and the facility is able to obtain copies and submit them to the Department within 10 days of the inspection;

(h) Failure to keep a container of hazardous waste located in a "satellite accumulation area" closed except when necessary to add or remove waste, when only one container is open;

(i) Failure to properly label a container of pesticide-containing material for use or reuse as required by OAR 340-109-0010(1)

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 459.995, ORS 466.070 - ORS 466.080, ORS 466.625 & ORS 468.020

Stats. Implemented: ORS 466.635 - ORS 466.680, ORS 466.880 - ORS 466.890 & ORS 468.090 - ORS 468.140

Hist.: DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 9-1986, f. & ef. 5-1-86; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0069

Oil and Hazardous Material Spill and Release Classification of Violations

Violations pertaining to spills or releases of oil or hazardous materials shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Failure to provide access to premises or records when required by law, rule, permit or order;

(c) Failure by any person having ownership or control over oil or hazardous materials to immediately cleanup spills or releases or threatened spills or releases;

(d) Failure by any person having ownership or control over oil or hazardous materials to immediately report all spills or releases or threatened spills or releases in amounts equal to or greater than the reportable quantity;

(e) Any violation related to the spill or release of oil or hazardous materials which causes a major harm or poses a major risk of harm to public health or the environment;

(f) Any spill or release of oil or hazardous materials which enters waters of the state.

(g) Failure to have a spill response or contingency plan; or failure to follow emergency procedures contained in a spill response or contingency plan when the plan is required by permit, rule, or order; or failure to follow emergency requirements at OAR 340-108-0020(2); when failure could result in serious harm;

(2) Any violation related to the spill or release of oil or hazardous materials which is not otherwise classified in these rules is a Class Two violation.

Stat. Auth.: ORS 466.625 & ORS 468.020

Stats. Implemented: ORS 466.635 - ORS 466.680, ORS 466.890 & ORS 468.090 - ORS 468.140

Hist.: DEQ 18-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0071

PCB Classification of Violations

Violations pertaining to the management and disposal of polychlorinated biphenyls (PCB) shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Treating or disposing of PCBs anywhere other than at a permitted PCB disposal facility;

(c) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit;

(d) Failure to provide access to premises or records when required to by law, rule, permit or order;

(e) Any violation related to the management and disposal of PCBs which causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Violating a condition of a PCB disposal facility permit;

(b) Any violation related to the management and disposal of PCBs which is not otherwise classified in these rules.

Stat. Auth.: ORS 459.995, ORS 466.625, ORS 467.030, ORS 468.020 & ORS 468.996

Stats. Implemented: ORS 466.255, ORS 466.265 - ORS 466.270, ORS 466.530 & ORS 466.880 - ORS 466.890

Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0072

Used Oil Management Classification of Violations

Violations pertaining to the management of used oil shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Department or Commission Order;

(b) Using used oil as a dust suppressant or pesticide, or otherwise spreading used oil directly in the environment;

(c) Collecting, processing, storing, disposing of, and/or transporting, used oil without first obtaining an EPA Identification number;

(d) Burning used oil with less than 5,000 Btu/pound for the purpose of "energy recovery" in violation of OAR 340-111-0110(3)(b);

(e) Offering for sale used oil as specification used oil-fuel when the used oil does not meet used oil-fuel specifications;

(f) Offering to sell off-specification used oil fuel to facility not meeting the definition of an industrial boiler or furnace, or failing to obtain proper certification under **40 CFR 179.75**;

(g) Burning off-specification used oil in a device not specifically exempted under **40 CFR 279.60(a)** that does not meet the definition of an industrial boiler or furnace

(h) Storing or managing used oil in a surface impoundment;

(i) Storing used oil in containers which are leaking or present a threat of release;

(j) Failure by a used oil transporter or processor to determine whether the halogen content of used oil exceeds that permissible for used oil;

(k) Failure to develop and follow a written waste analysis plan when required by law;

(l) Failure by a used-oil processor or transporter to manage used-oil residues as required under 40 CFR 279(10)(e);

(m) Any violation related to the management of used oil which causes major harm or poses a major risk of harm to public health or the environment;

(n) Failure to provide access to premises or records when required to do so by law, rule, permit or order.

(2) Class Two:

(a) Failure to close or cover used oil tanks or containers as required by OAR 340-111-0032(2);

(b) Failing to submit annual used oil handling reports;

(c) Failure by a used-oil transfer facility, processors, or off-specification used-oil burners to store used oil within secondary containment;

(d) Failure to label each container or tank in which used oil was accumulated on site with the words "used oil";

(e) Failure of a used-oil processor to keep a written operating record at the facility in violation of **40 CFR 279.57**;

(f) Failure by a used-oil processor to prepare and maintain a preparedness and prevention plan;

(g) Failure by a used-oil processor to close out used-oil tanks or containers when required by **40 CFR 279.54(h)**;

(h) Any violation related to the management of used oil which is not otherwise classified in these rules is a Class two violation.

(3) Class three: Failure to label one container or tank in which used oil was accumulated on site, when there are five or more present, with the required words "used oil."

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 459.995, ORS 468.020, ORS 468.869, ORS 468.870 & ORS 468.996

Stats. Implemented: ORS 459A.580 - ORS 459A.585, ORS 459A.590 & ORS 468.090 - ORS 468.140

Hist.: DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0073

Environmental Cleanup Classification of Violations

Violations of ORS 465.200 through 465.420 and related rules or orders pertaining to environmental cleanup shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department order;

(b) Failure to provide access to premises or records when required to do so by law, rule, permit or order;

(c) Any violation related to environmental investigation or cleanup which causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Failure to provide information under ORS 465.250;

(b) Any violation related to environmental investigation or cleanup which is not otherwise classified in these rules.

Stat. Auth.: ORS 465.280, ORS 465.400 - ORS 465.410, ORS 465.435 & ORS 468.020

Stats. Implemented: ORS 465.210 & ORS 468.090 - ORS 468.140

Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0090

Selected Magnitude Categories

(1) Magnitudes for select violations pertaining to Air Quality may be determined as follows:

(a) Opacity limitation violations:

(A) Major — Opacity measurements or readings of more than 40 percent opacity over the applicable limitation;

(B) Moderate — Opacity measurements or readings between greater than 10 percent and 40 percent or less opacity over the applicable limitation;

(C) Minor — Opacity measurements or readings of ten percent or less opacity over the applicable limitation.

(b) Steaming rates, performance standards, and fuel usage limitations:

(A) Major — Greater than 1.3 times any applicable limitation;

(B) Moderate — From 1.1 up to and including 1.3 times any applicable limitation;

(C) Minor — Less than 1.1 times any applicable limitation.

(c) Air contaminant emission limitation violations for selected air pollutants:

(A) Magnitude determination shall be made based upon the following table: [Table not included. See ED. NOTE.]

(B) Major:

(i) Exceeding the annual amount as established by permit, rule or order by more than the above amount;

(ii) Exceeding the monthly amount as established by permit, rule or order by more than ten percent of the above amount;

(iii) Exceeding the daily amount as established by permit, rule or order by more than 0.5 percent of the above amount;

(iv) Exceeding the hourly amount as established by permit, rule or order by more than 0.1 percent of the above amount.

(C) Moderate:

(i) Exceeding the annual amount as established by permit, rule or order by an amount from 50 up to and including 100 percent of the above amount;

(ii) Exceeding the monthly amount as established by permit, rule or order by an amount from five up to and including ten percent of the above amount;

(iii) Exceeding the daily amount as established by permit, rule or order by an amount from 0.25 up to and including 0.50 percent of the above amount;

(iv) Exceeding the hourly amount as established by permit, rule or order by an amount from 0.05 up to and including 0.10 percent of the above amount.

(D) Minor:

(i) Exceeding the annual amount as established by permit, rule or order by an amount less than 50 percent of the above amount;

(ii) Exceeding the monthly amount as established by permit, rule or order by an amount less than five percent of the above amount;

(iii) Exceeding the daily amount as established by permit, rule or order by an amount less than 0.25 percent of the above amount;

(iv) Exceeding the hourly amount as established by permit, rule or order by an amount less than 0.05 percent of the above amount.

(d) Asbestos violations:

(A) Major — More than 260 lineal feet or more than 160 square feet or more than 35 cubic feet of asbestos-containing material;

(B) Moderate — From 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet or from 17 cubic feet up to and including 35 cubic feet of asbestos-containing material;

(C) Minor — Less than 40 lineal feet or 80 square feet or less than 17 cubic feet of asbestos-containing material;

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(e) Open burning violations:

(A) Major — Initiating or allowing the initiation of open burning of material constituting more than five cubic yards in volume;

(B) Moderate — Initiating or allowing the initiation of open burning of material constituting from one up to and including five cubic yards in volume, or if the Department lacks sufficient information on which to base a determination;

(C) Minor — Initiating or allowing the initiation of open burning of material constituting less than one cubic yard in volume;

(D) For the purposes of determining the magnitude of a violation only, five tires shall be deemed the equivalent in volume to one cubic yard.

(2) Magnitudes for select violations pertaining to Water Quality may be determined as follows:

(a) Violating wastewater discharge limitations:

(A) Major:

(i) Discharging more than 30% outside any applicable range for flow rate, concentration limitation, or mass limitation, except for toxics, pH, and bacteria; or

(ii) Discharging more than 10% over any applicable concentration limitation or mass load limitations for toxics; or

(iii) Discharging wastewater having a pH of more than 1.5 above or below any applicable pH range; or

(iv) Discharging more than 1,000 bacteria per 100 milliliters (bact./100 mls) over the effluent limitation; or

(v) Discharging wastes having more than 10% below any applicable removal rate.

(B) Moderate:

(i) Discharging from 10% to 30% outside any applicable range for flow rate, concentration limitation, or mass limitation, except for toxics, pH, and bacteria; or

(ii) Discharging from 5% to 10% over any applicable concentration limitation or mass load limitations for toxics; or

(iii) Discharging wastewater having a pH from 0.5 to 1.5 above or below any applicable pH range; or

(iv) Discharging from 500 to 1,000 bact./100 mls over the effluent limitation; or

(v) Discharging wastewater having from 5% to 10% below any applicable removal rate.

(C) Minor:

(i) Discharging less than 10% outside any applicable range for flow rate, concentration limitation or mass limitation, except for toxics, pH, and bacteria; or

(ii) Discharging less than 5% over any applicable concentration limitation or mass load limitations for toxics; or

(iii) Discharging wastewater having a pH of less than 0.5 above or below any applicable pH range; or

(iv) Discharging less than 500 bact./100 mls over the effluent limitation; or

(v) Discharging wastewater having less than 5% below any applicable removal rate.

(b) Causing violation of numeric water-quality standards:

(A) Major:

(i) Reducing or increasing any criteria by 25% or more of the standard except for toxics, pH, and turbidity;

(ii) Increasing toxics by any amount over the acute standard or by 100% or more of the chronic standard;

(iii) Reducing or increasing pH by 1.0 pH unit or more from the standard;

(iv) Increasing turbidity by 50 nephelometric turbidity units (NTU) or more of the standard.

(B) Moderate:

(i) Reducing or increasing any criteria by more than 10% but less than 25% of the standard, except for toxics, pH, and turbidity;

(ii) Increasing toxics by more than 10% but less than 100% of the chronic standard;

(iii) Reducing or increasing pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard;

(iv) Increasing turbidity by more than 20 but less than 50 NTU over the standard.

(C) Minor:

(i) Reducing or increasing any criteria by 10% or less of the standard, except for toxics, pH, and turbidity;

(ii) Increasing toxics by 10% or less of the chronic standard;

(iii) Reducing or increasing pH by 0.5 pH unit or less from the standard;

(iv) Increasing a turbidity standard by 20 NTU or less over the standard.

(D) The magnitude of the violation may be increased one level if the reduction or increase:

(i) Occurred in a stream which is water-quality limited for that criterium; or

(ii) For oxygen or turbidity in a stream where salmonids are rearing or spawning; or

(iii) For bacteria in shell-fish growing waters or during period June 1 through September 30.

(3) Magnitudes for select violations pertaining to Hazardous Waste may be determined as follows:

(a) Failure to make a hazardous waste determination:

(A) Major — Failure to make the determination on five or more waste streams;

(B) Moderate — Failure to make the determination on three or four waste streams;

(C) Minor — Failure to make the determination on one or two waste streams;

(D) The magnitude of the violation may be increased by one level, if more than 1,000 gallons of hazardous waste is involved in the violation;

(E) The magnitude of the violation may be decreased by one level, if less than 250 gallons of hazardous waste is involved in the violation.

(b) Hazardous Waste disposal violations:

(A) Major — Disposal of more than 150 gallons of hazardous waste, or the disposal of more than three gallons of acutely hazardous waste, or the disposal of any amount of hazardous waste or acutely hazardous waste that has a substantial impact on the local environment into which it was placed;

(B) Moderate — Disposal of 50 to 150 gallons of hazardous waste, or the disposal of one to three gallons of acutely hazardous waste;

(C) Minor — Disposal of less than 50 gallons of hazardous waste, or the disposal of less than one gallon of acutely hazardous waste when the violation had no potential for or had no more than de minimis actual adverse impact on the environment, nor posed any threat to public health, or other environmental receptors.

(c) Hazardous waste management violations:

(A) Major — Failure to comply with hazardous waste management requirements when more than 1,000 gallons of hazardous waste, or more than 20 gallons of acutely hazardous waste, are involved in the violation;

(B) Moderate — Failure to comply with hazardous waste management requirements when 250 to 1,000 gallons of hazardous waste, or when 5 to 20 gallons of acutely hazardous waste, are involved in the violation;

(C) Minor — Failure to comply with hazardous waste management requirements when less than 250 gallons of hazardous waste, or 10 gallons of acutely hazardous waste are involved in the violation.

(4) Magnitudes for select violations pertaining to Solid Waste may be determined as follows:

(a) Operating a solid waste disposal facility without a permit:

(A) Major — If the volume of material disposed of exceeds 400 cubic yards;

(B) Moderate — If the volume of material disposed of is between 40 and 400 cubic yards;

(C) Minor — If the volume of materials disposed of is less than 40 cubic yards;

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste received.

(A) Major — If the amount of solid waste is underreported by more than 15% of the amount received;

(B) Moderate — If the amount of solid waste is underreported by from 5% to 15% of the amount received;

(C) Minor — If the amount of solid waste is underreported by less than 5% of the amount received.

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

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.065 & ORS 468A.045

Stats. Implemented: ORS 468.090 - ORS 468.140 & ORS 468A.060

Hist.: DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

DIVISION 14

PROCEDURES FOR ISSUANCE, DENIAL, MODIFICATION, AND REVOCATION OF GREEN PERMITS

[ED. NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-~~020-0047~~200-0040.]

340-014-0005
Purpose

~~OAR 340-014-0005 through 340-014-0050 prescribes uniform procedures for obtaining air contaminant discharge permits from the Department of Environmental Quality pursuant to Divison 216 of this Chapter. The procedures apply to issuing, denying, modifying and revoking such permits.~~

Stat. Auth.: ORS 468A.025
Stats. Implemented: ORS 468A.040
Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 4-1993, f. & cert. ef. 3-10-93

340-014-0010
Definitions

~~As used in this Division:~~

~~(1) "Department" means Department of Environmental Quality.~~](~~2~~) ~~"Commission" means Environmental Quality Commission.~~

~~(2) "Director" means Director of the Department of Environmental Quality or the Director's authorized designee.~~

~~(3) "Permit" means a written document issued by the Department, bearing the signature of the Director, which by its conditions may authorize the permittee to construct, install, modify or operate specified facilities, conduct specified activities or emit, discharge or dispose of wastes in accordance with specified limitations.~~

Stat. Auth.: ORS 468A.025
Stats. Implemented: ORS 468A.040
Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 4-1993, f. & cert. ef. 3-10-93

340-014-0015
Type, Duration, and Termination of Permits

~~(1) Permits issued by the Department will specify those activities, operations, emissions and discharges which are permitted as well as the requirements, limitations and conditions which must be met.~~

~~(2) The duration of permits will be variable, but shall not exceed ten years, except for permits issued to "confined animal feeding operations" pursuant to ORS468B.050. Those permits shall not expire, but may be revoked or modified by the director or may be terminated upon request by the permit holder. The expiration date will be recorded on each permit issued. Anew application must be filed with the Department to obtain renewal or modification of a permit.~~

~~(3) Permits are issued to the official applicant of record for the activities, operations, emissions or discharges of record and shall be automatically terminated:~~

~~(a) Within 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) Upon issuance of a new, renewal or modified permit for the same operation;~~

~~(d) Upon written request of the permittee.~~

Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048
Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050
Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 125, f. & ef. 12-16-76; DEQ 21-1990, f. & cert. ef. 7-6-90; DEQ 4-1993, f. & cert. ef. 3-10-93

340-014-0020
Application for a Permit

~~(1) Any person wishing to obtain a new, modified, or renewal permit from the Department shall submit a written application on a form provided by the Department. Applications must be submitted at least 60 days before a permit is needed. All application forms must be completed in full, signed by the applicant or the applicant's legally authorized representative, and accompanied by the specified number of copies of all required exhibits. The name of the applicant must be the legal name of the owner of the facilities or the owner's agent or the lessee responsible for the operation and maintenance.~~

~~(2) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits (clearly identified) will not be accepted by the Department for filing and will be returned to the applicant for completion.~~

~~(3) Applications which appear complete will be accepted by the Department for filing.~~

~~(4) Within 15 days after filing, the Department will preliminarily review the application to determine the adequacy of the information submitted:~~

~~(a) If the Department determines that additional information is needed it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request;~~

~~(b) If, in the opinion of the Director, additional measures are necessary to gather facts regarding the application, the Director will notify the applicant that said measures will be instituted, and the timetable and procedures to be followed. The application will not be considered complete for processing until the necessary additional fact-finding measures are completed. When the information in the application is deemed adequate, the applicant will be notified that this application is complete for processing.~~

~~(5) In the event the Department is unable to complete action on an application within 45 days of closing of public comment or closing of the hearing record under OAR 340-014-0025(2) and (3), the applicant shall be deemed to have received a temporary or conditional permit, such permit to expire upon final action by the Department to grant or deny the original application. Such temporary or conditional permit does not authorize any construction, activity, operation or discharge which will violate any of the laws, rules, or regulations of the State of Oregon or the Department of Environmental Quality.~~

~~(6) If, upon review of an application, the Department determines that a permit is not required, the Department shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Department on the application.~~

Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048
Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050
Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 4-1993, f. & cert. ef. 3-10-93

340-014-0022
Public Notice and Informational Hearings

~~(1) If the Department proposes to issue, modify or renew a permit under OAR 340-254-0070 or OAR 340-216-0020, a public notice containing information regarding the proposed permit will be prepared by the Department. This notice will be forwarded to the applicant and, at the discretion of the Department, other interested persons for comment. Each public notice will, at a minimum, for that permit, contain:~~

~~(a) All Notices:~~

~~(A) Name of applicant;~~

~~(B) Type and duration of permit;~~

~~(C) Type of facility and kind of product if appropriate;~~

~~(D) Description of substances stored, disposed of or discharged under the conditions of the permit;~~

~~(E) An indication of the location of plans, specifications, or other documents used in preparing the permit;~~

~~(F) Any special conditions imposed in the permit.~~

~~(b) New Permits Only:~~

~~(A) A list of other Department permits requiring public notice under this rule, which are expected to be required;~~

~~(B) Basis of the need for a permit.~~

~~(c) Renewal Permits with Increased Discharges Only:~~

~~(A) Basis of the need for permit modification;~~

~~(B) Date of previous permit;~~

~~(C) Formal compliance and enforcement history (excluding items under appeal) under most recent permit.~~

~~(2) The notice will also contain a description of public participation opportunities.~~

~~(3) The Department shall consider all timely received comments and any other information obtained which may be pertinent to the permit application.~~

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468.065 & ORS 468.070

340-014-0025

Issuance of a Permit

~~(1) Following determination that it is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with the provisions of all applicable statutes, rules and regulations of the State of Oregon and the Department of Environmental Quality.~~

~~(2) If the Department proposes to issue a permit, public notice of proposed provisions prepared by the Department will be forwarded for comment to the applicant and persons required to be notified pursuant to ORS Chapter 183. The Department may also notify other interested persons at the discretion of the Department. All comments must be submitted in writing within 30 calendar days from the commencement of the public notice period if such comments are to receive consideration prior to final action on the application.~~

~~(3) If, within 14 days after commencement of the public notice period, the Department receives written requests from ten 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 Department 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, in the Department's discretion, either in the notice accompanying the proposed provisions or in such other manner as is reasonably calculated to inform interested persons.~~

~~(4) The Department shall take final action on the permit application within 45 days of the closing of public comment under section (2) of this rule, or, if a public hearing is held under section (3) of this rule, within 45 days of closing of such hearing's record. Regarding solid waste disposal permits under ORS 459.245, consideration of such public comment or record shall constitute good cause for extension of time to act on such applications. The Department may adopt or modify the proposed provisions or recommend denial of a permit. In taking such action, the Department shall consider the comments received regarding the proposed provisions and any other information obtained which may be pertinent to the application being considered.~~

~~(5) The Department shall promptly notify the applicant in writing of the final action taken on an application. If the Department recommends denial, notification shall be in accordance with the~~

~~provisions of OAR 340-014-0035. 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.~~

~~(6) If the applicant is dissatisfied with the conditions or limitations of any permit issued by the Department, the applicant may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 20 days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to OAR Chapter 340, Division 11.~~

Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048
Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050
Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 4-1993, f. & cert. ef. 3-10-93

340-014-0030
Renewal of a Permit

~~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 Department 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.~~

Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048
Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050
Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 4-1993, f. & cert. ef. 3-10-93

340-014-0035
Denial of a Permit

~~If the Department 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 20 days from the date of mailing of such notice unless within that time the applicant requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to OAR Chapter 340, Division 11.~~

Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048
Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050
Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 4-1993, f. & cert. ef. 3-10-93

340-014-0040
Modification of a Permit

~~In the event that it becomes necessary for the Department to institute modification of a permit due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes, the Department shall notify the permittee by registered or certified mail of its intent to modify the permit. Such notification shall include the proposed modification and the reasons for modification. The modification shall become effective 20 days from the date of mailing of such notice unless within that time the permittee requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant OAR Chapter 340, Division 11. 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.~~

Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048
Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050
Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 4-1993, f. & cert. ef. 3-10-93

340-014-0045

Suspension or Revocation of a Permit

~~(1) In the event that it becomes necessary for the Department to suspend or revoke 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 Department shall notify the permittee by registered 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 20 days from the date of mailing of such notice unless within that time the permittee requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to OAR Chapter 340, Division 11.~~

~~(2) If the Department finds that there is a serious danger to the public health or safety or that irreparable damage to a resource will occur, it may, pursuant to applicable statutes, suspend or revoke a permit effective immediately. Notice of such suspension or revocation must state the reasons for such action and advise the permittee that he may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 90 days of the date of suspension and shall state the grounds for the request. Any hearing shall be conducted pursuant to OAR Chapter 340, Division 11.~~

Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048

Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050

Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 4-1993, f. & cert. ef. 3-10-93

340-014-0050

Short-term Permits

~~The Department may waive the procedures prescribed in OAR 340-014-0025 and issue short-term permits of duration not to exceed 60 days from the date of issuance for unexpected or emergency activities, operations, emission or discharges. Said permits shall be properly conditioned to insure adequate protection of property and preservation of public health, welfare and resources. 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.~~

Stat. Auth.: ORS 459, ORS 468, ORS 468A & ORS 468B

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1996, f. & cert. ef. 10-22-96

DIVISION 200

GENERAL AIR POLLUTION PROCEDURES AND DEFINITIONS

General

340-200-0010
Purpose and Application

(1) ~~The purpose of t~~This ~~Division~~ division ~~is to~~ provides general air pollution procedures and definitions that apply to all air quality rules in ~~Divisions~~ divisions 200 through 268.

(2) ~~The rules in~~ Divisions 200 through 268 apply in addition to all other rules adopted by the Environmental Quality Commission. In cases of apparent conflict between rules within these ~~Divisions~~divisions, the most stringent rule applies unless otherwise expressly stated.

(3) The Department administers ~~D~~divisions 200 through 268 ~~are administered by the Department~~ in all areas of the State of Oregon except in Lane County where Lane Regional Air Pollution Authority administers the air pollution control regulations ~~are administered by the Lane Regional Air Pollution Authority~~.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99

340-200-0020
General Air Quality Definitions

As used in ~~Divisions~~ divisions 200 through 268, ~~except where~~unless specifically defined otherwise:

(1) "Act" or "FCAA" means the Federal Clean Air Act, 42 U.S.C.A. §§ 7401 to 7671q ~~Public Law 88-206 as last amended by Public Law 101-549~~.

(2) "Activity" means any process, operation, action, or reaction (e.g., chemical) at a source that emits a regulated pollutant.

(3) "Actual emissions" means the mass 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:

(A) Except as provided in paragraph (B) ~~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~~that represent~~sative of~~ normal source operation;

(B) The Department ~~may~~ presume~~s~~ that the source-specific mass emissions limit included in ~~the~~ a source's permit ~~for a source~~ that was effective on September 8, 1981 is equivalent to the source's actual emissions ~~of the source~~ during the baseline period if it is within 10% of the actual emissions calculated under paragraph (A) ~~of this subsection~~.

(C~~b~~) For any source ~~which~~ that had not ~~yet~~ begun normal operation ~~in the specified time period~~, actual emissions ~~shall~~ equal the potential to emit of the source.

(e~~b~~) For ~~purposes of~~ determining actual emissions for Emission Statements under OAR 340-214-0200 through 340-214-0220~~,~~ and Oregon 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, except categorically insignificant activities and secondary emissions.

(c) For Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions must 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.

(4) "Adjacent" means interdependent facilities that are nearby to each other.

(45) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.

(56) "Affected Sstates" means all Sstates:

(a) Whose air quality may be affected by a proposed permit, permit modification, or permit renewal and that are contiguous to Oregon; or

(b) That are within 50 miles of the permitted source.

(67) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities at a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities shallmust be less than or equal to the lowest applicable level specified. in this section. The aggregate insignificant emissions levels are:

(a) One ton for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;

(b) 120 pounds for lead;

(c) 600 pounds for fluoride;

(d) 500 pounds for PM_{10} in a PM_{10} nonattainment area;

(e) The lesser of the amount established in OAR 340-244-0040, **Table 1** or OAR 340-244-0230, **Table 3,** or 1,000 pounds;

(f) An aggregate of 5,000 pounds for all Hazardous Air Pollutants.

(78) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(89) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by the Department, pursuant to OAR 340 division 216. and includes the application review report.

(910) "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. An alternative method used to meet an applicable federal requirement for which a reference method is specified shall must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(1011) "Applicable requirement" means all of the following as they apply to emissions units in an Oregon Title V Operating Permit program source or ACDP program source, including requirements that have been promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in **40 CFR Part 52 (July 1, 1997)**;

(b) Any standard or other requirement adopted under OAR 340-200-0040 of the State of Oregon Clean Air Act Implementation Plan, that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;

(c) Any term or condition in an ACDP, OAR 340 division 216, including any term or condition of any preconstruction permits issued pursuant to OAR 340 division 224, New Source Review, until or unless the Department revokes or modifies the term or condition by a permit modification;

(d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-210-0200 through 340-210-~~0220~~0240, until or unless the Department revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;

(e) Any term or condition in a Notice of Approval, OAR 340-218-0190, issued before July 1, 2001, until or unless the Department revokes or modifies the term or condition by a Notice of Approval or a permit modification;

(f) Any term or condition of a PSD permit issued by the EPA until or unless the EPA revokes or modifies the term or condition by a permit modification;

(~~f~~g) Any standard or other requirement under section 111 of the Act, including section 111(d);

(~~g~~h) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r) (7) of the Act;

(~~h~~i) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(~~i~~j) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(~~j~~k) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(~~k~~l) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(~~l~~m) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(~~m~~n) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(~~n~~o) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an Oregon Title V Operating Permit; and

(~~o~~p) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

(~~11~~12) "Assessable Emission" means a unit of emissions for which the major source owner or operator will be assessed a fee. It includes an emission of a pollutant as specified in OAR 340-220-0060 from one or more emissions devices or activities within a major source.

(~~12~~13) "Baseline Emission Rate" means the ~~average~~ actual emission rate during the baseline period. Baseline emission rate ~~shall~~ does not include increases due to voluntary fuel switches or increased hours of operation that ~~have~~ occurred after the baseline period.

(~~13~~14) "Baseline Period" means ~~either~~ any consecutive 12 calendar month period during calendar years 1977 or 1978. The Department ~~shall~~ may allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(~~14~~15) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event ~~shall~~ may the application of BACT result in emissions of any air contaminant ~~which~~ that would exceed the emissions allowed by any applicable new source

performance standard or any standard for hazardous air pollutant. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard ~~shall~~must, to the degree possible, set forth the emission reduction achievable and ~~shall~~ provide for compliance by prescribing appropriate permit conditions.

(16) "Capacity" means the maximum regulated pollutant emissions from a stationary source under its physical and operational design.

(~~15~~17) "Capture system" means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

(~~16~~18) "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 Divisions 200 through 268 excluding Divisions 248 and 262 of this chapter, 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 due to circumstances beyond the reasonable control of the owner or operator;
(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.

(~~17~~19) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.

(~~18~~20) "CFR" means Code of Federal Regulations.

(~~19~~21) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-204-0250.

(~~20~~22) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(~~21~~23) "Commission" or "EQC" means Environmental Quality Commission.

(~~22~~24) "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.

(~~23~~25) "Construction":

(a) Except as provided in subsection (b) of this section means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of a source or part of a source;

(b) As used in OAR 340 division 224 means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.

(~~24~~26) "Continuous compliance determination method" means a method, specified by the applicable standard or an applicable permit condition, which:

(a) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(b) Provides data either in units of the standard or correlated directly with the compliance limit.

(~~25~~27) "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with the Department's Continuous Monitoring Manual, and includes continuous emission monitoring systems, continuous opacity monitoring system (COMS) and continuous parameter monitoring systems.

(~~26~~28) "Control device" means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of OAR 340-212-0200 through 340-212-0280, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition ~~shall~~ will be binding for purposes of OAR 340-212-0200 through 340-212-0280.

(~~27~~29) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM_{10}, sulfur dioxide, carbon monoxide, or lead.

(~~28~~30) "Data" means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

(31) "De minimis emission level" means:

Pollutant	**De minimis (tons/year, except as noted)**
CO	1
NO_x	1
SO_2	1
VOC	1
PM	1
PM_{10} (except Medford AQMA)	1
PM_{10} (Medford AQMA)	0.5 [5.0 lbs/day]
Lead	0.1
Fluorides	0.3
Sulfuric Acid Mist	0.7
Hydrogen Sulfide	1
Total Reduced Sulfur (including hydrogen sulfide)	1
Reduced Sulfur	1
Municipal waste combustor organics (Dioxin and furans)	0.0000005
Municipal waste combustor metals	1
Municipal waste combustor acid gases	1
Municipal solid waste landfill gases	1
Single HAP	1
Combined HAP (aggregate)	1

Note: De minimis is compared to all increases that are not included in the PSEL.

(~~29~~32) "Department":

(a) Means Department of Environmental Quality; except

(b) As used in OAR 340 divisions 218 and 220 means Department of Environmental Quality or in the case of Lane County, Lane Regional Air Pollution Authority.

(~~30~~33) "Device" means any machine, equipment, raw material, product, or byproduct at a source that produces or emits a regulated pollutant.

(~~31~~34) "Director" means the Director of the Department or the Director's designee.

(~~32~~35) "Draft permit" means the version of an Oregon Title V Operating Permit for which the Department or Lane Regional Air Pollution Authority offers public participation under OAR 340-218-0210 or the EPA and affected State review under OAR 340-218-0230.

(~~33~~36) "Effective date of the program" means the date that the EPA approves the Oregon Title V Operating Permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.

(~~34~~37) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency ~~shall~~ does not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(~~35~~38) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.

(~~36~~39) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.

(~~37~~40) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate). Where an emission factor is required ~~S~~sources ~~shall~~ must use an emission factor approved by EPA or the Department.

(~~38~~41)(a) Except as provided in subsection (b) of this section, "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(b) As used in OAR 340-212-0200 through 340-212-0280, "Emission limitation or standard" means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., pounds of SO_2 per hour, pounds of SO_2 per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO_2) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO_2). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of OAR 340-212-0200 through 340-212-0280, an emission limitation or standard ~~shall~~ does not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

(~~39~~42) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of OAR 340 division 2~~2~~68, ~~New Source Review~~Emission Reduction Credits, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.

(~~40~~43) "Emission Reporting Form" means a paper or electronic form developed by the Department that ~~shall~~ must be completed by the permittee to report calculated emissions, actual emissions, or permitted emissions for interim emission fee assessment purposes.

(~~41~~44) "Emissions unit" means any part or activity of a source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a source is any machine, equipment, raw material, product, or byproduct ~~which~~ that produces or emits regulated air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits regulated air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit ~~provided~~ if the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable.

(c) The term emissions unit is not meant to alter or affect the definition of the term "unit" ~~for purposes of~~under Title IV of the FCAA.

(d) Parts and activities ~~shall~~ cannot be grouped for ~~purposes of~~ determining emissions increases from an emissions unit under OAR 340-224-0050 through~~,~~ OAR 340-224-0070, or OAR 340-~~218-0190,~~ division 210, or for ~~purposes of~~ determining the applicability of any New Source Performance Standard (NSPS).

(~~42~~45) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(~~43~~46) "Equivalent method" means any method of sampling and analyzing for an air pollutant ~~which~~ that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified ~~shall~~ must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(~~44~~47) "Event" means excess emissions ~~which~~ that arise from the same condition and ~~which~~ occur during a single calendar day or continue into subsequent calendar days.

(~~45~~48) "Exceedance" means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

(~~46~~49) "Excess emissions" means emissions ~~which are~~ in excess of a permit limit or any applicable air quality rule.

(~~47~~50) "Excursion" means a departure from an indicator range established for monitoring under OAR 340-212-0200 through 340-212-0280 and 340-218-0050(3)(a), consistent with any averaging period specified for averaging the results of the monitoring.

(~~48~~51) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(52) Federal Major Source means a source with potential to emit any individual regulated pollutant, excluding hazardous air pollutants listed in OAR 340 division 244, greater than or equal to 100 tons per year if in a source category listed below, or 250 tons per year if not in a source category listed. Potential to emit calculations must include emission increases due to a new or modified source.

(a) Fossil fuel-fired steam electric plants of more than 250 million BTU/hour heat input;
(b) Coal cleaning plants with thermal dryers;
(c) Kraft pulp mills;
(d) Portland cement plants;
(e) Primary Zinc Smelters;
(f) Iron and Steel Mill Plants;
(g) Primary aluminum ore reduction plants;
(h) Primary copper smelters;
(i) Municipal Incinerators capable of charging more than 50 tons of refuse per day;
(j) Hydrofluoric acid plants;
(k) Sulfuric acid plants;
(l) Nitric acid plants;
(m) Petroleum Refineries;
(n) Lime plants;
(o) Phosphate rock processing plants;
(p) Coke oven batteries;
(q) Sulfur recovery plants;
(r) Carbon black plants, furnace process;
(s) Primary lead smelters;
(t) Fuel conversion plants;

(u) Sintering plants;
(v) Secondary metal production plants;
(w) Chemical process plants;
(x) Fossil fuel fired boilers, or combinations thereof, totaling more than 250 million BTU per hour heat input;
(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(z) Taconite ore processing plants;
(aa) Glass fiber processing plants;
(bb) Charcoal production plants.

(~~49~~53) "Final permit" means the version of an Oregon Title V Operating Permit issued by the Department or Lane Regional Air Pollution Authority that has completed all review procedures required by OAR 340-218-0120 through 340-218-0240.

(~~50~~54) "Fugitive Emissions":

(a) Except as used in subsection (b) of this section, means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(b) As used to define a major Oregon Title V Operating Permit program source, means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(~~51~~55) "General permit":

(a) Except as provided in subsection (b) of this section, means an Oregon Air Contaminant Discharge Permit established under OAR 340-216-0060;

(b) As used in OAR 340 division 218 means an Oregon Title V Operating Permit established under OAR 340-218-0090.

(56) "Generic PSEL" means:

Pollutant	**Generic PSEL (tons/year, except as noted)**
CO	99
NO_x	39
SO_2	39
VOC	39
PM	24
PM_{10} (except Medford AQMA)	14
PM_{10} (Medford AQMA)	4.5 [49 lbs/day]
Lead	0.5
Fluorides	2
Sulfuric Acid Mist	6
Hydrogen Sulfide	9
Total Reduced Sulfur (including hydrogen sulfide)	9
Reduced Sulfur	9
Municipal waste combustor organics (Dioxin and furans)	0.0000030
Municipal waste combustor metals	14
Municipal waste combustor acid gases	39
Municipal solid waste landfill gases	49
Single HAP	9
Combined HAPs (aggregate)	24

Note: Sources are eligible for a generic PSEL if expected emissions are less than or equal to the levels listed in the table above. Baseline emission rate and netting basis do not apply to pollutants at sources using generic PSELs.

(~~52~~57) "Growth Allowance" means an allocation of some part of an airshed's capacity to accommodate future proposed major sources and major modifications of sources.

(~~53~~58) "Immediately" means as soon as possible but in no case more than one hour after a source knew or should have known of an excess emission period. ~~the beginning of the excess emission period.~~

(~~54~~59) "Inherent process equipment" means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of OAR 340-212-0200 through 340-212-0280, inherent process equipment is not considered a control device.

(~~55~~60) "Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant, or that meets the criteria of aggregate insignificant emissions.

(~~56~~61) "Insignificant Change" means an off-permit change defined under OAR 340-218-0140(2)(a) to either a significant or an insignificant activity which:

(a) Does not result in a redesignation from an insignificant to a significant activity;

(b) Does not invoke an applicable requirement not included in the permit; and

(c) Does not result in emission of regulated air pollutants not regulated by the source's permit.

~~(57) "Large Source" as used in OAR 340-214-0300 through 340-214-0350 means any stationary source whose actual emissions or potential controlled emissions while operating full time at the design capacity are equal to or exceed 100 tons per year of any regulated air pollutant, or which is subject to a National Emissions Standard for Hazardous Air Pollutants (NESHAP). Where PSELs have been incorporated into the ACDP, the PSEL shall be used to determine actual emissions.~~

(~~58~~62) "Late Payment" means a fee payment which is postmarked after the due date.

(~~59~~63) "Lowest Achievable Emission Rate" or "LAER" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. ~~In no event, shall t~~The application of this term cannot permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable New Source Performance Standards (NSPS) or standards for hazardous air pollutants.

(~~60~~64) "Maintenance Area" means a geographical area of the State that was designated as a nonattainment area, redesignated as an attainment area by EPA, and redesignated as a maintenance area by the Environmental Quality Commission in OAR Chapter 340, Division ~~31~~204.

(~~61~~65) "Maintenance Pollutant" means a pollutant for which a maintenance area was formerly designated a nonattainment area.

(~~62~~66) "Major Modification" means any physical change or change of operation of a source that ~~would~~ results in the following~~a net significant emission rate increase~~ for any regulated air pollutant:

(a) an increase in the PSEL by an amount equal to or more than the significant emission rate over the netting basis; and

(b) the accumulation of physical changes and changes of operation since baseline would result in a significant emission rate increase.

~~. This criteria also applies to any pollutants not previously emitted by the source.~~

(A) Calculations of ~~net~~ emission increases in (b) ~~shall~~ must ~~take into~~ account for all accumulated increases ~~and decreases~~ in actual emissions due to physical changes and changes of operation

occurring at the source since the baseline period, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations in OAR 340 division 224 for that pollutant, whichever time is more recent. These include emissions from insignificant activities

(B) Emission increases due solely to increased use of equipment or facilities that existed during the baseline period are not included, if that increased use was possible during the baseline period under the baseline configuration of the source and the increased use of baseline equipment capacity is not to support a physical change or change in operation.

~~Emissions from insignificant activities shall be included in the calculation of net emission increases. Emission decreases required by rule shall not be included in the calculation of net emission increases. If accumulation of emission increases results in a net significant emission rate increase, the modifications causing such increases become subject to the New Source Review requirements, including the retrofit of required controls.~~

(c) For new or modified major sources that were permitted to construct and operate after the baseline period and were not subject to New Source Review, a major modification means:

(A) Any change at a source, including production increases, that would result in a Plant Site Emission Limit increase of 1 ton or more for any regulated pollutant for which the source is a major source; or

(B) The addition or modification of any stationary source or sources after the initial construction that have cumulative potential emissions greater than or equal to the significant emission rate, excluding any emission decreases.

(C) Changes to the PSEL solely due to the availability of better emissions information are exempt from being considered an increase.

(d) The following are not considered major modifications:

(A) Except as provided in (c), proposed increases in hours of operation or production rates which would cause emission increases above the levels allowed in a permit and would not involve a physical change or change in method of operation in the source.

(B) Pollution control projects that are determined by the Department to be environmentally beneficial.

(C) Routine maintenance, repair, and replacement of components.

(D) Temporary equipment installed for maintenance of the permanent equipment if the temporary equipment is in place for less than six months and operated within the permanent equipment's existing PSEL.

(E) Use of alternate fuel or raw materials, that were available and the source was capable of accommodating in the baseline period.

(~~63~~67) "Major Source":

(a) Except as provided in subsections (b) ~~and (c) of this section~~, means a source ~~which~~ that emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate~~, as defined in this rule~~. This includes ~~E~~emissions from insignificant activities ~~shall be included in determining if a source is a major source~~.

(b) As used in OAR 340 division 210, Stationary Source Notification Requirements, OAR 340 division 218, Rules Applicable to Sources Required to Have Oregon Title V Operating Permits~~,~~ OAR 340 division 220, Oregon Title V Operating Permit Fees, and OAR 340-216-0066~~-0080, Synthetic Minor Sources~~ Standard ACDPs, means any stationary source~~,~~ (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control))~~,~~ belonging to a single major industrial grouping or ~~is~~ supporting the major industrial group and that ~~are~~ is described in paragraphs (A), (B), or (C) of this subsection. For the purposes of this subsection, a stationary source or group of stationary sources ~~shall be~~ is considered part of a single

industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (U.S. Office of Management and Budget, 1987) or support the major industrial group.

(A) A major source of hazardous air pollutants, which ~~is defined as~~means:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutants ~~which~~ that has been listed pursuant to OAR 340-244-0040~~,~~; 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. ~~Notwithstanding the preceding sentence,~~ ~~e~~Emissions from any oil or gas exploration or production well, along with its associated equipment, and emissions from any pipeline compressor or pump station ~~shall~~ will not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" ~~shall~~ will have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit~~,~~ 100 tpy or more of any regulated air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source ~~shall~~ are not ~~be~~ considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than ~~2~~50 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants (furnace process);
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
(xxvii) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.

(C) A major stationary source as defined in part D of Title I of the Act, including:
(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides ~~shall~~ do not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;
(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;
(iii) For carbon monoxide nonattainment areas:
(I) That are classified as "serious;" and
(II) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide.
(iv) For particulate matter (PM10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM10.

(~~64~~68) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.

(69) "Modification", except as used in the term "major modification", means any physical change to, or change in the method of operation of, a stationary source that results in an increase in the stationary source's potential to emit any regulated air pollutant on an hourly basis. Modifications do not include the following:
(a) Increases in hours of operation or production rates that do not involve a physical change or change in the method of operation;
(b) Changes in the method of operation due to using an alternative fuel or raw material that the stationary source was physically capable of accommodating during the baseline period; and
(c) Routine maintenance, repair and like-for-like replacement of components unless they increase the expected life of the stationary source by using component upgrades that would not otherwise be necessary for the stationary source to function.

(~~65~~70) "Monitoring" means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Monitoring may include ~~R~~record keeping ~~may be considered monitoring where such~~if the records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). Monitoring may include~~The~~ conducting ~~of~~ compliance method tests, such as the procedures in appendix A to 40 CFR part 60, on a routine periodic basis. ~~may be considered monitoring (or as a supplement to other monitoring), provided that requirements~~ Requirements to conduct such tests on a one-time basis, or at such times as a regulatory authority may require on a non-regular basis, are not considered monitoring requirements for purposes of this definition. Monitoring may include one or more than one of the following data collection techniques~~,~~ ~~where~~as appropriate for a particular circumstance:
(a) Continuous emission or opacity monitoring systems.

(b) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.
(c) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).
(d) ~~Maintenance and analysis~~Maintaining and analyzing ~~of~~ records of fuel or raw materials usage.
(e) Recording results of a program or protocol to conduct specific operation and maintenance procedures.
(f) ~~Verification of~~Verifying emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.
(g) Visible emission observations and recording.
(h) Any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

(71) "Netting Basis" means the baseline emission rate MINUS any emission reductions required by rule, orders, or permit conditions required by the SIP or used to avoid SIP requirements, MINUS any unassigned emissions that are reduced from allowable under OAR 340-222-0045, MINUS any emission reduction credits transferred off site, PLUS any emission increases approved through the New Source Review regulations.
(a) With the first permitting action for a source after July 1, 2002, the baseline emissions rate will be frozen and recalculated only if:
(A) a better emission factor is established for the baseline period and approved by the Department;
(B) a currently operating emissions unit that the Department formerly thought had negligible emissions, is determined to have non-de minimis emissions and needs to be added to the baseline emission rate; or
(C) a new pollutant is added to the regulated pollutant list (e.g., PM2.5). For a pollutant that is newly regulated after 11/15/90, the initial netting basis is the actual emissions during any 12 consecutive month period within the 24 months immediately preceding its designation as a regulated pollutant. The Department may allow a prior 12 consecutive month time period to be used if it is shown to be more representative of normal source operation.
(b) Netting basis is zero for:
(A) any source constructed after the baseline period and has not undergone New Source Review;
(B) any pollutant that has a generic PSEL in a permit;
(C) any source permitted as portable; and
(D) any source with a netting basis calculation resulting in a negative number.
(c) If a source relocates to an adjacent site, and the time between operation at the old and new sites is less than six months, the source may retain the netting basis from the old site.
(d) Emission reductions required by rule, order, or permit condition affect the netting basis if the source currently has devices or emissions units that are subject to the rules, order, or permit condition. The baseline emission rate is not affected.
(e) Netting basis for a pollutant with a revised definition will be adjusted if the source is emitting the pollutant at the time of redefining and the pollutant is included in the permit's netting basis.
(f) Where EPA requires an attainment demonstration based on dispersion modeling, the netting basis will be established at no more than the level used in the dispersion modeling to demonstrate attainment with the ambient air quality standard (i.e., the attainment demonstration is an emission reduction required by rule).

(~~66~~72) "Nitrogen Oxides" or "NO_x" means all oxides of nitrogen except nitrous oxide.

(~~67~~73) "Nonattainment Area" means a geographical area of the State, as designated by the Environmental Quality Commission or the EPA, that exceeds any state or federal primary or secondary ambient air quality standard ~~as designated by the Environmental Quality Commission or the EPA~~.

(~~68~~74) "Nonattainment Pollutant" means a pollutant for which an area is designated a nonattainment area.

(~~69~~75) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.

(~~70~~76) "Offset" means an equivalent or greater emission reduction ~~which~~ that is required ~~prior to~~before allowing an emission increase from a proposed major source or major modification of an existing source.

(~~71~~77) "Oregon Title V Operating Permit" means any permit covering an Oregon Title V Operating Permit source that is issued, renewed, amended, or revised pursuant to division 218.

(~~72~~78) "Oregon Title V Operating Permit program" means a program approved by the Administrator under 40 CFR Part 70 (July 1, 1997).

(~~73~~79) "Oregon Title V Operating Permit program source" means any source subject to the permitting requirements, OAR 340 division 218.

(~~74~~80) "Ozone Season" means the contiguous 3 month period ~~of the year~~ during which ozone exceedances typically occur (i.e., June, July, and August).

(~~75~~81) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual, (January, 1992).

(~~76~~82) "Permit" means an Air Contaminant Discharge Permit or an Oregon Title V Operating Permit ~~issued pursuant to Divisions 216 and 218~~.

(~~77~~83) "Permit modification" means ~~a revision to~~ a permit revision that meets the applicable requirements of OAR 340 division 216, OAR 340 division 224, or OAR 340-218-0160 through 340-218-0180.

(~~78~~84) "Permit revision" means any permit modification or administrative permit amendment.

(~~79~~85) "Permitted Emissions" as used in OAR division 220 means each assessable emission portion of the PSEL, as identified in an ACDP, Oregon Title V Operating Permit, review report, or by the Department pursuant to OAR 340-220-0190.

(~~80~~86) "Permittee" means the owner or operator of the facility, authorized by the ACDP or the Oregon Title V Operating Permit ~~in whose name the~~to ~~operation~~ operate ~~of~~ the source ~~is authorized by the ACDP or the Oregon Title V Operating Permit~~.

(~~81~~87) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the ~~s~~State of Oregon and any agencies thereof, and the ~~F~~federal government and any agencies thereof.

(~~82~~88) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one assessable emission.

(~~83~~89) "PM_{10}":

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensible particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's **Source Sampling Manual** (January, 1992);

(b) When used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with **40 CFR Part 50**, Appendix J (July, 1997).

(8490) "Pollutant-specific emissions unit" means an emissions unit considered separately with respect to each regulated air pollutant.

(8591) "Potential to emit" or "PTE" means the lesser of

(a) ~~maximum~~the capacity of a stationary source ~~to emit any air pollutant under its physical and operational design~~; or

(b) the maximum allowable emissions taking into consideration ~~A~~any physical or operational limitation ~~on the capacity of a source to emit an air pollutant~~, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, ~~shall be treated as part of its design~~ if the limitation is enforceable by the Administrator.

This definition does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act ~~or~~ and the regulations promulgated thereunder. Secondary emissions ~~shall~~ are not ~~be~~ considered in determining the potential to emit ~~of a source~~.

(8692) "Predictive emission monitoring system (PEMS)" means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(8793) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.

(8894) "Proposed permit" means the version of an Oregon Title V Operating Permit that the Department or ~~Lane~~ a Regional ~~Air Pollution~~ Authority proposes to issue and forwards to the Administrator for review in compliance with OAR 340-218-0230.

(8995) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in **40 CFR Part 60, 61 or 63** (July 1, 1997).

(9096) "Regional Authority" means Lane Regional Air Pollution Authority.

(9197) "Regulated air pollutant" or "Regulated Pollutant":

(a) Except as provided in subsections (b) and (c) of this rule, means:

(A) Nitrogen oxides or any VOCs;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(E) Any pollutant listed under OAR 340-244-0040 or OAR 340-244-0230.

(b) As used in OAR 340 division 220, means any ~~regulated~~ air pollutant as ~~defined~~ included in subsection (a) of this rule, except the following:

(A) Carbon monoxide;

(B) Any pollutant that is a regulated pollutant solely because it is a Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Federal Clean Air Act; or

(C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

(c) As used in OAR 340 division 224 any pollutant listed under OAR 340-244-0040 or OAR 340-244-0230 is not a regulated pollutant.

(9298) "Renewal" means the process by which a permit is reissued at the end of its term.

(9399) "Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such

person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
(A) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or
(B) The delegation of authority to such representative is approved in advance by the Department or Lane Regional Air Pollution Authority.
(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA); or
(d) For affected sources:
(A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
(B) The designated representative for any other purposes under the Oregon Title V Operating Permit program.

(~~94~~100) "Secondary Emissions" means emissions ~~from new or existing sources which occur as~~that are a result of the construction and/or operation of a source or modification, but that do not come from the source itself. Secondary emissions ~~shall~~ must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:
(a) Emissions from ships and trains coming to or from a facility;
(b) Emissions from off-site support facilities ~~which~~ that would be constructed or would otherwise increase emissions as a result of the construction or modification of a source ~~or modification~~.

(~~95~~101) "Section 111" means ~~that~~ section 111 of the FCAA ~~that~~ which includes Standards of Performance for New Stationary Sources (NSPS).

(~~96~~102) "Section 111(d)" means ~~that~~ subsection 111(d) of the FCAA ~~that~~ which requires states to submit to the EPA plans ~~to the EPA which~~that establish standards of performance for existing sources and provides for ~~the implementation~~ implementing and ~~enforcement~~ enforcing ~~of~~ such standards.

(~~97~~103) "Section 112" means ~~that~~ section 112 of the FCAA ~~that~~ which contains regulations for Hazardous Air Pollutants (HAP).

(~~98~~104) "Section 112(b)" means ~~that~~ subsection 112(b) of the FCAA ~~that~~ which includes the list of hazardous air pollutants to be regulated.

(~~99~~105) "Section 112(d)" means ~~that~~ subsection 112(d) of the FCAA ~~that~~ which directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.

(~~100~~106) "Section 112(e)" means ~~that~~ subsection 112(e) of the FCAA ~~that~~ which directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(~~101~~107) "Section 112(r)(7)" means ~~that~~ subsection 112(r)(7) of the FCAA ~~that~~ which requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.

(~~102~~108) "Section 114(a)(3)" means ~~that~~ subsection 114(a)(3) of the FCAA ~~that~~ which requires enhanced monitoring and submission of compliance certifications for major sources.

(~~103~~109) "Section 129" means ~~that~~ section 129 of the FCAA ~~that~~ which requires the EPA to establish emission standards and other requirements for solid waste incineration units.

(~~104~~110) "Section 129(e)" means ~~that~~ subsection 129(e) of the FCAA ~~that~~ which requires solid waste incineration units to obtain Oregon Title V Operating Permits.

(~~105~~111) "Section 182(f)" means ~~that~~ subsection 182(f) of the FCAA ~~that~~ which requires states to include plan provisions in the State Implementation Plan for NO_x in ozone nonattainment areas.

(~~106~~112) "Section 182(f)(1)" means ~~that~~ subsection 182(f)(1) of the FCAA ~~that~~ which requires states to apply those plan provisions developed for major VOC sources and major NO_x sources in ozone nonattainment areas.

(~~107~~113) "Section 183(e)" means ~~that~~ subsection 183(e) of the FCAA ~~that~~ which requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.

(~~108~~114) "Section 183(f)" means ~~that~~ subsection 182(f) of the FCAA ~~that~~ which requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.

(~~109~~115) "Section 184" means ~~that~~ section 184 of the FCAA ~~that~~ which contains regulations for the control of interstate ozone air pollution.

(~~110~~116) "Section 302" means ~~that~~ section 302 of the FCAA ~~that~~ which contains definitions for general and administrative purposes in the Act.

(~~111~~117) "Section 302(j)" means ~~that~~ subsection 302(j) of the FCAA ~~that~~ which contains definitions of "major stationary source" and "major emitting facility."

(~~112~~118) "Section 328" means ~~that~~ section 328 of the FCAA ~~that~~ which contains regulations for air pollution from outer continental shelf activities.

(~~113~~119) "Section 408(a)" means ~~that~~ subsection 408(a) of the FCAA ~~that~~ which contains regulations for the Title IV permit program.

(~~114~~120) "Section 502(b)(10) change" means a change ~~that~~ which contravenes an express permit term but is not a change that:

(a) Would violate applicable requirements;

(b) Would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or

(c) Is a Title I modification.

(~~115~~121) "Section 504(b)" means ~~that~~ subsection 504(b) of the FCAA ~~that~~ which states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.

(~~116~~122) "Section 504(e)" means ~~that~~ subsection 504(e) of the FCAA ~~that~~ which contains regulations for permit requirements for temporary sources.

(~~117~~123) "Significant Air Quality Impact" means an additional ambient air quality concentration ~~impact which is~~ equal to or greater than ~~those set out in~~ in the concentrations listed in **Table 1**. The threshold concentrations listed in Table 1 are used for comparison against the ambient air quality standard and do not apply for protecting PSD Class I increments or air quality related values (including visibility). For sources of VOC or NO_x, a major source or major modification ~~will be deemed to have~~ has a significant impact if it is located within ~~30 kilometers of an ozone nonattainment area or ozone maintenance area and is capable of impacting the nonattainment area or maintenance area~~ the Ozone Precursor Significant Impact Distance defined in OAR 340-225-0020.

(~~118~~124) "Significant ~~e~~Emission ~~r~~Rate" or "SER", except as provided in subsections (a) through (c) of this section, means an emission rate~~s~~ equal to or greater than the rates specified in **Table 2**.

(a) For the Medford-Ashland Air Quality Maintenance Area, the Significant Emission Rate for PM_{10} is defined in **Table 3**.

(b) For regulated air pollutants not listed in **Table** 2 or 3, the significant emission rate is zero unless the Department ~~shall~~ determine~~s~~ the rate that constitutes a significant emission rate.

(c) Any new source or modification with an emissions increase less than the rates specified in **Table** 2 or 3 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 ug/m³ (24 hour average) ~~shall~~ is ~~be deemed to be~~ emitting at a significant emission rate.

(~~119~~125) "Significant Impairment" occurs when the Department determines that visibility impairment ~~in the judgment of the Department~~ interferes with the management, protection, preservation, or enjoyment of the visual experience ~~of visitors~~ within a Class I area. The Department will make this determination ~~shall be made~~ on a case-by-case basis after considering the recommendations of the Federal Land Manager~~;~~ and the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered ~~with respect to~~along with visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

~~(120) "Small Source" means any stationary source with an regular ACDP (not an insignificant discharge permit, a minimal source permit or a general ACDP)or an Oregon Title V Operating Permit which is not classified as a large source.~~

(~~121~~126) "Source"~~:~~

~~(a) Except as provided in subsection (b) of this section,~~ means any building, structure, facility, installation or combination thereof ~~which~~ that emits or is capable of emitting air contaminants to the atmosphere, ~~and~~ is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control. The term

~~(b) As used in OAR 340 division 224, New Source Review, and the definitions of "BACT", "Commenced", "Construction", "Emission Limitation", Emission Standard", "LAER", "Major Modification", "Major Source", "Potential to Emit", and "Secondary Emissions" as these terms are used for purposes of OAR division 224,~~ includes all pollutant emitting activities ~~which~~ that belong to a single major industrial group (i.e., ~~which~~ that have the same two-digit code) as described in the **Standard Industrial Classification Manual**, (U.S. Office of Management and Budget, 1987) or ~~are~~ that support~~ing~~ the major industrial group.

(~~122~~127) "Source category":

(a) Except as provided in subsection (b) of this section, means all the pollutant emitting activities ~~which~~ that belong to the same industrial grouping (i.e., ~~which~~ that have the same two-digit code) as described in the **Standard Industrial Classification Manual**, (U.S. Office of Management and Budget, 1987).

(b) As used in OAR 340 division 220, Oregon Title V Operating Permit Fees, means a group of major sources ~~determined by~~that the Department determines ~~to be~~are using similar raw materials and ~~having~~ have equivalent process controls and pollution control equipment.

(~~123~~128) "Source Test" means the average of at least three test runs conducted during operating conditions representative of the period for which emissions are to be determined~~,~~ and ~~conducted~~ in accordance with the Department's **Source Sampling Manual** or other Department approved methods.

(~~124~~129) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.

(~~125~~130) "State Implementation Plan" or "SIP" means the State of Oregon Clean Air Act Implementation Plan as adopted by the Commission under OAR 340-200-0040 and approved by EPA.

(~~126~~131) "Stationary source" means any building, structure, facility, or installation at a source that emits or may emit any regulated air pollutant.

(~~127~~132) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.

(~~128~~133) "Synthetic minor source" means a source ~~which~~ that would be classified as a major source under OAR 340-200-0020, but for ~~physical or operational~~ limits on its potential to emit air

pollutants contained in ~~an ACDP~~ permit ~~-~~issued by the Department under OAR 340 division 216 or 218.

(~~129~~134) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:

(a) A major modification subject to OAR 340-224-0050, Requirements for Sources in Nonattainment Areas;

(b) A major modification subject to OAR 340-224-0060, Requirements for Sources in Maintenance Areas;

(c) A major modification subject to OAR 340-224-0070, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas;

(d) A ~~change~~ modification ~~which~~ that is subject to a New Source Performance Standard under Section 111 of the FCAA; or

(e) A modification under Section 112 of the FCAA.

~~(130) "Total Suspended Particulate" or "TSP" means particulate matter as measured by the reference method described in **40 CFR Part 50, Appendix B** (July 1, 1997).~~

(~~131~~135) "Total Reduced Sulfur" or "TRS" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, ~~and~~ dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide (H_2S).

(~~132~~136) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-226-0130. For existing sources, the emission limit established ~~shall~~ will be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established ~~shall~~ will be typical of the emission level achieved by well controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations ~~shall~~ will be based on information known to the Department while considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. The Department may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, ~~or~~ operational standard, or combination thereof, may be required.

(137) "Unassigned Emissions" means the amount of emissions that are in excess of the PSEL but less than the Netting Basis.

(~~133~~138) "Unavoidable" or "could not be avoided" means events ~~which~~ that are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.

(~~134~~139) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment ~~which~~ that may cause ~~an~~ excess emissions.

~~(135) "Verified Emission Factor" means an emission factor approved by the Department and developed for a specific major source or source category and approved for application to that major source by the Department.~~

(~~136~~140) "Visibility Impairment" means any humanly perceptible change in visual range, contrast or coloration from that which ~~would have~~ existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

(~~137~~141) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides~~,~~ or carbonates, and ammonium carbonate, ~~which~~ that participates in atmospheric photochemical reactions.

(a) This includes any such organic compound ~~other than~~except the following, which have been determined to have negligible photochemical reactivity in the formation of tropospheric ozone:

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

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

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

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

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

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

(c) ~~As a precondition to excluding these compounds, as listed in subsection (a), as VOC or at any time thereafter, t~~The Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the ~~satisfaction of the~~ Department's satisfaction, the amount of negligibly-reactive compounds in the source's emissions.

(142) "Year" means any consecutive 12 month period of time.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
[ED. NOTE: The tables referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: [DEQ 15-1978, f. & ef. 10-13-78; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-20-033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. &cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-20-145, 340-20-225, 340-20-305, 340-20-355, 340-20-460 & 340-20-520; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. ; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99]; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0205, 340-028-0110

340-200-0025
Abbreviations and Acronyms

(1) "ACDP" means Air Contaminant Discharge Permit.
(2) "ACT" means Federal Clean Air Act.
(3) "AE" means Actual Emissions.
(4) "AICPA" means Association of Independent Certified Public Accountants.
(5) "AQCR" means Air Quality Control Region.
(6) "AQMA" means Air Quality Maintenance Area.
(7) "ASME" means American Society of Mechanical Engineers.
(8) "ASTM" means American Society for Testing & Materials.
(9) "ATETP" means Automotive Technician Emission Training Program.
(10) "AWD" means all wheel drive.
(11) "BACT" means Best Available Control Technology.
(12) "BLS" means black liquor solids.
(13) "CAA" means Clean Air Act
(14) "CAR" means control area responsible party.
(15) "CBD" means central business district.
(16) "CCTMP" means Central City Transportation Management Plan.
(17) "CEM" means continuous emissions monitoring.
(18) "CEMS" means continuous emission monitoring system.
(19) "CERCLA" means Comprehensive Environmental Response Compensation and Liability Act.
(20) "CFRMS" means continuous flow rate monitoring system.
(21) "CFR" means Code of Federal Regulations.
(22) "CMS" means continuous monitoring system.
(23) "CO" means carbon monoxide.
(24) "COMS" means continuous opacity monitoring system.
(25) "CPMS" means continuous parameter monitoring system.
(26) "DEQ" means Department of Environmental Quality.
(27) "DOD" means Department of Defense.
(28) "EA" means environmental assessment.
(29) "ECO" means employee commute options.
(30) "EEAF" means emissions estimate adjustment factor.
(31) "EF" means emission factor.
(32) "EGR" means exhaust gas re-circulation.
(33) "EPA" means Environmental Protection Agency.
(34) "EQC" means Environmental Quality Commission.
(35) "ESI" means Environmental Impact Statement.
(36) "ESP" means electrostatic precipitator.
(37) "FCAA" means Federal Clean Air Act.
(38) "FHWA" means Federal Highway Administration.
(39) "FONSI" means finding of no significant impact.
(40) "FTA" means Federal Transit Administration.
(41) "GFA" means gross floor area.
(42) "GLA" means gross leasable area.
(43) "GPM" means grams per mile.
(44) "gr/dscf" means grains per dry standard cubit foot.
(45) "GTBA" means grade tertiary butyl alcohol.
(46) "GVWR" means gross vehicle weight rating.

(47) "HAP" means hazardous air pollutant.
(48) "HEPA" means high efficiency particulate air.
(49) "HMIWI" means hospital medical infectious waste incinerator.
(50) "I/M" means inspection and maintenance program.
(51) "IG" means inspection grade.
(52) "IRS" means Internal Revenue Service.
(53) "ISECP" means indirect source emission control program.
(54) "ISTEA" means Intermodal Surface Transportation Efficiency Act.
(55) "LAER" means Lowest Achievable Emission Rate.
(56) "LDT2" means light duty truck 2.
(57) "LIDAR" means laser radar; light detection and ranging.
(58) "LPG" means liquefied petroleum gas.
(59) "LRAPA" means Lane Regional Air Pollution Authority.
(60) "LUCS" means Land Use Compatibility Statement.
(61) "MACT" means Maximum Achievable Control Technology.
(62) "MPO" means Metropolitan Planning Organization.
(63) "MTBE" means methyl tertiary butyl ether.
(64) "MWC" means municipal waste combustor.
(65) "NAAQS" means National Ambient Air Quality Standards.
(66) "NEPA" means National Environmental Policy Act.
(67) "NESHAP" means National Emissions Standard for Hazardous Air Pollutants.
(68) "NIOSH" means National Institute of Occupational Safety & Health.
(69) "NO_x" means nitrogen oxides.
(70) "NSPS" means New Source Performance Standards.
(71) "NSR" means New Source Review.
(72) "NSSC" means neutral sulfite semi-chemical.
(73) "O_3" means ozone.
(74) "OAR" means Oregon Administrative Rules.
(75) "ODOT" means Oregon Department of Transportation.
(76) "ORS" means Oregon Revised Statutes.
(77) "OSAC" means orifice spark advance control.
(78) "OSHA" means Occupational Safety & Health Administration.
(79) "PCDE" means pollution control device collection efficiency.
(80) "PEMS" means predictive emission monitoring system.
(81) "PM" means particulate matter.
(82) "PM_{10}" means particulate matter less than 10 microns.
(83) "POTW" means Publicly Owned Treatment Works.
(84) "POV" means privately owned vehicle.
(85) "PSD" means Prevention of Significant Deterioration.
(86) "PSEL" means Plant Site Emission Limit.
(87) "QIP" means quality improvement plan.
(88) "RACT" means Reasonably Available Control Technology.
(89) "RVCOG" means Rogue Valley Council of Governments.
(90) "RWOC" means running weighted oxygen content.
(91) "SKATS" means Salem-Kaiser Area Transportation Study.
(92) "scf" means standard cubic feet.

(93) "SCS" means speed control switch.
(94) "SD" means standard deviation.
(95) "SIP" means State Implementation Plan.
(96) "SO_2" means sulfur dioxide.
(97) "SOCMI" means synthetic organic chemical manufacturing industry.
(98) "SOS" means Secretary of State.
(99) "TAC" means thermostatic air cleaner.
(100) "TACT" means Typically Achievable Control Technology.
(101) "TCM" means transportation control measures.
(102) "TCS" means throttle control solenoid.
(103) "TIP" means Transportation Improvement Program.
(104) "TRS" means total reduced sulfur.
(105) "TSP" means total suspended particulate matter.
(106) "UGA" means urban growth area.
(107) "UGB" means urban growth boundary.
(108) "US DOT" means United States Department of Transportation.
(109) "UST" means underground storage tanks.
(110) "UTM" means universal transverse mercator.
(111) "VIN" means vehicle identification number.
(112) "VMT" means vehicle miles traveled.
(113) "VOC" means volatile organic compounds.

340-200-0030
Exceptions

Except as provided in ORS 468A.020 and this rule, OAR Chapter 340, Divisions 200 through 268 do not apply to:

(1) Agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, except for field burning regulated pursuant to OAR Chapter 340, Division 266.
(2) Use of equipment in agricultural operations in the growth of crops or the raising of fowls or animals, except for field burning regulated pursuant to OAR Chapter 340, Division 266.
(3) Barbecue equipment used in connection with any residence.
(4) Agricultural land clearing operations or land grading.
(5) Heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families, except woodstoves regulated pursuant to OAR Chapter 340, Division 262.
(6) Fires set or permitted by any public officer, board, council or commission when such fire is set or permission given in the performance of such duty of the officer for the purpose of weed abatement, the prevention or elimination of a fire hazard, or the instruction of employees in the methods of fire fighting, which is in the opinion of such officer necessary, or from 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.
(7) The propagation and raising of nursery stock, except boilers used in connection with the propagation and raising of nursery stock.

[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.025
Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0003

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~~ will 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~~ will be submitted to the United States Environmental Protection Agency for approval.

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

(a) ~~To s~~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 a~~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; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047

340-200-0050
Compliance Schedules

(1) The Department's goal is to ~~shall attempt to~~ encourage voluntary cooperation of all persons responsible for an air contamination source~~, as defined by ORS 468A.005(4)~~. To facilitate this cooperation and provide for a progressive program of air pollution control, the Department may negotiate with such persons to establish a compliance schedule for meeting the requirements contained in the applicable air quality rules or statutes~~of compliance~~. The schedule will set forth the ~~dates and terms and~~ conditions ~~by~~ with which the responsible person ~~responsible for an air contamination source shall~~ must comply~~ with applicable air quality rules or statutes:~~

(a) The schedule may be accepted in lieu of a hearing. It ~~and shall~~ must be in writing and signed by the Director of the Department or his designated officer and an authorized agent of the responsible person~~ responsible for the air contamination source~~. After the schedule is executed by both parties, it ~~shall~~ must be confirmed by order of the Department;

(b) Compliance schedules providing for final compliance at a date later than 18 months from the date of execution ~~shall~~ must contain requirements for periodic reporting and increments of progress toward compliance, at intervals of less than 18 months;

(c) No compliance schedule ~~shall~~ may allow emissions on a permanent basis in excess of applicable standards and rules.

(2) ~~In the event~~If a negotiated schedule of compliance cannot be established, the Department may set a show cause hearing as provided by ORS 468.090 at a date and time designated as to why an order implementing a schedule proposed by the Department should not be adopted, or take such other authorized action as may be warranted.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0032; DEQ 19-1993, f. &cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0700

Conflicts of Interest

340-200-0100
Purpose

The purpose of OAR 340-200-0100 through 340-200-0120 is to comply with the requirements of Section 128 of the federal Clean Air Act ~~as amended August, 1977 (Public Law 95-95) (herein after called "Clean Air Act"),~~ regarding public interest representation by a majority of the members of the Commission and by the Director and disclosure by them of potential conflicts of interest.

[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.310
Hist.: DEQ 15-1978, f. & cf. 10-13-78; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0200

340-200-0110
Public Interest Representation

At least a majority of the members of the Commission and the Director ~~shall~~ must represent the public interest and ~~shall~~ may not derive any significant portion of their respective incomes directly from persons subject in Oregon to permits or enforcement orders under the Clean Air Act.

[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.310
Hist.: DEQ 15-1978, f. & ef. 10-13-78; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0210

340-200-0120
Disclosure of Potential Conflicts of Interest

Each member of the Commission and the Director ~~shall~~ must disclose any potential conflict of interest.

[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.310
Hist.: DEQ 15-1978, f. & ef. 10-13-78; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0215

TABLE 1
OAR 340-200-0020
SIGNIFICANT AMBIENT AIR QUALITY IMPACT WHICH IS EQUAL TO OR GREATER THAN:

Pollutant	*Pollutant Averaging Time*				
	Annual	*24-Hour*	*8-Hour*	*3-Hour*	*1-Hour*
SO_2	1.0 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
~~TSP or~~ PM_{10}	0.2 $\mu g/m^3$	1.0 $\mu g/m^3$			

TABLE 1
OAR 340-200-0020
SIGNIFICANT AMBIENT AIR QUALITY IMPACT WHICH IS EQUAL TO OR GREATER THAN:

Pollutant	*Pollutant Averaging Time*				
	Annual	*24-Hour*	*8-Hour*	*3-Hour*	*1-Hour*
NO_2	1.0 $\mu g/m^3$				
CO			0.5 mg/m^3		2 mg/m^3

TABLE 2
OAR 340-200-0020
SIGNIFICANT EMISSION RATES FOR POLLUTANTS REGULATED UNDER THE CLEAN AIR ACT

	Significant Pollutant	*Emission Rate*
(A)	Carbon Monoxide	100 tons/year
(B)	Nitrogen Oxides (NO_X)	40 tons/year
(C)	Particulate Matter	25 tons/year
(D)	PM_{10}	15 tons/year
(E)	Sulfur Dioxide	40 tons/year
(F)	Volatile Organic Compounds (VOC)	40 tons/year
(G)	Lead	0.6 ton/year
~~(H)~~	~~Mercury~~	~~0.1 ton/year~~
~~(I)~~	~~Beryllium~~	~~0.0004 ton/year~~
~~(J)~~	~~Asbestos~~	~~0.007 ton/year~~
~~(K)~~	~~Vinyl Chloride~~	~~1 ton/year~~
(~~L~~H)	Fluorides	3 tons/year
(~~M~~I)	Sulfuric Acid Mist	7 tons/year
(~~N~~J)	Hydrogen Sulfide	10 tons/year
(~~O~~K)	Total Reduced Sulfur (including hydrogen sulfide)	10 tons/year
(~~P~~L)	Reduced sulfur compounds (including hydrogen sulfide)	10 tons/year
(~~Q~~M)	Municipal waste combustor organics (measured as total tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 ton/year
(~~R~~N)	Municipal waste combustor metals (measured as particulate matter)	15 tons/year
(~~S~~O)	Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40 tons/year
(~~T~~P)	Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	50 tons/year

Table 3
OAR 340-200-0020
SIGNIFICANT EMISSION RATES FOR THE MEDFORD-ASHLAND AIR QUALITY MAINTENANCE AREA

Air Contaminant	*Emission Rate*		
	Annual	*Day*	~~*Hour*~~
PM_{10}	4,500 Kilograms (5.0 tons)	23 Kilograms (50.0 lbs.)	~~4.6 Kilograms (10.0 lbs.)~~

DIVISION 202

AMBIENT AIR QUALITY STANDARDS AND PSD INCREMENTS

[**NOTE:** Administrative Order DEQ 37 repealed previous OAR 340-031-0005 through 340-031-0020 (DEQ 5 and 6).]

340-202-0010
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) "Ambient Air" means that portion of the atmosphere external to buildings, to which the general public has access~~which surrounds the earth and is used for respiration by plants or animals including people, but excluding the general volume of gases contained within any building or structure~~.

(2) "Ambient Air Monitoring Site Criteria" means the general probe siting specifications as set forth in **Appendix E** of **40 CFR 58**.

(3) "Approved Method" means an analytical method for measuring air contaminant concentrations ~~which are~~ described or referenced in **40 CFR 50** and Appendices. These methods are approved by the Department of Environmental Quality.

(4) "Baseline Concentration" means:

(a) Except as provided in subsection (c)~~ of this section~~, the ambient concentration level for sulfur dioxide and PM_{10} ~~which~~ that existed in an area during the calendar year 1978. If no ambient air quality data is available in an area, the baseline concentration may be estimated using modeling based on actual emissions for 1978. Actual emission increases or decreases occurring before January 1, 1978 ~~shall~~must be included in the baseline calculation, except that actual emission increases from any major source or major modification on which construction commenced after January 6, 1975 ~~shall~~must not be included in the baseline calculation;

(b) The ambient concentration level for nitrogen oxides ~~which~~ that existed in an area during the calendar year 1988.

(c) For the area of northeastern Oregon within the boundaries of the Umatilla, Wallowa-Whitman, Ochoco, and Malheur National Forests, the ambient concentration level for PM_{10} ~~which~~ that existed during the calendar year 1993. The Department ~~shall~~ allows the use of a prior time period ~~upon a determination by~~if the Department determines that it is more representative of normal emissions.

~~(5) "CFR" means **Code of Federal Regulations**, which is published annually and updated daily by issues of the **Federal Register**. The CFR contains general and permanent rules promulgated by the executive departments and agencies of the federal government. References to the CFR are preceded by a "Title number" and followed by a "Part and Section number." For example: "**40 CFR 50.7**". The CFRs referenced in this division are available for inspection at the Department of Environmental Quality.~~

~~(6) "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.~~

(~~7~~5) "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(~~8~~6) "Indian Reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(~~9~~7) "Oregon Standard Method" means any method of sampling and analyzing for an air contaminant approved by the Department~~ of Environmental Quality~~. Oregon standard methods are kept on file by the Department~~ of Environmental Quality~~.

~~(10) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's **Source Sampling Manual (January 1992).**~~

~~(11) "PM_{10}":~~

~~(a) When used in the context of emissions, means finely divided solid or liquid material, including condensible particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal ten micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's **Source Sampling Manual (January 1992);**~~

~~(b) When used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured in accordance with **40 CFR, Part 50, Appendix J (July 1993).**~~

(~~12~~8) "PPM" means parts per million by volume. It is a dimensionless unit of measurement for gases ~~which~~ that expresses the ratio of the volume of one component gas to the volume of the entire sample mixture of gases.

~~(13) "Total Suspended Particulate" or "TSP" means particulate matter as measured by the method described in **40 CFR, Part 50, Appendix B (July 1, 1993).**~~

[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.]
[Publication: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
Stat. Auth.: ORS 468A
Stats. Implemented: ORS 468A.025
Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 18-1979, f. & ef. 6-22-79; DEQ 25-1981, f. & ef. 9-8-81; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 19-1993, f. & cert. ef. 11-4-93; Renumbered from 340-031-0105; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0005

Ambient Air Quality Standards

340-202-0050
Purpose and Scope of Ambient Air Quality Standards

(1) An ambient air quality standard is an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple contaminants in the ambient air ~~which~~ that ~~shall~~must not be exceeded. The ambient air quality standards set forth in OAR 340-202-0050 through 340-202-0130 ~~are designed~~were established to protect both public health and public welfare.

(2) Ambient air quality standards are not generally ~~intended as a means of~~used to ~~determining~~ determine the acceptability or unacceptability of emissions from a specific sources of air contamination. More commonly, the measured ambient air quality ~~in comparison~~is compared with the ambient air quality standards ~~is used as a criteria for~~to ~~determining~~ determine the adequacy or effectiveness of emission standards for ~~the aggregate of~~all sources in a general area. However, ~~in the case of~~if a source or combination of sources ~~which~~ are ~~deemed to be~~ singularly responsible for a violation of ambient air quality standards ~~being exceeded~~ in a particular ~~locality~~area, ~~the violation of said standards shall~~must ~~be due cause for~~it may be appropriate to ~~imposing~~ impose emission standards that are more stringent than those ~~generally~~ otherwise applied to the class of sources involved. Similarly, proposed construction of new sources or expansions of existing sources, ~~which~~ that may prevent or interfere with the attainment and maintenance of ambient air quality standards~~, shall be due cause~~are grounds for ~~issuance of~~issuing an order prohibiting such proposed construction~~, pursuant to~~as authorized by ORS 468A.055~~,~~ and pursuant to OAR 340-210-0200 through 340-210-0220, and OAR 340-218-0190.

(3) In adopting the ambient air quality standards in this division, the Environmental Quality Commission recognizes that one or more of the standards are currently being exceeded in certain parts of the state. It is hereby declared to be the policy of the Environmental Quality Commission to achieve, by application of a timely but orderly program of pollution abatement, full compliance with ambient air quality standards throughout the state at the earliest possible date.

[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.025

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. &cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0010

340-202-0060

Suspended Particulate Matter

Concentrations of the fraction of suspended particulate that is equal to or less than ten microns in aerodynamic diameter ~~matter~~ in ambient air as measured by an approved method ~~for total suspended particulate, (TSP), or by an approved method for the fraction of TSP which is equal to or less than ten microns in aerodynamic diameter, (PM_{10}), shall~~must not exceed:

~~(1) 60 micrograms of TSP per cubic meter of air as an annual geometric mean for any calendar year at any site.~~

~~(2) 150 micrograms of TSP per cubic meter of air as a 24 hour average concentration more than once per year at any site.~~

~~(3)~~(1) 50 micrograms of PM_{10} per cubic meter of air as an annual arithmetic mean. This standard is attained when the expected annual arithmetic mean concentration, as determined in accordance with **Appendix K** of **40 CFR 50** is less than or equal to 50 micrograms per cubic meter at any site.

~~(4)~~(2) 150 micrograms of PM_{10} per cubic meter of air as a 24-hour average concentration for any calendar day. This standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter as determined in accordance with **Appendix K** of **40 CFR 50** is equal to or less than one at any site.

[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.]

[Publication: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ4-1993, f. &cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0015

340-202-0070

Sulfur Dioxide

Concentrations of sulfur dioxide in ambient air as measured by an approved method ~~shall~~must not exceed:

(1) 0.02 ppm as an annual arithmetic mean for any calendar year at any site.

(2) 0.10 ppm as a 24-hour average concentration more than once per year at any site.

(3) 0.50 ppm as a three-hour average concentration more than once per year at any site.

[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.025

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ 24-1991, 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 340-031-0020

340-202-0080

Carbon Monoxide

For comparison to the standard, averaged ambient concentrations of carbon monoxide ~~shall~~must be rounded to the nearest integer in parts per million (ppm). Fractional parts of 0.5 or greater ~~shall~~ must be rounded up. Concentrations of carbon monoxide in ambient air as measured by an approved method, ~~shall~~ must not exceed:

(1) 9 ppm as an eight-hour average concentration more than once per year at any site.

(2) 35 ppm as a one-hour average concentration more than once per year at any site.

[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.025

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ 24-1991, 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 340-031-0025

340-202-0090

Ozone

Concentrations of ozone in ambient air as measured by an approved method ~~shall~~must not exceed 0.12 ppm as a one-hour average concentration. This standard is attained when, at any site the expected number of days per calendar year with maximum hourly concentrations greater than 0.12 ppm is equal to or less than one as determined by the method of **Appendix H, 40 CFR 50**.

[**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.]

[Publication: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.025
Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 15-1979, f. & ef. 6-22-79; DEQ 7-1980, f. & ef. 3-5-80; DEQ 4-1982, f. & ef. 1-29-82; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ 24-1991, 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 340-031-0030

340-202-0100
Nitrogen Dioxide

Concentrations of nitrogen dioxide in ambient air as measured by an approved method ~~shall~~must not exceed 0.053 ppm as an annual arithmetic mean at any site.

[**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.025
Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ 24-1991, 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 340-031-0040

340-202-0110
Particle Fallout

The particle fallout rate as measured by an Oregon standard method at a location approved by the Department of Environmental Quality ~~shall~~must not exceed:

(1) 10 grams per square meter per month in an industrial area.

(2) 5.0 grams per square meter per month in an industrial area if visual observations show a presence of wood waste or soot and the volatile fraction of the sample exceeds 70 percent.

(3) 5.0 grams per square meter per month in residential and commercial areas.

(4) 3.5 grams per square meter per month in residential and commercial areas if visual observations show the presence of wood waste or soot and the volatile fraction of the sample exceeds 70 percent.

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.025
Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0045

~~340-202-0120~~
~~Calcium Oxide (Lime Dust)~~

~~(1) Concentrations of calcium oxide present as total suspended particulate, TSP, as measured by an approved method at a location approved by the Department of Environmental Quality, shall not exceed 20 micrograms per cubic meter in residential and commercial areas.~~

~~(2) Concentrations of calcium oxide present as particle fallout as measured by an Oregon standard method at a location approved by the Department of Environmental Quality, shall not exceed 0.35 grams per square meter per month in residential and commercial areas.~~

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.025
Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0050

340-202-0130
Ambient Air Quality Standard for Lead

The lead concentration in ambient air as measured by an approved method ~~shall~~must not exceed 1.5 micrograms per cubic meter as an arithmetic average concentration of all samples collected at any site during any one calendar quarter.

[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.025

Hist.: DEQ 85, f. 1-29-75, ef. 2-25-75; DEQ 1-1983, f. & ef. 1-21-83; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ 24-1991, 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 340-031-0055

Prevention of Significant Deterioration Increments

340-202-0200
General

(1) The purpose of OAR 340-202-0200 through 340-202-0220 is to implement a program to prevent significant deterioration of air quality in the State of Oregon as required by the federal Clean Air Act Amendments of 1977.

(2) The Department will review the adequacy of the State Implementation Plan on a periodic basis and within 60 days of such time as information becomes available that an applicable increment is being violated. Any Plan revision resulting from the reviews will be subject to the opportunity for public hearing in accordance with procedures established in the Plan.

[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.025
Hist.: DEQ 18-1979, f. & ef. 6-22-79; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0100

340-202-0210
Ambient Air Increments

(1) This rule defines significant deterioration. In areas designated as Class I, II or III, emissions from new or modified sources ~~shall~~must be limited such that increases in pollutant concentration over the baseline concentration ~~shall~~must be limited to those set out in **Table 1**.

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

[**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.025
Hist.: DEQ 18-1979, f. & ef. 6-22-79; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0110

340-202-0220
Ambient Air Ceilings

No concentration of a pollutant ~~shall~~ may exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard; or

(3) The concentration permitted under the state ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

[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.025
Hist.: DEQ 18-1979, f. & ef. 6-22-79; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0115

DIVISION 204
DESIGNATION OF AIR QUALITY AREAS

340-204-0030
Designation of Nonattainment Areas

The following areas are designated as Nonattainment Areas:

(1) Carbon Monoxide Nonattainment Areas:

(a) The Grants Pass Nonattainment Area for Carbon Monoxide is the Grants Pass CBD as defined in OAR 340-204-0010. After the effective date of the Environmental Protection Agency's approval of this section as a revision to the Oregon Clean Air Act Implementation Plan as published in the Federal Register, the Grants Pass CBD is not subject to OAR 340-204-0030 and is no longer considered a nonattainment area.

(b) The Klamath Falls Nonattainment Area for Carbon Monoxide is the Klamath Falls UGB as defined in OAR 340-204-0010.

(c) The Salem Nonattainment Area for Carbon Monoxide is the Salem-Kaiser Area Transportation Study as defined in OAR 340-204-0010.

(2) PM10 Nonattainment Areas:

Revocation of the nonattainment designation for the following areas will be effective upon final notice in the Federal Register:

(a) The Eugene Nonattainment Area for PM10 as defined in OAR 340-204-0010.

(b) The Grants Pass Nonattainment Area for PM10 as defined in OAR 340-204-0010.

(c) The Klamath Falls Nonattainment Area for PM10 as defined in OAR 340-204-0010.

(d) The LaGrande Nonattainment Area for PM10 as defined in OAR 340-204-0010.

(e) The Lakeview Nonattainment Area for PM10 as defined in OAR 340-204-0010.

(f) The Medford Nonattainment Area for PM10 as defined in OAR 340-204-0010.

(g) The Oakridge Nonattainment Area for PM10 as defined in OAR 340-204-0010.

(3) Ozone Nonattainment Areas:

The Salem Nonattainment Area for Ozone is the Salem-Kaiser Area Transportation Study as defined in OAR 340-204-0010.

[**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 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0520; DEQ15-1999, f. & cert. ef. 10-22-99.

DIVISION 209

Public Participation
340-209-0010
Purpose

The purpose of this Division is to specify the requirements for notifying the public of certain permit actions and providing an opportunity for the public to participate in those permit actions.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-209-0020
Applicability

This Division applies to permit actions requiring public notice as specified in OAR 340, Divisions 216 and 218.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-209-0030
Public Notice Categories and Timing

(1) The Department categorizes permit actions according to potential environmental and public health significance and the degree to which the Department has discretion for implementing the applicable regulations. Category I is for permit actions with low environmental and public health significance so they have less public notice and opportunity for public participation. Category IV is for permit actions with potentially high environmental and public health significance so they have the greatest level of public notice and opportunity for participation.

(2) Permit actions are assigned to specific categories in OAR 340, Divisions 216 and 218. If a permit action is uncategorized, the permit action will be processed under Category III.

(3) The following describes the public notice or participation requirements for each category:

(a) Category I – No prior public notice or opportunity for participation. However, the Department will maintain a list of all permit actions processed under Category I and make the list available for public review.

(b) Category II – The Department will provide public notice of the proposed permit action and a minimum of 30 days to submit written comments.

(c) Category III - The Department will provide notice of the proposed permit action and a minimum of 35 days to submit written comments. The Department will provided a minimum of 30 days notice for a hearing, if one is scheduled. The Department will schedule a hearing to allow interested persons to submit oral or written comments if:

(A) the Department determines that a hearing is necessary; or

(B) within 35 days of the mailing of the public notice, the Department receives written requests from ten persons, or from an organization representing at least ten persons, for a hearing.

(d) Category IV - Once an application is considered complete under OAR 340-216-0040, the Department will:

(A) Provide notice of the completed application and requested permit action;

(B) Schedule an informational meeting within the community where the facility will be or is located and provide public notice of the meeting;

(C) Once a draft permit is completed, provide public notice of the proposed permit and a minimum of 40 days to submit written comments; and

(D) Schedule a public hearing to allow interested persons to submit oral or written comments and provide a minimum of 30 days public notice for the hearing.

(4) Except for title V permit actions, ~~T~~the Department may move a permit action to a higher category under section (3) of this rule based on, but not limited to the following factors:

(a) Anticipated public interest in the facility;

(b) Compliance and enforcement history of the facility or owner; or

(c) Potential for significant environmental or public harm due to location or type of facility.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-209-0040
Public Notice Information

(1) The following information is required in public notices for all proposed ACDP and draft Oregon Title V Operating Permit actions, except for General Permit actions:

(a) Name of applicant and location of the facility;

(b) Type of facility, including a description of the facility's processes subject to the permit;

(c) Description of the air contaminant emissions including, the type of pollutants, quantity of emissions, and any decreases or increases since the last permit action for the facility;

(d) Location and description of documents relied upon in preparing the draft permit;

(e) Other permits required by the Department;

(f) Date of previous permit actions;

(g) Opportunity for public comment, whether in writing or in person;

(h) Compliance, enforcement, and complaint history along with resolution of the same;

(i) A summary of the discretionary decisions made by the Department in drafting the permit;

(j) Type and duration of the proposed or draft permit action;

(k) Basis of need for the proposed or draft permit action;

(l) Any special conditions imposed in the proposed or draft permit action;

(m) Whether each proposed permitted emission is a criteria pollutant and whether the area in which the source is located is designated as attainment or nonattainment for that pollutant;

(n) If the proposed permit action is for a federal major source, whether the proposed permitted emission would have a significant impact on a Class I airshed;

(o) If the proposed permit action is for a major source for which dispersion modeling has been performed, an indication of what impact each proposed permitted emission would have on the ambient air quality standard and PSD increment consumption within an attainment area;

(p) Other available information relevant to the permitting action;

(q) The name and address of the Department office processing the permit;

(r) The name, address, and telephone number and e-mail address of a person from whom interested persons may obtain additional information, including copies of the permit draft, the

application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, except for information that is exempt from disclosure, and all other materials available to the Department that are relevant to the permit decision; and

(s) If applicable, a statement that an enhanced New Source Review process, including the external review procedures required under OAR 340-218-0210 and 340-218-0230, is being used to allow for subsequent incorporation of the operating approval into an Oregon Title V Operating Permit as an administrative amendment.

(2) General Permit Actions. The following information is required for General ACDP and General Oregon Title V Operating Permit actions:

(a) The name and address of potential or actual facilities assigned to the General Permit;

(b) Type of facility, including a description of the facility's process subject to the permit;

(c) Description of the air contaminant emissions including, the type of pollutants, quantity of emissions, and any decreases or increases since the last permit action for the potential or actual facilities assigned to the permit;

(d) Location and description of documents relied upon in preparing the draft permit;

(e) Other permits required by the Department;

(f) Date of previous permit actions;

(g) Opportunity for public comment, whether in writing or in person;

(h) Compliance, enforcement, and complaint history along with resolution of the same;

(i) A summary of the discretionary decisions made by the Department in drafting the permit;

(j) Type and duration of the proposed or draft permit action;

(k) Basis of need for the proposed or draft permit action;

(l) Any special conditions imposed in the proposed or draft permit action;

(m) Whether each proposed permitted emission is a criteria pollutant and whether the area in which the sources are located are designated as attainment or nonattainment for that pollutant;

(n) If the proposed permit action is for a federal major source, whether the proposed permitted emission would have a significant impact on a Class I airshed;

(o) Other available information relevant to the permitting action; and

(p) The name and address of the Department office processing the permit;

(q) The name, address, and telephone number and e-mail address of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, except for information that is exempt from disclosure, and all other materials available to the Department that are relevant to the permit decision; and

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-209-0050
Public Notice Procedures

(1) All notices. The Department will mail a notice of proposed permit actions to the persons identified in OAR 340-209-0060.

(2) New Source Review, Oregon Title V Operating Permit and General ACDP actions. In addition to section (1) of this rule, the Department will provide notice of New Source Review, Oregon Title V Operating Permit and General ACDP actions as follows:

(a) Advertisement in a newspaper of general circulation in the area where the source or sources are or will be located or a Department publication designed to give general public notice; and

(b) Other means, if necessary, to assure adequate notice to the affected public.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-209-0060
Persons Required To Be Notified

(1) All notices. For all types of public notice, the Department will provide notice to the following persons:

(a) The applicant;

(b) Persons on a mailing list maintained by the Department, including those who request in writing to be notified of air quality permit actions;

(c) Local news media; and

(d) Interested state and federal agencies.

(2) General ACDP or General Oregon Title V Operating Permit actions. In addition to section (1) of this rule, the Department will notify the following:

(a) Potential applicants; and

(b) All existing permit holders in the source category in the case where a General Permit is being issued to a category of sources already permitted.

(3) Oregon Title V Operating Permit actions. The Department will provide notice to affected states and the EPA in addition to the persons identified in sections (1) and (2) of this rule.

(4) New Source Review actions. For New Source Review actions (OAR 340, division 224), the Department will provide notice to the following officials and agencies having jurisdiction over the location where the proposed construction would occur in addition to the persons identified in section (1) of this rule:

(a) The chief executives of the city and county where the source or modification would be located;

(b) Any comprehensive regional land use planning agency;

(c) Any state, federal land manager, or Indian governing body whose land may be affected by emissions from the source or modification; and

(d) The EPA.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-209-0070
Hearing and Meeting Procedures

(1) Informational Meeting. For category IV permit actions, the Department will provide an informational meeting at a reasonable place and time.

(a) The meeting will be held after a complete application is received and before the Department makes a preliminary decision on the application.

(b) Notice of the meeting will be provided at least 14 days before the meeting;

(c) During the meeting, the Department will:

(A) describe the requested permit action; and

(B) accept comments from the public.

(d) The Department will consider any information gathered during the meeting, but will not maintain an official record of the meeting and will not provide a written response to the comments.

(2) Public Hearing. When a public hearing is required or requested, the Department will provide the hearing at a reasonable place and time before taking the final permit action.

(a) Notice of the hearing may be given either in the notice accompanying the proposed or draft permit action or in such other manner as is reasonably calculated to inform interested persons. The Department will provide notice of the hearing at least 30 days before the hearing

(b) Presiding Officer. A Presiding Officer will preside over the public hearing and ensure that proper procedures are followed to allow for the public to comment on the proposed permit action.

(A) Before accepting oral or written comments by members of the public, the Presiding Officer or Department representative will present a summary of the proposed permit action and the Department's preliminary decision. During this period, there will be an opportunity to ask questions about the proposed or draft permit action.

(B) The Presiding Office will then provide an opportunity for interested persons to submit oral or written comments regarding the proposed permit action. Interested persons are encouraged to submit written comments because time constraints may be imposed, depending on the level of participation. While public comment is being accepted, discussion of the proposed or draft permit action will not be allowed.

(C) After the public hearing, the Presiding Officer will prepare a report of the hearing that includes the date and time of the hearing, the permit action, names of persons attending the hearing, written comments, and a summary of the oral comments. The Presiding Officer's report will be entered into the permit action record.

(D) The applicant may submit a written response to any comments submitted by the public within 10 working days after the close of the public comment period. The Department will consider the applicant's response in making a final decision.

(c) Following the public hearing, or within a reasonable time after receipt of the Presiding Officer's report, the Department will take action upon the matter. Before taking such action, the Department will prepare a written response to separately address each substantial, distinct issue raised in the hearing record.

(d) The Department will make a record of the public comments, including the names and affiliation of persons who commented, and the issues raised during the public participation process. The public comment records are available to the public in the location(s) listed in OAR 340-209-0040. The public comment records may be in summary form rather than a verbatim transcript.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-209-0080

Issuance or Denial of a Permit

(1) The Department will take final action on the application as expeditiously as possible after the close of the public comment period.

(2) In making the final decision on the application, the Department will consider all relevant timely submitted comments.

(3) After considering the comments, the Department may adopt or modify the provisions requested in the permit application.

(4) Issuance of permit: The Department will promptly notify the applicant in writing of the final action as provided in OAR 340-011-0097 and will include a copy of the permit. If the permit conditions are different from those contained in the proposed permit, the notification will identify the affected conditions and include the reasons for the changes.

(5) Denial of a permit: The Department will promptly notify the applicant in writing of the final action as provided in OAR 340-011-0097. If the Department denies a permit application, the notification will include the reasons for the denial.

(6) The Department's decision under (4) and (5) is effective 20 days from the date of service of the notice unless, within that time, the Department receives a request for a hearing from the applicant. The request for a hearing must be in writing and state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR 340 division 11.

Stat. Auth.: ORS 183.335 and 468.020
Stats. Implemented: ORS 183.341, 183.413, 183.415, 468 & ORS 468A
Hist.:

DIVISION 210

STATIONARY SOURCE NOTIFICATION REQUIREMENTS

340-210-0010
Applicability

This division applies to all stationary sources in the state.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0200

340-210-0020
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.

[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 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99

Registration

340-210-0100
Registration in General

Any air contaminant source not subject to Air Contaminant Discharge Permits, OAR 340 division 216, or Oregon Title V Operating Permits, OAR 340-division 218, ~~shall~~must register with the Department upon request pursuant to OAR 340-210-01~~0~~10 through 340-210-0120.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020 & ORS 468A.310
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 15, f. 6-12-70, cf. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0005; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0500

340-210-0110
Registration Requirements

(1) Registration ~~shall~~must be completed within 30 days following the mailing date of the request by the Department.

(2) Registration ~~shall~~must be made on forms furnished by the Department and completed by the owner, lessee of the source, or agent.

(3) The following information ~~shall~~must 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~~must 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;

(i) Any other information requested by the Department.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020 & ORS 468A.310
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0010; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0510

340-210-0120
Re-Registration

(1) Once a year upon the annual date of registration, a person responsible for an air contaminant source ~~shall~~must reaffirm in writing the correctness and current status of the information furnished to the Department.

(2) Any change in any of the factual data reported under OAR 340-210-0110(3) ~~shall~~must be reported to the Department, at which time re-registration may be required on forms furnished by the Department.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020 & ORS 468A.310
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0015; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0520

Notice of Construction and Approval of Plans

~~**340-210-0200**~~

~~**Requirement**~~

~~**(1) No person shall construct, install, or establish a new source of air contaminant emission without first notifying the Department in writing if such new source is:**~~

~~**(a) Of any class listed in OAR 340-210-0210(1); and**~~

~~**(b) Not under the jurisdiction of a regional air quality control authority.**~~

~~**(2) New construction, installation or establishment includes:**~~

~~**(a) Addition to or enlargement or replacement of an air contamination source;**~~

~~**(b) A major alteration or modification of an air contamination source that may significantly affect the emission of air contamination.**~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0020; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0800

340-210-0205
Applicability

(1) Except as provided in section (2) of this rule, OAR 340-210-0200 through 340-210-0250 apply to

(a) all stationary sources; and

(b) all air pollution control equipment used to comply with emissions limits or used to avoid Oregon Title V Operating Permits (OAR 340 division 218) or New Source Review (OAR 340 division 224) requirements, or MACT standards (OAR 340, Division 244).

(2) OAR 340-210-0200 through 340-210-0250 do not apply to the following stationary sources:

(a) equipment used in agricultural operations and the growing or harvesting of crops or the raising of fowls or animals;

(b) agricultural land clearing operations or land grading;

(c) heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families;

(d) other activities associated with residences used exclusively as dwellings for not more than four families, including, but not limit to barbecues, house painting, maintenance, and groundskeeping; and

(e) categorically insignificant activities as defined in OAR 340-200-0020 that are not subject to NESHAP or NSPS requirements. This exemption applies to all categorically insignificant activities whether or not they are located at major or non-major sources.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

~~**340-210-0210**~~

~~**Scope**~~

~~**(1) Except as provided in section (2) of this rule, OAR 340-210-0200 through 340-210-0220 shall apply to the following classes of sources of air contaminant emission:**~~

~~**(a) Air pollution control equipment;**~~

~~**(b) Fuel burning equipment rated at 400,000 BTU per hour or greater;**~~

~~**(c) Refuse burning equipment rated at 50 pounds per hour or greater;**~~

~~**(d) Open burning operations;**~~

~~**(e) Process equipment having emission to the atmosphere;**~~

~~**(f) Such other sources as the Department may determine to be potentially significant sources of air contamination.**~~

~~**(2) OAR 340-210-0200 through 340-210-0220 shall not apply to Oregon Title V Operating Permit program sources.**~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0025; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0810

340-210-0215

Requirement

(1) New Stationary Sources. No person is allowed to construct, install, or establish a new stationary source that will cause an increase in any regulated pollutant emissions without first notifying the Department in writing.

(2) Modifications to Stationary Sources. No person is allowed to make a physical change or change in operation of an existing stationary source that will cause an increase, on an hourly basis at full production, in any regulated pollutant emissions without first notifying the Department in writing.

(3) Air Pollution Control Equipment. No person is allowed to construct or modify any air pollution control equipment without first notifying the Department in writing.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

~~340-210-0220~~

~~Procedure~~

~~(1) Notice of Construction. Any person intending to construct, install, or establish a new source of air contaminant emissions of a class listed in OAR 340-210-0210(1) shall notify the Department in writing on a form supplied by the Department.~~

~~(2) Submission of Information. The Department may within 30 days of receipt of a Notice of Construction require any or all of the following information to be submitted:~~

~~(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) 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 the person wants the Department to consider 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 Department to establish operational and maintenance requirements under OAR 340-226-0120(1) and (2);~~

~~(l) Amount and method of refuse disposal; and~~

~~(m) Corrections and revisions to the plans and specifications to insure compliance with applicable rules, orders and statutes.~~

~~(3) Notice of Approval:~~

~~(a) The Department shall upon determining that the proposed construction is in the opinion of the Department in accordance with the provisions of applicable rules, order, and statutes, notify the person concerned that construction may proceed;~~

~~(b) A Notice of Approval to proceed with construction shall not relieve the owner of the obligation of complying with applicable emission standards and orders.~~

~~(4) Order Prohibiting Construction:~~

~~(a) If within 60 days of receipt of the items set forth in section (2) of this rule the Director determines that the proposed construction is not in accordance with applicable statutes, rules, regulations and orders, the Director shall issue an order prohibiting the construction, installation or establishment of the air contamination source. Said order is to be forwarded to the owner by certified mail;~~

~~(b) Failure to issue such order within the time prescribed herein shall be considered a determination that the proposed construction, installation, or establishment may proceed, provided that it is in accordance with plans, specifications, and any corrections or revisions~~

~~thereto, or other information, if any, previously submitted, and provided further that it shall not relieve the owner of the obligation of complying with applicable emission standards and orders.~~

~~(5) Hearing. Pursuant to law, a person against whom an order prohibiting construction is directed may within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, state the grounds for hearing, and be mailed to the Director of the Department. The hearing shall be conducted pursuant to the applicable provisions of ORS Chapter 183.~~

~~(6) Notice of Completion. Within 30 days after any person has constructed an air contamination source as defined under OAR 340-210-0210(1), that person shall so report in writing on a form furnished by the Department, stating the date of completion of construction and the date the source was or will be put in operation.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 5-1989, f. 4-24-89, cert. ef. 5-1-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0030; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0820

340-210-0225

Types of Construction/Modification Changes

For the purpose of OAR 340-210-0200 through 340-210-0250, changes that involve new construction or modifications of stationary sources or air pollution control equipment are divided into the following Types:

(1) Type 1 changes include construction or modification of stationary sources or air pollution control equipment where such a change:

(a) would not increase emissions above the Plant Site Emission Limit by more than the deminimis levels defined in OAR 340-200-0020 for sources required to have a permit;

(b) would not increase emissions above the netting basis by more than or equal to the significant emissions rate;

(c) would not increase emissions from any stationary source or combination of stationary sources by more than the deminimis levels defined in OAR 340-200-0020;

(d) would not be used to establish a federally enforceable limit on the potential to emit; and

(e) would not require a TACT determination under OAR 340-226-0130 or a MACT determination under OAR 340-244-0200.

(2) Type 2 changes include construction or modification of stationary sources or air pollution control equipment where such a change:

(a) would meet the criteria of sub-sections (1)(a), (1)(b), (1)(d), and (1)(e) of this rule; and

(b) would not increase emissions from any stationary source or combination of stationary sources by more than or equal to the significant emission rate;

(3) Type 3 changes include construction or modification of stationary sources or air pollution control equipment where such a change:

(a) would increase emissions above the Plant Site Emission Limit by more than the deminimis levels defined in OAR 340-200-0020 but less than the significant emission rate for sources required to have a permit;

(b) would increase emissions from any stationary source or combination of stationary sources by more than the significant emission rate but are not subject to OAR 340-222-0041(3)(b) or OAR 340, division 224 (NSR rules);

(c) would be used to establish a federally enforceable limit on the potential to emit; or

(d) would require a TACT determination under OAR 340-226-0130 or a MACT determination under OAR 340-244-0200.

(4) Type 4 changes include construction or modification of stationary sources or air pollution control equipment where such a change or changes would increase emissions above the PSEL or Netting Basis of the source by more than the significant emission rate.

[**NOTE**: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-210-0230
Notice to Construct

(1) Any person proposing a Type 1 or 2 change must provide notice to the Department before constructing or modifying a stationary source or air pollution control equipment. The notice must be in writing on a form supplied by the Department and include the following information as applicable:

(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) The type of construction or modification as defined in OAR 340-210-0220;

(e) A description of the constructed or modified source;

(f) A description of the production processes and a related flow chart for the constructed or modified source;

(g) A plot plan showing the location and height of the constructed or modified source. The plot plan must also indicate the nearest residential or commercial property;

(h) Type and quantity of fuels used;

(i) The change in the amount, nature and duration of regulated air pollutant emissions;

(j) Plans and specifications for air pollution control equipment and facilities and their relationship to the production process, including estimated efficiency of air pollution control equipment under present or anticipated operating conditions;

(k) Any information on pollution prevention measures and cross-media impacts the owner or operator wants the Department to consider in determining applicable control requirements and evaluating compliance methods;

(l) A list of any requirements applicable to the new construction or modification;

(m) 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 Department to establish operational and maintenance requirements under OAR 340-226-0120(1) and (2);

(n) Amount and method of refuse disposal; and

(o) Land Use Compatibility Statement signed by a local (city or county) planner either approving or disapproving construction or modification to the source if required by the local planning agency.

(2) Any person proposing a Type 3 or 4 change must submit an application for either a

construction ACDP, new permit, or permit modification, whichever is appropriate.

(3) The Department must be notified of any corrections and revisions to the plans and specifications upon becoming aware of the changes.

(4) Where a permit issued in accordance with OAR 340, divisions 216 or 218 includes construction approval for future changes for operational flexibility, the notice requirements in this rule are waived for the approved changes.

[**NOTE**: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-210-0240
Construction Approval

(1) Approval to Construct:

(a) For Type 1 changes, the owner or operator may proceed with construction or modification 10 days after the Department receives the notice required in OAR 340-210-0230, unless the Department notifies the owner or operator in writing that the proposed construction or modification is not a Type 1 change.

(b) For Type 2 changes, the owner or operator may proceed with the construction or modification 60 days after the Department receives the notice required in OAR 340-210-0230 or on the date that the Department approves the proposed construction in writing, whichever is sooner.

(c) For Type 3 changes, the owner or operator must obtain either a Construction ACDP or a new or modified Standard ACDP in accordance with OAR Chapter 340 division 216 before proceeding with the construction or modification.

(d) For Type 4 changes, the owner or operator must obtain a new or modified Standard ACDP before proceeding with the construction or modification.

[Note: In non-attainment areas and maintenance areas, Type 4 changes may be subject to OAR 340 division 224, New Source Review. In attainment areas, Type 4 changes may be subject to OAR 340-224-0070, Prevention of Significant Deterioration, only if the source would be a federal major source after making the change.]

(2) Approval to construct does not relieve the owner of the obligation of complying with applicable requirements.

(3) Notice of Completion. Unless otherwise specified in the construction ACDP or approval, the owner or operator must notify the Department in writing that the construction or modification has been completed using a form furnished by the Department. Unless otherwise specified, the notice is due 30 days after completing the construction or modification. The notice of completion must include the following:

(a) the date of completion of construction or modification; and

(b) the date the stationary source or air pollution control equipment was or will be put in operation.

(4) Order Prohibiting Construction or Modification. If at any time, the Department determines that the proposed construction is not in accordance with applicable statutes, rules, regulations, and orders, the Department will issue an order prohibiting the construction or

modification. The order prohibiting construction or modification will be forwarded to the owner or operator by certified mail.

(5) Hearing. A person against whom an order prohibiting construction or modification is directed may demand a hearing within 20 days from the date of mailing the order. The demand must be in writing, state the grounds for hearing, and be mailed to the Director of the Department. The hearing will be conducted pursuant to the applicable provisions in division 11 of this chapter.

[**NOTE**: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-210-0250
Approval to Operate

(1) The approval to construct does not provide approval to operate the constructed or modified stationary source or air pollution control equipment unless otherwise allowed by either the ACDP or Oregon Title V Operating Permit programs (OAR 340 divisions 216 and 218).

(2) Type 1 and 2 changes:

(a) For sources that are not required to obtain a permit in accordance with OAR 340-216-0020, Type 1 and 2 changes may be operated without further approval.

(b) For new sources that are required to obtain an ACDP in accordance with OAR 340-216-0020, the ACDP, which allows operation, is required before operating Type 1 or 2 changes.

(c) For sources currently operating under an ACDP, Type 1 and 2 changes may be operated without further approval unless the ACDP specifically prohibits the operation.

(d) For sources currently operating under an Oregon Title V Operating Permit, Type 1 and 2 changes may only be operated in accordance with OAR 340-218-0190(2).

(3) Type 3 and 4 changes:

(a) For new sources, Type 3 or 4 changes require a standard ACDP before operation of the changes.

(b) For sources currently operating under an ACDP, approval to operate Type 3 or 4 changes will require a new or modified standard ACDP. All ACDP terms and conditions remain in effect until the ACDP is modified.

(c) For sources currently operating under an Oregon Title V Operating Permit, approval to operate Type 3 or 4 changes must be in accordance with OAR 340-218-0190(2).

[**NOTE**: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

DIVISION 212

STATIONARY SOURCE TESTING AND MONITORING

340-212-0010
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.

[**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 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99

Sampling, Testing and Measurement

340-212-0110
Applicability

OAR 340-212-0110 through 340-212-0160 apply to all stationary sources in the state.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. &cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0900

340-212-0120
Program

(1) As part of its coordinated program of air quality control and preventing and abating air pollution, the Department may:

(a) Require ~~any person responsible for emissions of air contaminants~~the owner or operator of a stationary source ~~to make or have made tests~~ to determine the type, quantity, quality, and duration of the emissions from any air contamination source;

(b) Require full reporting in writing of all test procedures and ~~results furnished to the Department in writing and~~ signed by the person or persons responsible for conducting the tests;

(c) Require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.

(2) ~~At the request of t~~The Department, may require an owner or operator of a source ~~required to conduct emissions tests may be required~~ to provide emission testing facilities as follows:

(a) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and

(b) Utilities for sampling and testing equipment.

(3) Testing ~~shall~~ must 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 Department, ~~where~~ if allowed under applicable federal requirements:

(a) Specifies or approves, ~~in specific cases,~~ minor changes in methodology in specific cases;

(b) Approves the use of an equivalent method or alternative method ~~which~~ that will provide adequate results;

(c) Waives the testing requirement ~~for tests~~ because the owner or ~~operator of a source has demonstrated by other means to~~has satisfied the Department~~'s satisfaction~~ that the affected facility is in compliance with applicable requirements; or

(d) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020 0035; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1100

340-212-0130

Stack Heights and Dispersion Techniques

(1) **40 CFR Parts 51.100(ff)** through **51.100(kk), 51.118, 51.160** through **51.166 (July 1, ~~1993~~2000),** concerning stack heights and dispersion techniques, are ~~by this reference~~ adopted and incorporated herein~~, concerning stack heights and dispersion techniques~~.

~~(2) In general, the~~the federal rule generally prohibits the use of excessive stack height and certain dispersion techniques when calculating compliance with ambient air quality standards. The rule ~~does not~~ forbids neither the construction and actual use of excessively tall stacks, nor the use of dispersion techniques.~~;~~ ~~i~~It only forbids their use in noted calculations~~as noted above~~.

~~(3)~~ The rule ~~has the~~generally applies as follows~~following general applicability. With respect to the use of excessive stack height, s~~Stacks 65 meters high or greater~~,~~ that were constructed after December 31, 1970, and major modifications made after December 31, 1970 to existing plants ~~after December 31, 1970~~ with stacks 65 meters high or greater which were constructed before that date~~,~~ are subject to this rule.~~;~~ ~~with the exception that c~~ Certain stacks at federally owned, coal-fired steam electric generating units constructed under a contract awarded before February 8, 1974~~,~~ are exempt. ~~With respect to the use of dispersion techniques, a~~Any dispersion technique implemented after December 31, 1970~~,~~ at any plant is subject to this rule. 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~~may be used when calculating compliance with ambient air quality standards for sulfur dioxide:

(~~a~~2) Where found in the federal rule, the following terms apply

(a) "~~r~~Reviewing agency" means the Department, LRAPA, or the EPA, as applicable;

(b) ~~Where found in the federal rule, the term~~ "~~a~~Authority administering the State Implementation Plan" means Department, LRAPA, or EPA;

(c) The "procedures" referred to in **40 CFR 51.164** are the Department's New Source Review procedures ~~at the Department~~(OAR 340 division 224~~)~~ or ~~at~~ Title 38 of LRAPA rules~~(Title 38)~~, and the review procedures for new, or modifications to, minor sources, at the Department's review procedures for new or modified minor sources (OAR 340-210-0200 to 340-210-0220, OAR 340 division 216~~)~~ or ~~at~~ LRAPA ~~(~~Title 34)~~.~~;

(d) ~~Where~~ "~~t~~The state" or "state, or local control agency" ~~i~~as referred to in **40 CFR 51.118**~~, it~~ means the Department or LRAPA;

(e) ~~Where found in the federal rule, the terms~~ "~~a~~Applicable state implementation plan" and "plan" refer to the Department's or LRAPA's programs and rules~~of the Department or LRAPA~~, as approved by the EPA, or any ~~EPA promulgated~~ regulations promulgated by EPA (see **40 CFR Part 52, Subpart MM**).

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 11-1986, f. & ef. 5-12-86; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0037; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1110

340-212-0140

Methods

(1) Any sampling, testing, or measurement performed ~~under this regulation~~pursuant to this division ~~shall~~ must conform to methods contained in the **Department's Source Sampling Manual (January 1992)** or to recognized applicable standard methods approved in advance by the Department.

(2) The Department may approve any alternative method of sampling ~~provided~~ if it finds that the proposed method is satisfactory and complies with the intent of these ~~regulations~~ rules, ~~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.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-11-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0040; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1120

340-212-0150

Department Testing

~~The Department, i~~Instead of ~~requesting~~ asking for tests and sampling of emissions from the owner or operator of a~~person responsible for an air contamination~~ source, the Department may conduct such tests alone or in conjunction with ~~said person~~the owner or operator. If the Department conducts the testing or sampling ~~is performed by the Department~~, the agency will provide a copy of the results ~~shall must be provided to the person responsible for the air contamination source~~to the owner or operator.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0045; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1130

340-212-0160

Records; Maintaining and Reporting

Renumbered to 340-214-0114

~~(1) Upon notification from the Director all persons owning or operating a source within the state 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 such is in compliance with applicable emission rules, limitations or other control measures.~~

~~(2) The records shall be prepared in the form of a report and submitted to the Department on a semi-annual basis, or more frequent basis if requested in writing by the Department, commencing with the~~

~~first full semi-annual period after the Director's notification to such persons owning or operating a stationary air contaminant source of these record keeping requirements. Except as may be otherwise provided by rule, semi-annual periods are January 1 to June 30, July 1 to December 31. A more frequent basis for reporting may be required due to noncompliance or to protect human health or the environment.~~

~~(3) The reports required by this rule shall be completed on forms approved by the Department and shall be submitted within 30 days after the end of each reporting period.~~

~~[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]~~

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

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

Hist.: DEQ 44(Temp), f. & ef. 5-5-72; DEQ 48, f. 9-20-72, ef. 10-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0046; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1140, Renumbered to 340-214-0114

Compliance Assurance Monitoring

340-212-0200

Purpose and Applicability

(1) The purpose of OAR 340-212-0200 through 340-212-0280 is to require, as part of the issuance of a permit under title V of the Act, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of OAR 340-212-0200 through 340-212-0280.~~General applicability~~. Except for backup utility units that are exempt under subsection (2)(b) of this rule, the requirements of OAR 340-212-0200 through 340-212-0280 ~~shall~~ apply to a pollutant-specific emissions unit at a major source that is required to obtain an Oregon Title V Operating Permit if the unit ~~satisfies~~ meets all of the following criteria:

(a) The unit is subject to an emission limitation or standard for the applicable regulated air pollutant (or a surrogate thereof), other than an emission limitation or standard that is exempt under subsection (2)(a);

(b) The unit uses a control device to achieve compliance with any such emission limitation or standard; and

(c) The unit has potential pre-control device emissions of the applicable regulated air pollutant that are equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source. For purposes of this subsection, "potential pre-control device emissions" ~~shall~~ have the same meaning as "potential to emit," as defined in 340-200-0020, except that emission reductions achieved by the applicable control device ~~shall~~ are not ~~be~~ taken into account.

(2) Exemptions:

(a) Exempt emission limitations or standards. The requirements of OAR 340-212-0200 through 340-212-0280 ~~shall~~ do not apply to any of the following emission limitations or standards:

(A) Emission limitations or standards proposed by the Administrator after November 15, 1990 pursuant to section 111 or 112 of the Act;

(B) Stratospheric ozone protection requirements under title VI of the Act;

(C) Acid Rain Program requirements pursuant to sections 404, 405, 406, 407(a), 407(b), or 410 of the Act;

(D) Emission limitations or standards or other applicable requirements that apply solely under an emissions trading program approved or promulgated by the Administrator under the Act that allows for trading emissions within a source or between sources;

(E) An emissions cap that meets the requirements specified in 40 CFR 70.4(b)(12), 71.6(a)(13)(iii) (July 2000), or OAR 340, division 222 (Plant Site Emission Limits);

(F) Emission limitations or standards for which an Oregon Title V Operating Permit specifies a continuous compliance determination method, as defined in OAR 340-200-0020. The exemption ~~provided in this subsection shall~~ does not apply if the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device. For example a certain ~~(such as a~~ surface coating line is controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test; in this example, OAR 340-212-0200 through 212-0280 ~~would~~ apply to the control device and capture system, but not to the remaining elements of the coating line, such as raw material usage~~)~~.

(b) Exemption for backup utility power emissions units. The requirements of OAR 340-212-0200 through 212-0280 ~~shall~~ do not apply to a utility unit, as defined in 40 CFR 72.2 (July 2000), that is municipally owned if the owner or operator provides documentation in an Oregon Title V Operating Permit application that:

(A) The utility unit is exempt from all monitoring requirements in 40 CFR part 75 (July 2000) (including the appendices thereto);

(B) The utility unit is operated ~~for the~~ solely for ~~purpose of~~ providing electricity during periods of peak electrical demand or emergency situations and will be operated consistent with that purpose throughout the Oregon Title V Operating Permit term. The owner or operator ~~shall~~ must provide historical operating data and relevant contractual obligations to document that this criterion is satisfied; and

(C) The actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation (or such shorter time period that is available for units with fewer than three years of operation) are less than 50 percent of the amount in tons per year required for a source to be classified as a major source and are expected to remain so.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1200

340-212-0210

Monitoring Design Criteria

(1) General criteria. To provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at a pollutant-specific emissions unit, monitoring under OAR 340-212-0200 through 340-212-0280 ~~shall~~ must meet the following general criteria:

(a) The owner or operator ~~shall~~ must design the monitoring to obtain data for one or more indicators of emission control performance for the control device, any associated capture system and, if necessary to satisfy subsection (1)(b) of this rule, processes at a pollutant-specific emissions unit. Indicators of performance may include, but are not limited to, direct or predicted emissions (including visible emissions or opacity), process and control device parameters that affect control device (and capture system) efficiency or emission rates, or recorded findings of inspection and maintenance activities conducted by the owner or operator;

(b) The owner or operator ~~shall~~ must establish an appropriate range(s) or designated condition(s) for the selected indicator(s) such that operation within the ranges provides a reasonable assurance of ongoing compliance with emission limitations or standards for the anticipated range of operating conditions. Such range(s) or condition(s) ~~shall~~ must reflect the proper operation and maintenance of the control device (and associated capture system), in accordance with applicable design properties, for minimizing emissions over the anticipated range of operating conditions at least to the level required to achieve compliance with the applicable requirements. The reasonable assurance of compliance will be

assessed by maintaining performance within the indicator range(s) or designated condition(s). The ranges ~~shall~~ must be established in accordance with the design and performance requirements in this rule and documented in accordance with the requirements in OAR 340-212-0220. If necessary to assure that the control device and associated capture system can satisfy this criterion, the owner or operator ~~shall~~ must monitor appropriate process operational parameters (such as total throughput where necessary to stay within the rated capacity for a control device). In addition, unless specifically stated otherwise by an applicable requirement, the owner or operator ~~shall~~ must monitor indicators to detect any bypass of the control device (or capture system) to the atmosphere, if such bypass can occur based on the design of the pollutant-specific emissions unit;

(c) The design of indicator ranges or designated conditions may be:

(A) Based on a single maximum or minimum value if appropriate (e.g., maintaining condenser temperatures a certain number of degrees below the condensation temperature of the applicable compound(s) being processed) or at multiple levels that are relevant to distinctly different operating conditions (e.g., high versus low load levels);

(B) Expressed as a function of process variables (e.g., an indicator range expressed as minimum to maximum pressure drop across a venturi throat in a particulate control scrubber);

(C) Expressed as maintaining the applicable parameter in a particular operational status or designated condition (e.g., position of a damper controlling gas flow to the atmosphere through a by-pass duct);

(D) Established as interdependent between more than one indicator.

(2) Performance criteria. The owner or operator ~~shall~~ must design the monitoring to meet the following performance criteria:

(a) Specifications that provide for obtaining data that are representative of the emissions or parameters being monitored (such as detector location and installation specifications, if applicable);

(b) For new or modified monitoring equipment, verification procedures to confirm the operational status of the monitoring prior to the date by which the owner or operator must conduct monitoring under OAR 340-212-0200 through 340-212-0280 as specified in OAR 340-212-0250(1). The owner or operator ~~shall~~ must consider the monitoring equipment manufacturer's requirements or recommendations for installation, calibration, and start-up operation;

(c) Quality assurance and control practices that are adequate to ensure the continuing validity of the data. The owner or operator ~~shall~~ must consider manufacturer recommendations or requirements applicable to the monitoring in developing appropriate quality assurance and control practices;

(d) Specifications for the frequency of ~~conducting~~ the monitoring, the data collection procedures that will be used (e.g., computerized data acquisition and handling, alarm sensor, or manual log entries based on gauge readings), and, if applicable, the period over which discrete data points will be averaged for the purpose of determining whether an excursion or exceedance has occurred:

(A) At a minimum, the owner or operator ~~shall~~ must design the period over which data are obtained and, if applicable, averaged consistent with the characteristics and typical variability of the pollutant-specific emissions unit (including the control device and associated capture system). Such intervals ~~shall~~ must be commensurate with the time period over which a change in control device performance that would require actions by owner or operator to return operations within normal ranges or designated conditions is likely to be observed;

(B) For all pollutant-specific emissions units with the potential to emit, calculated including the effect of control devices, the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, for each parameter monitored, the owner or operator ~~shall~~ must collect four or more data values equally spaced over each hour and average the values, as applicable, over the applicable averaging period as determined in accordance with paragraph (2)(d)(A) ~~of this rule~~. The Department may approve a reduced data collection frequency~~, if appropriate,~~ based on information presented by the owner or operator concerning the data collection mechanisms available for a particular parameter for the particular

pollutant-specific emissions unit (e.g., integrated raw material or fuel analysis data, noninstrumental measurement of waste feed rate or visible emissions, use of a portable analyzer or an alarm sensor);

(C) For other pollutant-specific emissions units, the frequency of data collection may be less than the frequency specified in paragraph (2)(d)(B) of this rule, but the monitoring ~~shall~~ must include some data collection at least once per 24-hour period (e.g., a daily inspection of a carbon adsorber operation in conjunction with a weekly or monthly check of emissions with a portable analyzer).

(3) Evaluation factors. In designing monitoring to meet the requirements in sections (1) and (2) of this rule, the owner or operator ~~shall~~ must take into account site-specific factors including the applicability of existing monitoring equipment and procedures, the ability of the monitoring to account for process and control device operational variability, the reliability and latitude built into the control technology, and the level of actual emissions relative to the compliance limitation.

(4) Special criteria for the use of continuous emission, opacity or predictive monitoring systems:

(a) If a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required ~~pursuant to~~by other authority under the Act or state or local law, the owner or operator ~~shall~~ must use such system to satisfy the requirements of OAR 340-212-0200 through 340-212-0280;

(b) The use of a CEMS, COMS, or PEMS that satisfies any of the following monitoring requirements ~~shall be deemed to~~ satisfies~~y~~ the general design criteria in sections (1) and (2) of this rule~~,~~. ~~provided that~~However, a COMS may be subject to the criteria for establishing indicator ranges under section (1) of this rule:

(A) Section 51.214 and Appendix P of 40 CFR part 51 (July 1, 2000);

(B) Section 60.13 and Appendix B of 40 CFR part 60 (July 1, 2001);

(C) Section 63.8 and any applicable performance specifications required pursuant to the applicable subpart of 40 CFR part 63 (July 1, 2000);

(D) 40 CFR part 75 (July 1, 2000);

(E) Subpart H and Appendix IX of 40 CFR part 266 July 1, 2000); or

(F) If an applicable requirement does not otherwise require compliance with the requirements listed in ~~the preceding~~ paragraphs (4)(b)(A) through (E)~~of this rule~~, comparable requirements and specifications established by the Department.

(c) The owner or operator ~~shall~~ must design the monitoring system subject to ~~this~~ section (4) to:

(A) Allow for reporting exceedances (or excursions if applicable to a COMS used to assure compliance with a particulate matter standard), consistent with any period for reporting of exceedances in an underlying requirement. If an underlying requirement does not contain a provision for establishing an averaging period for the reporting of exceedances or excursions, the criteria used to develop an averaging period in section (2)(d) ~~of this rule shall~~ applies~~y~~; and

(B) Provide an indicator range consistent with section (1) ~~of this rule~~ for a COMS used to assure compliance with a particulate matter standard. If an opacity standard applies to the pollutant-specific emissions unit, such limit may be used as the appropriate indicator range unless the opacity limit fails to meet the criteria in section (1) ~~of this rule~~ after considering the type of control device and other site-specific factors applicable to the pollutant-specific emissions unit.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1210

340-212-0220
Submittal Requirements

(1) The owner or operator ~~shall~~ must submit to the Department monitoring plans that ~~satisfies~~ satisfy the design requirements in OAR 340-212-0210. The submission ~~shall~~ must include the following information:

(a) The indicators to be monitored to satisfy OAR 340-212-0210(1)(a) and (b);

(b) The ranges or designated conditions for such indicators, or the process by which such indicator ranges or designated conditions ~~shall~~ will be established;

(c) The performance criteria for the monitoring to satisfy OAR 340-212-0210(2); and

(d) If applicable, the indicator ranges and performance criteria for a CEMS, COMS or PEMS pursuant to OAR 340-212-0210(4).

(2) As part of the information submitted, the owner or operator ~~shall~~ must submit a justification for the proposed elements of the monitoring plans. If the performance specifications proposed to satisfy OAR 340-212-0210(2)(b) or (c) include differences from manufacturer recommendations, the owner or operator ~~shall~~ must explain the reasons for the differences ~~between the requirements proposed by the owner or operator and the manufacturer's recommendations or requirements~~. The owner or operator also ~~shall~~ must submit any data supporting the justification~~,~~ and may refer to generally available sources of information used to support the justification (such as generally available air pollution engineering manuals, or EPA or Department publications on appropriate monitoring for various types of control devices or capture systems). To justify the appropriateness of the monitoring elements proposed, the owner or operator may rely in part on existing applicable requirements that establish the monitoring for the applicable pollutant-specific emissions unit or a similar unit. If an owner or operator relies on presumptively acceptable monitoring, no further justification for the appropriateness of that monitoring should be necessary other than an explanation of the applicability of such monitoring to the unit in question, unless data or information is brought forward to rebut the assumption. Presumptively acceptable monitoring includes:

(a) Presumptively acceptable or required monitoring approaches, established by the Department in a rule that constitutes part of the applicable implementation plan required pursuant to title I of the Act, that are designed to achieve compliance with OAR 340-212-0200 through 340-212-0280 for particular pollutant-specific emissions units;

(b) Continuous emission, opacity, or predictive emission monitoring systems that satisfy applicable monitoring requirements and performance specifications ~~as specified~~contained in OAR 340-212-0210(d);

(c) Excepted or alternative monitoring methods allowed or approved pursuant to **40 CFR part 75 (July 1, 2000)**;

(d) Monitoring included for standards exempt from OAR 340-212-0200 through 340-212-0280 pursuant to OAR 340-212-0200(2)(a)(A) through (F) to the extent such monitoring is applicable to the performance of the control device (and associated capture system) for the pollutant-specific emissions unit; and

(e) Presumptively acceptable monitoring methods identified in guidance by EPA.

(3)(a) Except as provided in section (4) ~~of this rule~~, the owner or operator ~~shall~~ must submit control device (and process and capture system, if applicable) operating parameter data obtained during the conduct of the applicable compliance or performance test conducted under conditions specified by the applicable rule. If the applicable rule does not specify testing conditions or only partially specifies test conditions, the performance test generally ~~shall~~ must be conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the pollutant-specific emissions unit. Such data may be supplemented~~, if desired,~~ by engineering assessments and manufacturer's recommendations to justify the indicator ranges (or, if applicable, the procedures for establishing such indicator ranges). Emission testing is not required to be conducted over the entire indicator range or range of potential emissions;

(b) The owner or operator must document that no changes to the pollutant-specific emissions unit, including the control device and capture system, have taken place that could result in a significant

change in the control system performance or the selected ranges or designated conditions for the indicators to be monitored since the performance or compliance tests were conducted.

(4) If existing data from unit-specific compliance or performance testing specified in section (3) ~~of this rule~~ are ~~not~~ unavailable, the owner or operator:

(a) ~~Shall~~ Must submit a test plan and schedule for obtaining such data in accordance with section (5) ~~of this rule~~; or

(b) May submit indicator ranges (or procedures for establishing indicator ranges) that rely on engineering assessments and other data, ~~provided that~~if the owner or operator demonstrates that factors specific to the type of monitoring, control device, or pollutant-specific emissions unit make compliance or performance testing unnecessary to establish indicator ranges at levels that satisfy the criteria in OAR 340-212-0210(1).

(5) If the monitoring plans submitted by the owner or operator requires installation, testing, or other necessary activities ~~prior to use of~~before conducting the monitoring for purposes of OAR 340-212-0200 through 340-212-0280, the owner or operator ~~shall~~ must include an implementation plan and schedule for installing, testing and performing any other appropriate activities ~~prior to use of~~before conducting the monitoring. The implementation plan and schedule ~~shall~~ must provide for ~~use of~~conducting the monitoring as expeditiously as practicable after the Department approves~~al of~~ the monitoring plans in the Oregon Title V Operating Permit pursuant to OAR 340-212-0240. ~~, but i~~ In no case ~~shall~~ may the schedule for completing installation and beginning operation of the monitoring exceed 180 days after approval of the permit.

(6) If a control device is common to more than one pollutant-specific emissions unit, the owner or operator may submit monitoring plans for the control device and identify the pollutant-specific emissions units affected and any process or associated capture device conditions that must be maintained or monitored in accordance with OAR 340-212-0210(1) rather than submit separate monitoring plans for each pollutant-specific emissions unit.

(7) If a single pollutant-specific emissions unit is controlled by more than one control device that is similar in design and operation, the owner or operator may submit monitoring plans that apply~~ies~~ to all the control devices and identify the control devices affected and any process or associated capture device conditions that must be maintained or monitored in accordance with OAR 340-212-0210(1) rather than submit a separate description ~~of monitoring~~ for each control device.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1220

340-212-0230

Deadlines for Submittals

(1) Large pollutant-specific emissions units. For all pollutant-specific emissions units with the potential to emit ~~(taking into account control devices to the extent appropriate under the definition of this term in OAR 340-200-0020)~~ the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, the owner or operator ~~shall~~ must submit the information required under OAR 340-212-0220 at the following times:

(a) ~~On or after April 20, 1998, t~~The owner or operator ~~shall~~ must submit information as part of an application for an initial Oregon Title V Operating Permit if, by that date, the application either:

(A) Has not been filed~~,~~; or

(B) Has not yet been determined to be complete by the Department.

(b) ~~On or after April 20, 1998, t~~The owner or operator ~~shall~~ must submit information as part of an application for a significant permit revision under OAR 340-218-0080, but only with respect to those pollutant-specific emissions units for which the proposed permit revision ~~is applicable~~applies;

(c) The owner or operator ~~shall~~ must submit any information not submitted under the deadlines set forth in subsections (1)(a) and (b) of this rule as part of the application for the renewal of an Oregon Title V Operating Permit.

(2) Other pollutant-specific emissions units. For all other pollutant-specific emissions units subject to OAR 340-212-0220 through 340-212-0280 and not subject to section (1) of this rule, the owner or operator ~~shall~~ must submit the information required under OAR 340-212-0220 as part of an application for a renewal of an Oregon Title V Operating Permit.

(3) ~~The effective date for the requirement to submit information under OAR 340-212-0220 shall be~~is ~~as specified pursuant to sections (1) and (2) of this rule and a~~A permit reopening to require the submittal of information under this rule ~~shall~~ is not ~~be~~ required ~~pursuant to~~by OAR 340-218-0200(1)(a)(A)~~,~~, ~~provided, however, that, if~~If, however, an Oregon Title V Operating Permit is reopened for cause by EPA or the Department pursuant to OAR 340-218-0200(1)(a)(C), (D), or (E), the applicable agency may require the submittal of information under this rule for those pollutant-specific emissions units that are subject to OAR 340-212-0200 through 340-212-0280 and that are affected by the permit reopening.

(4) ~~Prior to approval of~~Until the Department approves monitoring plans that satisfy~~ies~~ the requirements of OAR 340-212-0200 through 340-212-0280, the owner or operator is subject to the requirements of OAR 340-218-0050(3)(a)(C).

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1230

340-212-0240

Approval of Monitoring plans

(1) Based on an application that includes the information submitted in accordance with OAR 340-212-0230, the Department ~~shall~~ will ~~act to~~ approve the monitoring plans submitted by the owner or operator by confirming that the ~~monitoring~~ plans satisfy~~ies~~ the requirements in OAR 340-212-0210.

(2) ~~In approving monitoring under OAR 340-212-0200 through 340-212-0280, t~~The Department may condition ~~the~~ its approval on the owner or operator collecting additional data on the indicators to be monitored for a pollutant-specific emissions unit, including required compliance or performance testing, to confirm ~~the ability of~~that the monitoring ~~to~~ will provide data ~~that are~~ sufficient to satisfy the requirements of OAR 340-212-0200 through 340-212-0280 and to confirm the appropriateness of an indicator range(s) or designated condition(s) proposed to satisfy OAR 340-212-0210(1)(b) and (c) and consistent with the schedule in OAR 340-212-0220(4).

(3) If the Department approves the proposed monitoring, the Department ~~shall~~ will establish one or more permit terms or conditions that specify the required monitoring in accordance with OAR 340-218-0050(3)(a). At a minimum, the permit ~~shall~~ will specify:

(a) The approved monitoring approach that includes all of the following:

(A) The indicator(s) to be monitored (such as temperature, pressure drop, emissions, or similar parameter);

(B) The means or device to be used to measure the indicator(s) (such as temperature measurement device, visual observation, or CEMS); and

(C) The performance requirements established to satisfy OAR 340-212-0210(2) or (4), as applicable.

(b) The means by which the owner or operator will define an exceedance or excursion for purposes of responding to and reporting exceedances or excursions under OAR 340-212-0250 and 340-212-0260. The permit ~~shall~~ will specify the level at which an excursion or exceedance will be deemed to occur, including the appropriate averaging period associated with such exceedance or excursion. For defining

an excursion from an indicator range or designated condition, the permit may either include the specific value(s) or condition(s) at which an excursion ~~shall~~ occurs, or the specific procedures that will be used to establish that value or condition. If the latter, the permit ~~shall~~ will specify appropriate notice procedures for the owner or operator to notify the Department upon any establishment or reestablishment of the value;

(c) The obligation to conduct the monitoring and fulfill the other obligations specified in OAR 340-212-0250 through 340-212-0270;

(d) If appropriate, a minimum data availability requirement for valid data collection for each averaging period, and, if appropriate, a minimum data availability requirement for the averaging periods in a reporting period.

(4) If the monitoring proposed by the owner or operator requires installation, testing or final verification of operational status, the Oregon Title V Operating Permit ~~shall~~ will include an enforceable schedule with appropriate milestones for completing such installation, testing, or final verification consistent with the requirements in OAR 340-212-0220(5).

(5) If the Department disapproves the proposed monitoring, the following applies:

(a) The draft or final permit ~~shall~~ will include, at a minimum, monitoring that satisfies the requirements of OAR 340-218-0050(3)(a)(C);

(b) The ~~Department shall include in the~~ draft or final permit will include a compliance schedule for the ~~source~~ owner or operator to submit monitoring plans that satisfy~~ies~~ OAR 340-212-0210 and 340-212-0220.~~;~~ ~~but~~ ~~i~~In no case ~~shall~~ may the owner or operator submit revised monitoring more than 180 days from the date of issuance of the draft or final permit; and

(c) If the ~~source~~ owner or operator does not submit the monitoring plans in accordance with the compliance schedule contained in the draft of final permit ~~as required in subsection (5)(b) of this rule~~ or if the Department disapproves the proposed monitoring plans ~~submitted~~, the ~~source~~ owner or operator ~~shall~~ is ~~be deemed~~ not in compliance with OAR 340-212-0200 through 340-212-0280, unless the source owner or operator successfully challenges the disapproval.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1240

340-212-0250

Operation of Approved Monitoring

(1) Commencement of operation. The owner or operator ~~shall~~ must conduct the monitoring required under OAR 340-212-0200 through 340-212-0280 upon issuance of an Oregon Title V Operating Permit that includes such monitoring, or by ~~such~~ any later date specified in the permit pursuant to OAR 340-212-0240(4).

(2) Proper maintenance. ~~At all times, t~~The owner or operator ~~shall~~ must at all times maintain the monitoring equipment, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(3) Continued operation. Except for~~, as applicable,~~ monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator ~~shall~~ must conduct all monitoring in continuous operation (or ~~shall~~ must collect data at all required intervals) at all times that the pollutant-specific emissions unit is operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities ~~shall~~ can not be used for purposes of OAR 340-212-0200 through 340-212-0280, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The owner or operator ~~shall~~ must use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring

to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(4) Response to excursions or exceedances:

(a) Upon detecting an excursion or exceedance, the owner or operator ~~shall~~ must restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response ~~shall~~ must include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable;

(b) Determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process;

(c) Documentation of need for improved monitoring. After ~~approval of~~ the Department approves the monitoring plans under OAR 340-212-0200 through 340-212-0280, if the owner or operator identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not ~~provide an indication of~~ indicate an excursion or exceedance while providing valid data, or if the results of compliance or performance testing document a need to modify the existing indicator ranges or designated conditions, the owner or operator ~~shall~~ must promptly notify the Department and, if necessary, submit a proposed modification to the Oregon Title V Operating Permit to address the necessary monitoring changes. Such a modification may include, but is not limited to, reestablishing indicator ranges or designated conditions, modifying the frequency of conducting monitoring and collecting data, or the monitoring of additional parameters.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1250

340-212-0260

Quality Improvement Plan (QIP) Requirements

(1) Based on the results of a determination made under OAR 340-212-0250(4)(b), the Administrator or the Department may require the owner or operator to develop and implement a QIP. Consistent with OAR 340-212-0240(3)(c), the Oregon Title V Operating Permit may specify an appropriate threshold, such as an accumulation of exceedances or excursions exceeding 5 percent duration of a pollutant-specific emissions unit's operating time for a reporting period, for requiring the implementation of a QIP. The threshold may be set at a higher or lower percent or may rely on other criteria for purposes of indicating whether a pollutant-specific emissions unit is being maintained and operated in a manner consistent with good air pollution control practices.

(2) Elements of a QIP:

(a) The owner or operator ~~shall~~ must maintain a written QIP, if required, and have it available for inspection;

(b) The plan initially ~~shall~~ must include procedures for evaluating the control performance problems and, based on the results of the evaluation procedures, the owner or operator ~~shall~~ must modify the plan to include procedures for conducting one or more of the following actions, as appropriate:

(A) Improved preventive maintenance practices;

(B) Process operation changes;

(C) Appropriate improvements to control methods;

(D) Other steps appropriate to correct control performance;

(E) More frequent or improved monitoring (only in conjunction with one or more steps under paragraphs (A) through (D) above).

(3) If a QIP is required, the owner or operator ~~shall~~ must develop and implement a QIP as expeditiously as practicable and ~~shall~~ notify the Department if the period for completing the improvements contained in the QIP exceeds 180 days from the date on which the need to implement the QIP was determined.

(4) Following implementation of a QIP, upon any subsequent determination pursuant to OAR 340-212-0250(4)(b) the Administrator or the Department may require that an owner or operator make reasonable changes to the QIP if the QIP is found to have:

(a) Failed to address the cause of the control device performance problems; or

(b) Failed to provide adequate procedures for correcting control device performance problems as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.

(5) Implementation of a QIP ~~shall~~ does not excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1260

340-212-0270

Reporting and Recordkeeping Requirements

(1) General reporting requirements:

(a) On and after the date specified in OAR 340-212-0250(1) by which the owner or operator must ~~use~~ conduct monitoring that meets the requirements of OAR 340-212-0200 through 340-212-0280, the owner or operator ~~shall~~ must submit monitoring reports to the Department in accordance with OAR 340-218-0050(3)(c);

(b) A report for monitoring under OAR 340-212-0200 through 340-218-0280 ~~shall~~ must include, at a minimum, the information required under OAR 340-218-0050(3)(c) and the following information, as applicable:

(A) Summary information on the number, duration and cause (including unknown cause~~, if applicable~~) of excursions or exceedances, as applicable, and the corrective actions taken;

(B) Summary information on the number, duration and cause (including unknown cause~~, if applicable~~) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks~~, if applicable~~); and

(C) A description of the actions taken to implement a QIP during the reporting period as specified in OAR 340-212-0260. Upon completion of a QIP, the owner or operator ~~shall~~ must include in the next summary report documentation that the implementation of the plan has been completed and has reduced the likelihood of similar levels of excursions or exceedances occurring.

(2) General recordkeeping requirements:

(a) The owner or operator ~~shall~~ must comply with the recordkeeping requirements specified in OAR 340-218-0050(3)(b). The owner or operator ~~shall~~ must maintain records of monitoring data, ~~monitor~~ performance data, corrective actions taken, any written quality improvement plan required pursuant to OAR 340-212-0260 and any activities undertaken to implement a quality improvement plan, and other supporting information required ~~to be maintained under~~by OAR 340-212-0200 through 340-212-0280

(such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions);

(b) Instead of paper records, the owner or operator may maintain records on alternative media, such as microfilm, computer files, magnetic tape disks, or microfiche, ~~provided that~~if the use of such alternative media allows for expeditious inspection and review~~,~~ and does not conflict with other applicable recordkeeping requirements.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1270

340-212-0280

Savings Provisions

Nothing in OAR 340-212-0200 through 340-212-0280 ~~shall~~:

(1) Excuses the owner or operator of a source from ~~compliance~~ complying with any existing emission limitation or standard, or with any existing monitoring, testing, reporting, or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act. The requirements of OAR 340-212-0200 through 340-212-0280 ~~shall~~may not be used to justify the approval of monitoring less stringent than the monitoring ~~which is~~ required under separate legal authority. ~~and~~ Nor are ~~not~~ they intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under separate authority under the Act, including monitoring in permits issued pursuant to title I of the Act. ~~The purpose of OAR 340-212-0200 through 340-212-0280 is to require, as part of the issuance of a permit under title V of the Act, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of OAR 340-212-0200 through 340-212-0280~~;

(2) Restricts or abrogates the authority of the Administrator or the Department to impose additional or more stringent monitoring, recordkeeping, testing, or reporting requirements on any owner or operator of a source under any provision of the Act, including but not limited to sections 114(a)(1) and 504(b), or state law, as applicable;

(3) Restricts or abrogates the authority of the Administrator or Department to take any enforcement action under the Act for any violation of an applicable requirement or of any person to take action under section 304 of the Act.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1280

DIVISION 214

STATIONARY SOURCE REPORTING REQUIREMENTS

340-214-0010
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) "Large Source", as used in OAR 340-214-0300 through 340-214-0350, means any station source whose actual emissions or potential controlled emissions while operating full time at the design capacity are equal to or exceed 100 tons per year of any regulated air pollutant, or which is subject to a National Emissions Standard for Hazardous Air Pollutants (NESHAP). Where PSELs have been incorporated into the ACDP, the PSEL will be used to determine actual emissions.

(2) "Small Source" means any stationary source with a simple or standard ACDP or an Oregon Title V Operating Permit that is not classified as a large source.

[**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 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99

Reporting

340-214-0100
Applicability

OAR 340-214-0100 through 340-214-0130 apply to all stationary sources in the state.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0200

340-214-0110
Request for Information

All stationary sources ~~shall~~must provide in a reasonably timely manner any and all information that the Department ~~may~~ reasonably requires 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.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0300

340-214-0114

Records; Maintaining and Reporting

(1) When notified by the Department, any person owning or operating a source within the state must keep and maintain written records of the nature, type, and amounts of emissions from such source and other information the Department may require in order to determine whether the source is in compliance with applicable emission rules, limitations, or control measures.

(2) The records must be prepared in the form of a report and submitted to the Department on an annual, semi-annual, or more frequent basis, as requested in writing by the Department. Submittals must be filed at the end of the first full period after the Department's notification to such persons owning or operating a stationary air contaminant source of these recordkeeping requirements. Unless otherwise required by rule or permit, semi-annual periods are January 1 to June 30, and July 1 to December 31. A more frequent basis for reporting may be required due to noncompliance or if necessary to protect human health or the environment.

(3) The required reports must be completed on forms approved by the Department and submitted within 30 days after the end of the reporting period, unless otherwise authorized by permit.

(4) All reports and certifications submitted to the Department under Divisions 200 to 264 must accurately reflect the monitoring, record keeping and other documentation held or performed by the owner or operator.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 44(Temp), f. & ef. 5-5-72; DEQ 48, f. 9-20-72, ef. 10-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0046; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1140, DEQ __-2001, f & cert. Ef. __-__01, Renumbered from340-212-0160

340-214-0120

Enforcement

Notwithstanding any other provisions contained in any applicable requirement, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such applicable requirements.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.035

Stats. Implemented: ORS 468.100

Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0310

340-214-0130

Information Exempt from Disclosure

(1) Pursuant to the provisions of ORS 192.410 to 192.505, all information submitted to the Department ~~shall be~~is ~~presumed to be~~ subject to inspection upon request by any person unless such information is determined to be exempt from disclosure pursuant to section (2) or (3) of this rule.

(2) If an owner or operator claims that any writing, as that term is defined in ORS 192.410, is confidential or otherwise exempt from disclosure, in whole or in part, the owner or operator ~~shall~~must comply with the following procedures:

(a) The writing ~~shall~~must be clearly marked with a request for exemption from disclosure. For a multi-page writing, each page ~~shall~~must be so marked.

(b) The owner or operator ~~shall~~must 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~~must be clearly distinguishable from the non-exempt material. If possible, the exempt material ~~shall~~should 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~~ must meet all of the following criteria:

(a) The information ~~shall~~can not be patented;

(b) It ~~shall~~must 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~~must be information ~~which~~ that derives actual or potential economic value from not being disclosed to other persons; and

(d) It ~~shall~~must give its users the chance to obtain a business advantage over competitors not having the information.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0400

Emission Statements for VOC and NO_x Sources

340-214-0200

Purpose and Applicability

(1) The purpose of these rules is to obtain data on actual emissions of VOCs and NO_X from sources in ozone nonattainment areas, in accordance with FCAA requirements, for the purpose of monitoring progress toward attainment of the ozone national ambient air quality standard.

(2) This rule ~~shall apply~~applies to sources of VOC and NO_X in ozone nonattainment areas~~, with~~ that have a PSEL equal to or greater than 25 tons per year for either pollutant, ~~and to any source~~ whose actual emissions are equal to or greater than 25 tons per year for either pollutant.

(3) For purposes of establishing consistent emission reporting requirements, owners or operators of VOC and NO_X sources already subject to ~~the~~ Oregon Title V Operating Permit Fees, OAR 340 division 220, and electing to pay fees based on actual emissions ~~shall~~ must report emission data to the Department, utilizing procedures identified in those rules to calculate actual VOC and NO_X emissions, to the extent applicable. Owners or operators of other sources ~~shall~~must use current and applicable emission factors and actual production data to estimate and report actual emissions.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0450; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. &cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1500

340-214-0210

Requirements

(1) Owners or operators of VOC and NO_X sources subject to the requirements of OAR 340-214-0200 through 340-214-0220 ~~shall~~ must ~~annually~~ submit data annually on the actual average emissions

during the ozone season to the Department. These Emission Statements ~~submitted by the owner or operator to the Department shall~~must contain the following information:

(a) Certification that the information contained in the statement is accurate to the best ~~knowledge~~ of the certifying individual's knowledge;

(b) Source identification information: full name, physical location, mailing address of the facility, and permit number;

(c) Emissions information:

(A) The ~~E~~estimated actual VOC and~~/or~~ NO_X emissions for those emissions equal to or greater than 25 tons per year, on an average weekday basis during the preceding year's ozone season, by source category,~~; and~~

~~(B)~~ for the ~~C~~calendar year for the ozone season; and

(B~~C~~) Each emission factor used and reference source for the emission factor, if applicable, or ~~indicate~~ an explanation of any other ~~estimation~~ method or procedure used to calculate emissions (e.g., material balance, source test, or continuous monitoring).

(2) Owners or operators of sources subject to these rules ~~shall~~must keep at the plant site records ~~at the plant site~~ of the information used to calculate actual emissions pursuant to these rules. These records ~~shall~~must contain all applicable operating data, process rate data, ~~and~~ control equipment efficiency information, and other information used to calculate or estimate actual emissions.~~, and~~ The information ~~shall~~must be available for the Department's review~~,~~ or submitted upon request. Such records ~~shall~~must be kept by the owner or operator for three calendar years after submittal of the emission statement.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0470;DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1510

340-214-0220

Submission of Emission Statements

The owner or operator of any facility meeting the applicability requirements stated in OAR 340-214-0200 ~~shall~~must submit annual Emission Statements to the Department ~~beginning in 1993~~. The Emission Statement for the preceding calendar year is due to the Department no later than the due date for the annual permit report specified in the source's ACDP or Oregon Title V Operating Permit.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0480; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1520

Excess Emissions and Emergency Provision

340-214-0300

Purpose and Applicability

Emissions of air contaminants in excess of applicable standards or permit conditions are ~~considered~~ unauthorized and subject to enforcement action~~, pursuant to OAR 340-214-0300 through 340-214-0360~~. OAR 340-214-0300 through 340-214-0360 apply to any source ~~which~~ that emits air contaminants in excess of any applicable air quality rule or permit condition resulting from the breakdown of air

pollution control equipment or operating equipment, process upset, startup, shutdown, or scheduled maintenance. The purpose of these rules is to:

(1) Require that, where applicable, the owner or operator immediately report all excess ~~emissions be reported by sources~~ to the Department ~~immediately~~;

(2) Require ~~sources~~ the owner or operator to submit information and data regarding conditions ~~which~~ that resulted or could result in excess emissions;

(3) Identify criteria ~~to be used by~~for the Department ~~for~~ to use in determining whether it will take enforcement action ~~will be taken~~ against an owner or operator for an excess emission; and

(4) Provide ~~sources~~ owners and operators an affirmative defense to enforcement when noncompliance with technology-based emission limits is due to an emergency ~~pursuant to OAR 340-214-0360~~.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; Renumbered from 340-021-0065; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0350; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1400

340-214-0310

Planned Startup and Shutdown

(1) This rule applies to any source where startup or shutdown of a production process or system may result in excess emissions~~,~~; and

(a) ~~Which~~ That is a major source; or

(b) ~~Which~~ That is in a non-attainment or maintenance area for the pollutant which may constitute excess emissions; or

(c) From which the Department requires the application in section (2) of this rule.

(2) The ~~permitee~~ owner or operator must ~~shall~~ obtain prior Department authorization of startup and /shutdown procedures ~~that will be used to minimize excess emissions~~. The owner or operator must submit to the Department a written ~~A~~application for approval of new procedures or modifications to existing procedures. The application must ~~shall~~ be submitted ~~and~~ in time for the Department to receive~~d~~ it ~~by the Department in writing~~ at least 72 hours ~~prior to~~before the first occurrence of a startup or shutdown event to which these procedures apply~~.~~; The application must ~~and shall include the following~~:

(a) Explain ~~The reasons~~ why the excess emissions during startup and shutdown cannot be avoided;

(b) Identify~~ication of~~ the specific production process or system that will cause~~s~~ the excess emissions;

(c) Identify ~~T~~the nature of the air contaminants likely to be emitted~~,~~ and ~~an~~ estimate ~~of~~ the amount and duration of the excess emissions; and

(d) Identify~~ication of~~ specific procedures to be followed ~~which~~ that will minimize excess emissions at all times during startup and shutdown.

(3) The Department will Approve~~al of~~ the ~~startup/shutdown~~ procedures ~~by the Department shall be based upon~~if it determine~~sation~~ that ~~said procedures~~they are consistent with good pollution control practices, ~~and~~ will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The ~~permittee~~owner or operator ~~shall~~ must record all excess emissions in the upset log, as required in OAR 340-214-0340(3). Approval of the ~~startup/shutdown~~ procedures ~~shall~~ does not ~~absolve~~ shield the ~~permittee~~owner or operator from an enforcement action if the approved procedures are not followed, or if the Department determines pursuant to OAR 340-214-

0350 that the excess emissions ~~which occur are determined by the Department to be~~were avoidable~~, pursuant to OAR 340-214-0350~~.

(4) Once the Department approves startup and ~~/~~shutdown procedures ~~are approved~~, the ~~permittee~~ owner or operator does not have ~~is not required to~~ to notify the Department of a planned startup or shutdown event ~~which~~ that may result in excess emissions, unless:

(a) ~~Required by~~A permit condition requires such notice~~;~~ or

(b) The source is located in a nonattainment area for a pollutant ~~which~~ that may be emitted in excess of applicable air quality standards.

(5) When notice is required by subsection (4)(a) or (b) of this rule, ~~notification~~ it ~~shall~~must be made by telephone or in writing as soon as possible ~~prior to~~before the startup or shutdown event and ~~shall~~ must include the date, ~~and~~ estimated time and duration of the event.

(6) The Department may revoke or require modifications to previously approved procedures at any time by written notification to the owner or operator.

(7) No startups or shutdowns resulting in excess emissions associated with the approved procedures in section (3) of this rule ~~shall occur~~ are allowed during any period in which an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared, or during an announced yellow or red woodstove curtailment period in areas designated by the Department as PM_{10} Non-attainment Areas.

(8) The ~~permittee~~owner or operator ~~shall~~must ~~immediately~~ notify the Department immediately by telephone of a startup or shutdown event and ~~shall be~~is subject to the requirements under Upsets and Breakdowns in OAR 340-214-0330 if the ~~permittee~~owner or operator fails to:

(a) Obtain Department approval of start-up~~/~~ and shutdown procedures in accordance with ~~OAR~~ section (2) of this rule; or

(b) Notify the Department of a startup or shutdown event ~~which~~ that may result in excess emissions in accordance with section (4) of this rule.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0360; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1410

340-214-0320
Scheduled Maintenance

(1) ~~In cases where it is anticipated~~If the owner or operator anticipates that shutdown, by-pass, or operation at reduced efficiency of air pollution control equipment for necessary scheduled maintenance may result in excess emissions, the owner or operator must obtain prior Department authorization ~~shall be obtained~~ of procedures that will be used ~~to minimize excess emissions~~. The owner or operator must submit a written ~~A~~application for approval of new procedures or modifications to existing procedures. The application must be submitted in time for the ~~shall be submitted and received by the~~ Department ~~in writing~~to receive it at least 72 hours ~~prior to~~before the first occurrence of a maintenance event to which ~~these~~ procedures apply~~,~~ ~~and shall include the following~~ The application must:

(a) ~~The reasons explaining~~Explain the need for maintenance, including why it would be impractical to shut down the source operation during the period, and why the by-pass or reduced efficiency could not be avoided through better scheduling for maintenance or through better operation and maintenance practices;

(b) Identify~~ication of~~ the specific production or emission control equipment or system to be maintained;

(c) Identify ~~T~~the nature of the air contaminants likely to be emitted during the maintenance period~~,~~ and the estimated amount and duration of the excess emissions, including measures such as the use of overtime labor and contract services and equipment, that will be taken to minimize the length of the maintenance period;

(d) Identify~~ication of~~ specific procedures to be followed ~~which~~ that will minimize excess emissions at all times during the scheduled maintenance.

(2) The Department will Approve~~al of~~ the ~~above procedures by the Department shall will be based upon~~if it determination that ~~said procedures~~they are consistent with good pollution control practices, ~~and~~ will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The ~~permittee~~owner or operator ~~shall~~ must record all excess emissions in the upset log, as required in OAR 340-214-0340(3). Approval of the above procedures ~~shall~~ does not ~~absolve~~ shield the ~~permittee~~owner or operator from an enforcement action if the approved procedures are not followed, or if the Department determines pursuant to OAR 340-214-0350 that the excess emissions ~~occur which are determined by the Department to be~~were avoidable~~, pursuant to OAR 340-214-0350~~.

(3) Once the Department approves the maintenance procedures ~~are approved,~~ the owners~~s~~ or operators ~~shall~~ does not have ~~be required~~ to notify the Department of a scheduled maintenance event ~~which~~ that may result in excess emissions unless:

(a) ~~Required by~~ A permit condition requires such notice; or

(b) ~~If t~~The source is located in a nonattainment area for a pollutant ~~which~~ that may be emitted in excess of applicable air quality standards.

(4) When required by subsection (3)(a) or (b) of this rule, notification ~~shall~~ must be made by telephone or in writing as soon as possible ~~prior to~~before the scheduled maintenance event and ~~shall~~ must include the date, ~~and~~ estimated time and duration of the event.

(5) The Department may revoke or require modifications to previously approved procedures at any time by written notification to the owner or operator.

(6) No scheduled maintenance associated with the approved procedures in section (2) of this rule, ~~which~~ that is likely to result in excess emissions, ~~shall~~ may occur during any period in which an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared, or during an announced yellow or red woodstove curtailment period in areas designated by the Department as PM_{10} Nonattainment Areas.

(7) The ~~permittee~~owner or operator ~~shall~~ must ~~immediately~~ notify the Department immediately by telephone of a maintenance event, and ~~shall be~~is subject to the requirements under Upset and Breakdowns in OAR 340-214-0330 if the ~~permittee~~owner or operator fails to:

(a) Obtain Department approval of maintenance procedures in accordance with section (1) of this rule; or

(b) Notify the Department of a maintenance event ~~which~~ that may result in excess emissions in accordance with section (3) of this rule.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0365; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1420

340-214-0330
Upsets and Breakdowns

(1) For upsets or breakdowns caused by an emergency and resulting in emissions in excess of technology-based standards, the owner or operator may be entitled to an affirmative defense to enforcement if:

(a) The Department is notified immediately of the emergency condition; and

(b) The owner or operator fulfills the requirements outlined in the Emergency Provision in OAR 340-214-0360.

(2) ~~In the case of~~For all other upsets and breakdowns, the following requirements apply:

(a) ~~For~~ The owner or operator of a large source~~s~~, as defined by OAR 340-~~200-0020~~214-0010, must immediately report to the Department the first onset per calendar day of any excess emissions event due to upset or breakdown, other than those described in section (1) of this rule~~, shall be reported to the Department immediately~~ or unless otherwise specified by a permit condition. Based on the severity of the event, the Department will require either ~~require submittal of~~ a written report pursuant to OAR 340-214-0340(1) and (2)~~,~~ or a recording of the event in the upset log as required in OAR 340-214-0340(3).

(b) The owner or operator of a small source, as defined by OAR 340-200-0020, need not immediately report excess emissions events due to upset or breakdown ~~immediately~~ unless otherwise required by~~:~~ a permit condition~~,~~; written notice by the Department~~,~~; subsection (1)(a) of this rule~~,~~; or if the excess emission is of a nature that could endanger public health. Based on the severity of the event, the Department will require either ~~require submittal of~~ a written report pursuant to OAR 340-214-0340(1) and (2), or a recording of the event in the upset log as required in OAR 340-214-0340(3).

(3) During any period of excess emissions due to upset or breakdown, the Department may require that an owner or operator immediately ~~proceed to~~ reduce or cease operation of the equipment or facility until ~~such time as~~ the condition causing the excess emissions has been corrected or brought under control~~. Such action by t~~The Department ~~would be taken upon consideration of~~will consider the following factors:

(a) The ~~P~~potential risk to the public or environment;

(b) Whether shutdown could result in physical damage to the equipment or facility, or cause injury to employees;

(c) Whether any Air Pollution Alert, Warning, Emergency, or yellow or red woodstove curtailment period exists; ~~or~~and

(d) ~~If~~ Whether continued excess emissions were ~~determined by the Department to be~~ avoidable.

(4) ~~In the event of~~If there is an~~y~~ on-going period of excess emissions ~~due to~~caused by upset or breakdown, the owner or operator ~~shall~~ must cease operation of the equipment or facility no later than 48 hours after the beginning of the excess emission period, if the condition causing the emissions is not corrected within that time. The owner or operator ~~need~~ does not have to cease operation if ~~he or she can obtain~~the Department~~'s~~ approve~~sal of~~ procedures ~~that will be used~~ to minimize excess emissions until ~~such time as~~ the condition causing the excess emissions is corrected or brought under control. . The Department will consider the following before Approving~~al of~~ these procedures ~~shall be based on the following information supplied to the Department~~:

(a) ~~The reasons w~~Why the condition(s) causing the excess emissions cannot be corrected or brought under control~~.~~ ~~Such reasons shall include but not be limited to~~including equipment availability and difficulty of repair or installation~~;~~ and

(b) Information as required in OAR 340-214-0310(2)(b), (c), and (d).

(5) The Department will Approve~~al of~~ the ~~above~~ procedures ~~by the Department shall be based upon~~if it determine~~sation~~ that ~~said procedures~~they are consistent with good pollution control practices, ~~and~~ will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The ~~permittee~~owner or operator ~~shall~~ must record all excess emissions in the upset log as required in section (2) of this rule. At any time during the period of excess emissions the Department may require the owner or operator to cease operation of the equipment or facility, in accordance with section (3) of this rule. ~~In addition, a~~Approval of these procedures ~~shall~~ does not ~~absolve~~ shield the ~~permittee~~owner or operator from an enforcement action if the approved procedures

are not followed, or if The Department determines excess emissions ~~occur that are determined by the Department to be~~were avoidable~~, pursuant to OAR 340-214-0350~~.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 4-1933, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0370; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1430

340-214-0340

Reporting Requirements

(1) For any excess emissions event, the Department may require the owner or operator to submit a written report of excess emissions ~~report~~ for each calendar day of the event. ~~If required, this~~The report ~~shall~~ must be submitted within 15 days of the date of the event and ~~shall~~ include the following:

(a) The date and time the event was reported to the Department;

(b) Whether the event occurred during startup, shutdown, maintenance, or as a result of a breakdown or malfunction;

(c) Information as described in OAR 340-214-0350(1) through (5);

(d) The final resolution of the cause of the excess emissions; and

(e) Where applicable, evidence supporting any claim that emissions in excess of technology-based limits were due to an emergency pursuant to OAR 340-214-0360.

(2) Based on the severity of event, the Department may waive the 15 day reporting requirement, and specify either a shorter or longer time period for report submittal. The Department may also waive the submittal of the written report~~,~~ if ~~in the judgement of~~ the Department determines that~~,~~ the period or magnitude of excess emissions was minor. In such cases, the owner or operator ~~shall~~ record the event in the upset log pursuant to section (3) of this rule.

(3) ~~Large and small~~All source owners or operators ~~shall~~ must keep an upset log of all planned and unplanned excess emissions. The upset log ~~shall~~ must include all pertinent information as required in section (1) of this rule and ~~shall~~ be kept by the ~~permittee~~owner or operator for five calendar years.

(4) At each annual reporting period specified in a permit, or sooner if ~~required by~~ the Department requires, the ~~permittee~~owner or operator ~~shall~~ must submit:

(a) A copy of the upset log entries for the reporting period~~,~~; and

(b) Where applicable, current procedures to minimize emissions during startup, shutdown, or maintenance as outlined in OAR 340-214-0310 and 340-214-0320. The owner or operator ~~shall~~ must specify in writing whether these procedures are new, modified, or have already been approved by the Department.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0375; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1440

340-214-0350

Enforcement Action Criteria

In determining if a period of excess emissions is avoidable, and whether enforcement action is warranted, the Department considers, based upon information submitted by the owner or operator, ~~shall consider whether~~ the following ~~criteria are met~~:

(1) Where applicable, whether the owner or operator submitted a description of any emergency ~~which~~ that may have caused emissions in excess of technology-based limits and sufficiently demonstrated~~,~~ through properly signed, contemporaneous operating logs, upset logs, or other relevant evidence that an emergency caused the excess emissions and that all causes of the emergency were identified.

(2) Whether ~~N~~notification occurred immediately pursuant to OAR 340-214-0330(1)(a), (2), or (3).

(3) Whether ~~T~~the Department was furnished with complete details of the event, including, but not limited to:

(a) The date and time of the beginning of the excess emissions event and the duration or best estimate of the time until return to normal operation;

(b) The equipment involved;

(c) Steps taken to mitigate emissions and corrective actions taken; and

(d) The magnitude and duration of each occurrence of excess emissions during the course of an event and the increase over normal rates or concentrations as determined by continuous monitoring or a best estimate (supported by operating data and calculations).

(4) Whether ~~D~~during the period of the excess emissions event the ~~permittee~~owner or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other permit requirements ~~in the permit~~.

(5) Whether ~~The~~the owner or operator took the appropriate remedial action ~~was taken~~.

(6) Whether ~~T~~the event was ~~not~~ due to the owner or operator's negligent or intentional ~~operation by the owner or operator~~. For the Department to find that an incident of excess emissions ~~is~~ was not due to the owner or operator's negligent or intentional operation ~~by the owner or operator~~, the Department may ask the ~~permittee~~owner or operator ~~shall~~ to demonstrate~~,~~ ~~upon Department request,~~ that all of the following conditions were met:

(a) The process or handling equipment and the air pollution control equipment were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;

(b) Repairs or corrections were made in an expeditious manner when the owner or operator~~(s)~~ knew or should have known that emission limits were being or were likely to be exceeded. "Expeditious manner" may include ~~such~~ activities such as use of overtime labor or contract labor and equipment that would reduce the amount and duration of excess emissions;

(c) The event was not one in a recurring pattern of incidents ~~which~~ that indicate inadequate design, operation, or maintenance.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0380; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1450

340-214-0360

Emergency as an Affirmative Defense~~Provision~~

(1) ~~Effect of an emergency.~~ An emergency constitutes an affirmative defense to noncompliance with technology-based emission limits if the source meets criteria specified in OAR 340-214-0350(1) through (6).

(2) The ~~permittee~~person seeking to establish the occurrence of an emergency has the burden of proof by a preponderance of the evidence.

(3) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1460

DIVISION 216

AIR CONTAMINANT DISCHARGE PERMITS

340-216-0010
Purpose

~~The purpose of t~~This division ~~is to~~ prescribes the requirements and procedures for obtaining Air Contaminant Discharge Permits (ACDPs) pursuant to ORS 468A.040 through 468A.060 and related statutes for ~~stationary~~ sources of air contaminants. ~~This division shall not apply to Oregon Title V Operating Permit program sources unless an ACDP is required by OAR 340-216-0020, OAR 340-216-0080, or OAR 340-224-0010.~~

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-86; Renumbered from 340-020-0033.02; DEQ4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0140; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1700

340-216-0020
Applicability

This division applies to all sources referred to in Table 1. This division also applies to Oregon Title V Operating Permit program sources when an ACDP is required by OAR 340-218-0020 or OAR 340-224-0010.

(1) No person ~~shall~~ may construct, install, establish, develop or operate any air contaminant source which is referred to in Table 1 ~~OAR 340-216-0090 **Table 1**, appended hereto and incorporated herein by reference,~~ without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Department or Regional Authority.

(a) For portable sources, a single permit may be issued for operating at any area of the state if the permit includes the requirements from both the Department and Regional Authorities.

(b) The Department or Regional Authority where the portable source's Corporate offices are located will be responsible for issuing the permit. If the corporate office of a portable source is located outside of the state, the Department will be responsible for issuing the permit.

(2) No person ~~shall~~ may construct, install, establish, or develop any source that will be subject to the Oregon Title V Operating Permit program ~~as provided in OAR 340-218-0020~~ without first obtaining an ACDP from the Department or Regional Authority. ~~Any Oregon Title V Operating Permit program source required to have obtained an ACDP prior to construction shall:~~

~~(a) Choose to become a synthetic minor source, OAR 340-216-0080, and remain in the ACDP program; or~~

~~(b) File a complete application to obtain the Oregon Title V Operating Permit within 12 months after initial startup.~~

(3) No person ~~shall~~ may modify any source ~~covered by~~ that has been issued an ACDP ~~under this division such that the emissions are significantly increased~~ without first ~~applying for and obtaining a permit modification.~~ complying with the requirements of OAR 340-210-0200 through 340-210-0250.

(4) No person ~~shall~~ may modify any source required to ~~be covered by~~ have an ACDP ~~under this division~~ such that the source becomes subject to the Oregon Title V Operating Permit program~~, OAR 340 division 218~~ without ~~first applying for and obtaining a modified ACDP~~ complying with the

requirements of OAR 340-210-0200 through 340-210-0250-.~~. Any Oregon Title V Operating Permit program source required to have obtained an ACDP prior to modification shall:~~

~~(a) Choose to become a synthetic minor source, OAR 340-216-0080, and remain in the ACDP program;~~

~~(b) Choose to remain a synthetic minor source, OAR 340-216-0080, and remain in the ACDP program; or~~

~~(c) File a complete application to obtain the Oregon Title V Operating Permit within 12 months after initial startup of the modification.~~

(5) No person ~~shall~~ may increase emissions above the PSEL by more than the deminimis levels specified in OAR 340-200-0020 ~~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 this division and not required to obtain an Oregon 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 Department.~~

~~(7) Any owner or operator may apply to the Department or Regional Authority for an insignificant discharge permit if operating a facility with no, or insignificant, air contaminant discharges. The determination of applicability of this insignificant discharge permit shall be made solely by the Department or Regional Authority having jurisdiction. If issued an insignificant discharge permit, the application processing fee and/or annual compliance determination fee, provided by OAR 340-216-0090, may be waived by the Department or Regional Authority.~~

~~(8) The Department may designate any source as a "Minimal Source" based upon the following criteria:~~

~~(a) Quantity and quality of emissions;~~

~~(b) Type of operation;~~

~~(c) Compliance with Department regulations; and~~

~~(d) Minimal impact on the air quality of the surrounding region. If a source is designated as a minimal source, the annual compliance determination fee, provided by OAR 340-216-0090, will be collected no less frequently than every five years.~~

~~(9) Any person complying with this division shall be exempted from complying with the notice of construction requirements of OAR 340-210-0200 and 340-210-0220.~~

340-216-0025

Types of Permits

(1) Construction ACDP

(a) A Construction ACDP may be used for approval of Type 3 changes specified in OAR 340-210-0220 at a source subject to the ACDP permit requirements in this division.

(b) A Construction ACDP is required for Type 3 changes specified in OAR 340-210-0220 at sources subject to the Oregon Title V Operating Permit requirements.

(2) General ACDP. A General ACDP is for a category of sources for which individual permits are unnecessary in order to protect the environment. An owner or operator of a source may be assigned to a General ACDP if the Department has issued a General ACDP for the source category:

(a) The source meets the qualifications specified in the General ACDP;

(b) The Department determines that the source has not had ongoing, reoccurring, or serious compliance problems; and

(c) The Department determines that a General ACDP would appropriately regulate the source.

(3) Short Term Activity ACDP. A Short Term Activity ACDP is a letter permit that authorizes the activity and includes any conditions placed upon the method or methods of operation of the activity. The Department may issue a Short Term Activity ACDP for unexpected or emergency activities, operations, or emissions.

(4) Basic ACDP. A Basic ACDP is a letter permit that authorizes the regulated source to operate in conformance with the rules contained in OAR 340 Divisions 200 to 268.

(a) Owners and operators of sources and activities listed in Table 1, Part A of OAR 340-216-0020 must at a minimum to obtain a Basic ACDP.

(b) Any owner or operator of a source required to obtain a Basic ACDP may obtain either a Simple or Standard ACDP.

(5) Simple ACDP A Simple ACDP is a permit that contains:

(a) All relevant applicable requirements for source operation, including general ACDP conditions for incorporating generally applicable requirements;

(b) Generic PSELs for all pollutants emitted at more than the deminimis level in accordance with OAR 340, division 222;

(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(d) A permit duration not to exceed 5 years.

(6) Standard ACDP

(a) A Standard ACDP is a permit that contains:

(A) all applicable requirements, including general ACDP conditions for incorporating generally applicable requirements;

(B) Source specific PSELs or Generic PSELs, whichever are applicable, as specified in OAR 340, division 222;

(C) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(D) A permit duration not to exceed 5 years.

(b) All owners and operators of sources and activities listed in Table 1, Part C of OAR 340-216-0020 must obtain a Standard ACDP.

(c) Owners or operators of sources and activities listed in Table 1, Part B of OAR 340-216-0020 which do not qualify for a General ACDP or Simple ACDP must obtain a Standard ACDP.

(d) Any owner or operator of a source not required to obtain a Standard ACDP may obtain a Standard ACDP.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-211-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0155; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1994, f. & cert. ef. 10-4-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720

340-216-0030
Definitions

(1) 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.

(2) "Permit modification" or "modified permit" means any change to the content of a permit, including but not limited to the following:

[**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 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99

340-216-0040
Application Requirements

(1) New Permits. Except for Short Term Activity ACDPs, any person required to obtain a new ACDP must provide the following general information, as applicable, using forms provided by the Department in addition to any other information required for a specific permit type:

(a) Identifying information, including the name of the company, the mailing address, the facility address, and the nature of business (Standard Industrial Classification (SIC) code);

(b) The name and phone number of a local person responsible for compliance with the permit;

(c) The name of a person authorized to receive requests for data and information;

(d) A description of the production processes and related flow chart;

(e) A plot plan showing the location and height of air contaminant sources. The plot plan must also indicate the nearest residential or commercial property;

(f) The type and quantity of fuels used;

(g) An estimate of the amount and type of each air contaminant emitted by the source in terms of hourly, daily, or monthly and yearly rates, showing calculation procedures;

(h) Any information on pollution prevention measures and cross-media impacts the applicant wants the Department to consider in determining applicable control requirements and evaluating compliance methods;

(i) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions;

(j) 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 Department to establish operational and maintenance requirements in accordance with OAR 340-226-0120(1) and (2);

(k) A Land Use Compatibility Statement signed by a local (city or county) planner either approving or disapproving construction or modification of the source, if required by the local planning agency; and

(l) Any other information requested by the Department.

(2) Renewal Permits. Except for Short Term Activity ACDPs, any person required to renew an existing permit must submit the information identified in section (1) using forms provided by the Department, unless there are no significant changes to the permit. If there are significant changes, the applicant must provided the information identified in section (1) only for those changes. Where there are no significant changes to the permit , the applicant may use a streamlined permit renewal application process by providing the following information:

(a) Identifying information, including the name of the company, the mailing address, the facility address, and the nature of business (Standard Industrial Classification (SIC) code) using a form provided by the Department; and

(b) a marked up copy of the previous permit indicating minor changes along with an explanation for each requested change.

(3) Permit Modifications. For Simple and Standard ACDP modifications, the applicant must provided the information in section (1) relevant to the requested changes to the permit and a list of any new requirements applicable to those changes.

(4) The department must receive the application at least 60 days before a permit or modified permit is needed.

(5) The application must be completed in full and signed by the applicant or the applicant's legally authorized representative.

(6) Two copies of the application are required, unless otherwise requested by the Department. At least one of the copies must be a paper copy, but the others may be in any other format, including electronic copies, upon approval by the Department.

(7) A copy of NSR permit applications and supplemental information must also be submitted directly to the EPA.

(8) The name of the applicant must be the legal name of the facility or the owner's agent or the lessee responsible for the operation and maintenance of the facility. The legal name must be registered with the Secretary of State Corporations Division.

(9) All applications must include the appropriate fees as specified in Table 2 of OAR 340-216-0020.

(10) Applications that are obviously incomplete, unsigned, improperly signed, or lacking the required exhibits or fees will be rejected by the Department and returned to the applicant for completion.

(11) Within 15 days after receiving the application, the Department will preliminarily review the application to determine the adequacy of the information submitted:

(a) If the Department determines that additional information is needed, the Department will promptly ask the applicant for the needed information. The application will not be considered complete for processing until the requested information is received. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request;

(b) If, in the opinion of the Department, additional measures are necessary to gather facts regarding the application, the Department will notify the applicant that such measures will be instituted along with the timetable and procedures to be followed. The application will not be considered complete for processing until the necessary additional fact-finding measures are completed. When the information in the application is deemed adequate for processing, the Department will so notify the applicant .

(12) If at any time while processing the application, the Department determines that additional information is needed, the Department will promptly ask the applicant for the needed information. The application will not be considered complete for processing until the requested information is received. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request

(13) If, upon review of an application, the Department determines that a permit is not required, the Department will so notify the applicant in writing. Such notification is a final action by the Department on the application.

~~Any person intending to obtain an ACDP to construct, install, or establish a new or modified source of air contaminant emissions as required in OAR 340-216-0020 shall submit a completed application on forms provided by the Department or at least the following information:~~

~~(1) Name, address, and nature of business;~~

~~(2) A description of the production processes and a related flow chart;~~

~~(3) A plot plan showing location of all air contaminant sources and the nearest residential or commercial property;~~

~~(4) Type and quantity of fuels used;~~

~~(5) Amount, nature, and duration of emissions;~~

~~(6) Plans and specifications for air pollution control equipment and facilities and their relationship to the production process;~~

~~(7) Estimated efficiency of air pollution control equipment;~~

~~(8) Any information on pollution prevention measures and cross-media impacts the person wants the Department to consider in determining applicable control requirements and evaluating compliance methods; and~~

~~(9) Where the operation or maintenance of air pollution control equipment and emissions reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness,~~

~~information necessary for the Department to establish operational and maintenance requirements under OAR 340-226-0120(1) and (2).~~

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 20-1979, f. & ef. 6-29-79; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0175; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1770

~~**340-216-0050**~~

~~**Public Notice**~~

~~(1) It shall be the policy of the Department and the Regional Authority to issue public notice as to the intent to issue an ACDP allowing at least 30 days for written comment from the public, and from interested State and Federal agencies, prior to issuance of the permit. Public notice shall include the name 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 Department.~~

~~(2) In addition to the information required under OAR 340-011-0007, public notices for ACDPs shall contain:~~

~~(a) If a major source permit, whether the proposed permitted emission would have a significant impact on a Class 1 airshed;~~

~~(b) Whether each proposed permitted emission is a criteria pollutant and whether the area in which the source is located is designated as attainment or nonattainment for that pollutant; and~~

~~(c) For each major source within an attainment area for which dispersion modeling has been performed an indication of what impact each proposed permitted emission would have on the Prevention of Significant Deterioration Program within that attainment area.~~

~~[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 183, ORS 468 & ORS 468A~~

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

~~Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 34-1990, f. 8-20-90, cert. ef. 9-1-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0150; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1710~~

304-216-0052

Construction ACDP

(1) Purpose. A Construction ACDP is a permit for approval of Type 3 construction or modification changes as specified in OAR 340-210-0220. The Construction ACDP includes requirements for the construction or modification of stationary sources or air pollution control equipment and does not by itself provide authorization to operate the new construction or modification. A new or modified Standard ACDP or Oregon Title V Operating Permit is required before operation of the new construction or modification. A Construction ACDP may be used for the following situations:

(a) For complex construction or modification projects that require an extended period of time to construct, the Construction ACDP may provide construction approval faster than issuance of a Standard ACDP or modified Standard ACDP because the operating requirements would not need to be included in the permit.

(b) For Oregon Title V Operating Permit sources, the Construction ACDP may include the requirements of OAR 340-218-0050 and follow the external review procedures in OAR 340-218-0210 and 340-218-0230 so that the requirements may later be incorporated into the Oregon Title V Operating Permit by an administrative amendment. If the applicant elects to incorporate the Construction ACDP by administrative amendment, all of the application submittal, permit content, and permit issuance requirements of OAR 340, division 218 must be met for the Construction ACDP

(2) Application requirements. Any person requesting a Construction ACDP must:

(a) Submit an application in accordance with OAR 340-216-0040 and provide the information specified in OAR 340-216-0040(1) as it relates to the proposed new construction or modification; and

(b) Provide a list of any applicable requirements related to the new construction or modification.

(3) Fees. Applicants for a Construction ACDP must pay the fees set forth in Table 2 of OAR 340-216-0020.

(4) Permit content. A Construction ACDP must include at ~~a minimum~~least the following:

(a) A requirement that construction must commence within 18 months after the permit is issued;

(b) A requirement to construct in accordance with approved plans;

(c) A requirement to comply with all applicable requirements;

(d) Emission limits for affected stationary sources;

(e) Performance standards for affected stationary sources and air pollution control equipment;

(f) Performance test requirements;

(g) Monitoring requirements, if specialized equipment is required (e.g., continuous monitoring systems);

(h) Notification and reporting requirements (construction status reports, startup dates, source test plans, CEMS performance specification testing plans, etc.);

(i) General ACDP conditions for incorporating generally applicable requirements;

(j) A requirement to modify the operating permit before commencing operation of the new construction or modification;

(k) A permit expiration date of no more than 5 years; and

(l) Oregon Title V Permit requirements as specified in OAR 340-218-0050, if the applicant requests the external review procedures in OAR 340-218-0210 and 340-218-0230.

(5) Permit issuance procedures:

(a) A Construction ACDP requires public notice in accordance with OAR 340 division 209 for Category III permit actions.

(b) For sources subject to the Oregon Title V Operating Permit program, the applicant may ask for the external review procedures in OAR 340-218-0210 and 340-218-0230 in addition to the requirements of OAR 340, division 209 to allow the Construction ACDP to be incorporated into the Oregon Title V Operating Permit later by an administrative amendment provided the requirements of (1)(b) are met.

(c) Issuance of a modified Construction ACDP requires one of the following, as applicable:

(A) Non-technical modifications and non-NSR Basic and Simple technical modifications require public notice in accordance with OAR 340 division 209 for Category I permit actions.

(B) Non-NSR/PSD Moderate and Complex technical modifications require public notice in accordance with OAR 340 division 209 for Category II permit actions.

340-216-0054
Short Term Activity ACDPs

(1) Application requirements. Any person requesting a Short Term Activity ACDP must apply in writing, fully describing the emergency and the proposed activities, operations, and emissions. The application must include the fees specified in section (2) of this rule.

(2) Fees. Applicants for a Short Term Activity ACDP must pay the fees set forth in Table 2 of 340-216-0020.

(3) Permit content.

(a) This permit includes conditions that ensure adequate protection of property and preservation of public health, welfare, and resources.

(b) A Short Term Activity ACDP does not include a PSEL for any air contaminants discharged as a result of the permitted activity.

(c) A Short Term Activity ACDP automatically terminates 60 days from the date of issuance and may not be renewed.

(d) A Short Term Activity ACDPs will be properly conditioned to ensure adequate protection of property and preservation of public health, welfare and resources.

(4) Permit issuance procedures. A Short Term Activity ACDP requires public notice in accordance with OAR 340 division 209 for Category I permit actions.

340-216-0056
Basic ACDPs

(1) Application requirements. Any person requesting a Basic ACDP must submit an application in accordance with OAR 340-216-0040 and provide the information specified in OAR 340-216-0040(1).

(2) Fees. Applicants for a new Basic ACDP must pay the fees set forth in Table 2 of 340-216-0020.

(3) Permit content:

(a) A Basic ACDP contains only the most significant and relevant- rules applicable to the source.

(b) A Basic ACDP does not contain a PSEL;

(c) A Basic ACDP requires a simplified annual report be submitted to the Department; and

(d) A Basic ACDP may be issued for a period not to exceed ten years.

(4) Permit issuance procedures. A Basic ACDP requires public notice in accordance with OAR 340 division 209 for Category I permit actions.

340-216-0060
General Air Contaminant Discharge Permits

(1) Applicability.

(a) ~~Applicability.~~ The ~~Department~~ Commission may issue a ~~g~~General ~~permits~~ ACDP under the following circumstances: ~~for categories of sources where individual permits are not necessary in order to adequately protect the environment. Before the Department can issue a gGeneral permit~~ ACDP, ~~the following conditions must be met:~~

(~~a~~A) There are several sources ~~which~~ that involve the same or substantially similar types of operations;

(~~b~~B) All ~~applicable~~ requirements applicable to the sources can be contained in a ~~g~~General ACDP~~permit~~;

(~~c~~C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all sources covered by the General ACDP; and

(~~d~~D) The pollutants emitted are of the same type for all covered sources.~~; and~~

~~(e) A plant site emission limit is not required.~~

(b) Permit content. Each General ACDP must include the following:

(A) All relevant requirements;

(B) Generic PSELs for all pollutants emitted at more than the deminimis level in accordance with OAR 340, division 222;

(C) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the PSEL and other applicable emissions limits and standards, and;

(D) A permit duration not to exceed 10 years.

(~~2~~c) Permit issuance procedures: A General ACDP requires public notice and opportunity for comment in accordance with ORS 183.325 to 183.410. All General ACDPs are on file and available for review at the Department's headquarters. The Commission chair signs a General ACDP.~~Public notice. Prior to issuing a general permit, the Department will provide public notice of the proposed permit conditions for each source category according to the procedures outlinedin OAR 340-216-0050 and the following:~~

~~(a) Notice shall be given by publication in a newspaper of general circulation in the state and in areas where potential applicants are known to be located, or in a Department publication designed to give general public notice, and by other means if necessary to ensure adequate public notice.~~

~~(b) The notice shall be provided to persons on a Department mailing list and others who submit a written request for notification.~~

~~(c) The notice shall include the information required by OAR 340-011-0007 and the following:~~

~~(A) The name, address and telephone number of the Department contact from whom interested persons may obtain additional information;~~

~~(B) Copies of the draft permit or equivalent summary; and~~

~~(C) A brief description of the procedures to request a hearing or the time and place of any hearing that has been scheduled.~~

~~(3) Permit issuance:~~

~~(a) The Department will follow the permit issuance procedures outlined in OAR 340-014-0025 for issuing a general permit for a source category.~~

~~(b) The Department may revoke a general permit if conditions or standards have changed so the permit no longer meets the requirements of this rule.~~

(42) Source assignment:

(a) Application requirements. Any person ~~source wishing to obtain~~ requesting that a source be assigned to a ~~g~~General ~~permit~~ ACDP must~~shall~~ submit a written application ~~on a form provided by the Department~~ in accordance with OAR 340-216-0040 that includes the information in OAR 340-216-0040(1), specifies the General ACDP source category, and shows that the source qualifies for the General ACDP.~~ along with the fee specified in the permit.~~

(b) Fees. Applicants must pay the fees set forth in Table 2 of 340-216-0020.

~~(b) The Department will assign a source to a general permit for the term of the permit if:~~

~~(A) The source meets the qualifications specified in the permit;~~

~~(B) The Department determines that the source has not had compliance problems; and~~

~~(C) The Department determines that the source would be appropriately regulated by a general permit.~~

~~(c) Assignment of a source to a general permit is not subject to public notice requirements, but the Department will make an updated list of sources assigned to a source category available for public review.~~

~~(d) The Department may revoke a source's assignment to a general permit if the source no longer meets the requirements of this rule or the conditions of the permit.~~

(c) Source assignment procedures~~.~~:

(A) Assignment of a source to a General ACDP is subject to public notice in accordance with OAR 340, division 209 for Category I permit actions.

(B) Assignments to General ACDPs terminate when the General ACDP expires or is modified, terminated or revoked.

(3) Commission Initiated Modification. If the Commission determines that the conditions have changed such that a General ACDP for a category needs to be modified, the Commission may issue a new General ACDP for that category and the Department may assign all existing General ACDP permit holders to the new General ACDP.

(4) Rescission. In addition to 340-216-0082 (Termination or Revocation of an ACDP), the may rescind an individual source's assignment to a General ACDP if the source no longer meets the requirements of this rule or the conditions of the permit, including, but not limited to the source having an ongoing, reoccurring or serious compliance problem. Upon rescinding a source's assignment to a General ACDP the Department will place the source on a Simple or Standard ACDP. The Commission may also revoke a General ACDP if conditions, standards or rules have changed so the permit no longer meets the requirements of this rule.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats Implemented: ORS 468.020 & ORS 468A.025
Hist.: DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1725

340-216-0064
Simple ACDPs

(1) Applicability.
(A) Sources and activities listed in Table 1, Part B of OAR 340-216-0020 that do not qualify for a General ACDP and are not required to obtain a Standard ACDP must, at a minimum, obtain a Simple ACDP.
(B) Any source required to obtain a Simple ACDP may obtain a Standard ACDP.
(C) The Department may determine that a source is ineligible for a Simple ACDP and must obtain a Standard ACDP based upon, but not limited to, the following considerations:
(i) the nature, extent, and toxicity of the source's emissions;
(ii) the complexity of the source and the rules applicable to that source;
(iii) the complexity of the emission controls and potential threat to human health and the environment if the emission controls fail;
(iv) the location of the source; and
(v) the compliance history of the source.
(2) Application Requirements. Any person requesting a new, modified, or renewed Simple ACDP must submit an application in accordance with OAR 340-216-0040.
(3) Fees. Applicants for a new, modified, or renewed Simple ACDP must pay the fees set forth in Table 2 of 340-216-0020.
(4) Permit Content.
(a) All relevant applicable requirements for source operation, including general ACDP conditions for incorporating generally applicable requirements;
(b) Generic PSELs for all pollutants emitted at more than the deminimis level in accordance with OAR 340, division 222;
(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and
(d) A permit duration not to exceed 5 years
(5) Permit issuance procedures:
(a) Issuance of a new or renewed Simple ACDP requires public notice in accordance with OAR 340 division 209 for Category II permit actions.
(b) Issuance of a modification to a Simple ACDP requires one of the following procedures, as applicable:

(A) Non-technical and non-NSR/PSD Basic and Simple technical modifications require public notice in accordance with OAR 340, division 209 for Category I permit actions; or

(B) Issuance of non-NSR/PSD Moderate and Complex technical modifications require public notice in accordance with OAR 340, division 209 for Category II permit actions.

340-216-0066
Standard ACDPs

(1) Application requirements. Any person requesting a new, modified, or renewed Standard ACDP must submit an application in accordance with OAR 340-216-0040 and include the following additional information as applicable:

(a) For new or modified Standard ACDPs that are not subject to NSR (OAR 340, division 224) but have emissions increases above the significant emissions rate, the application must include an analysis of the air quality and visibility (federal major sources only) impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts.

(b) For new or modified Standard ACDPs that are subject to NSR (OAR 340, division 224), the application must include the following additional information as applicable:

(A) A detailed description of the air pollution control equipment and emission reductions processes which are planned for the source or modification, and any other information necessary to determine that BACT or LAER technology, whichever is applicable, would be applied;

(B) An analysis of the air quality and visibility (federal major sources only) impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts; and

(C) An analysis of the air quality and visibility (federal major sources only) impacts, and the nature and extent of all commercial, residential, industrial, and other source emission growth, which has occurred since January 1, 1978, in the area the source or modification would affect.

(2) Fees. Applicants for a Standard ACDP must pay the fees set forth in Table 2 of 340-216-0020.

(3) Permit content. A Standard ACDP is a permit that contains:

(a) all applicable requirements, including general ACDP conditions for incorporating generally applicable requirements;

(b) Source specific PSELs or Generic PSELs, whichever are applicable, as specified in OAR 340, division 222;

(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(d) A permit duration not to exceed 5 years.

(4) Permit issuance procedures.

(a) Issuance of a new or renewed Standard ACDP requires public notice as follows:

(A) For non-NSR permit actions, issuance of a new Standard ACDP requires public notice in accordance with OAR 340 division 209 for Category III permit actions.

(B) For NSR permit actions, issuance of a new Standard ACDP requires public notice in accordance with OAR 340 division 209 for Category IV permit actions.

(b) Issuance of a modified Standard ACDP requires one of the following, as applicable:

(A) Non-technical modifications and non-NSR Basic and Simple technical modifications require public notice in accordance with OAR 340 division 209 for Category I permit actions.

(B) Non-NSR/PSD Moderate and Complex technical modifications require public notice in accordance with OAR 340 division 209 for Category II permit actions.

(C) NSR/PSD modifications require public notice in accordance with OAR 340 division 209 for Category IV permit actions.

340-216-0070

Permitting Multiple- Sources at a Single Adjacent or Contiguous Site ~~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 OAR 340-216-0090 **Table 1**:~~

~~(1) 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 Department or Regional Authority shall only affect that individual source without thereby affecting any other source subject to the permit.~~

~~(2) When a multiple source ACDP includes air contaminant sources subject to the jurisdiction of the Department and the Regional Authority, the Department may require that it shall be the permit issuing agency. In such cases, the Department and the Regional Authority shall otherwise maintain and exercise all other aspects of their respective jurisdictions over the permittee.~~ A single or contiguous site containing activities or processes that are covered by more than one General ACDP, or a source that contains processes or activities listed in more than one Part of Table 1, Part A to Part C OAR 340-216-0020 may obtain a Standard ACDP.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0003; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0160; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1730

340-216-0080

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 if required under OAR 340 division 222, 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 OAR 340-212-0120 through 340-212-0160.~~

~~(3) To avoid being required to submit an application for an Oregon 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 before the owner or operator would be required to submit an Oregon Title V Operating Permit application.~~

~~(4) Applications for synthetic minor source status shall be subject to notice procedures of OAR 340-216-0050.~~

~~(5) Synthetic minor source owners or operators who cause their source to be subject to the Oregon 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 OAR 340 division 218;~~

~~(b) Submit an Oregon Title V Operating Permit application pursuant to OAR 340-218-0040; and~~

~~(c) Receive an Oregon Title V Operating Permit before commencing operation in excess of the enforceable condition to limit potential to emit.~~

~~(6) Synthetic minor source owners or operators who cause their source to be subject to the Oregon 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 OAR 340 division 218; and~~

~~(d) Submit an Oregon Title V Operating Permit application under OAR 340-218-0040 to obtain an Oregon Title V Operating Permit within 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).~~

~~[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]~~

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.065 & ORS 468A.310

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. &cert. ef. 10-6-95; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1740

340-216-0082

Termination or Revocation of an ACDP

(1) Automatic Termination. A permit is automatically terminated upon:

(a) Issuance of a new permit for the same activity or operation;

(b) Written request of the permittee, if the Department determines that a permit is no longer required;

(c) Failure to submit a timely application for permit renewal. Termination is effective on the permit expiration date; or

(d) Failure to pay annual fees within 90 days of invoice by the Department, unless prior arrangements for payment have been approved in writing by the Department.

(2) Reinstatement of Terminated Permit: A permit automatically terminated under 340-216-0082(1)(b) through (1)(d) may only be reinstated by the permittee by applying for a new permit, including the applicable new source permit application fees as set forth in this Division.

(3) Revocation:

(a) If the Department determines that a permittee is in noncompliance with the terms of the permit, submitted false information in the application or other required documentation, or is in violation of any applicable rule or statute, the Department may revoke the permit. Notice of the intent to revoke the permit will be provided to the permittee in accordance with OAR 340-011-0097. The notice will include the reasons why the permit will be revoked, and include an opportunity for hearing prior to the revocation. A written request for hearing must be received within 60 days from service of the notice, and must state the grounds of the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011 The permit will continue in effect until the 60 days expires, or until a final order is issued if an appeal is filed, whichever is later.

(b) If the Department finds there is a serious danger to the public health, safety or the environment caused by a permittee's activities, the Department may immediately revoke or refuse to renew the permit without prior notice or opportunity for a hearing. If no advance notice is provided, notification will be provided to the permittee as soon as possible as provided in OAR 340-011-0097. The notification will

set forth the specific reasons for the revocation or refusal to renew. For the permittee to contest the Department's revocation or refusal to renew the Department must receive a written request for a hearing within 90 days of service of the notice and the request must state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011. The revocation or refusal to renew becomes final without further action by the Department if a request for a hearing is not received within the 90 days.

340-216-0084
Department Initiated Modification

If the Department determines it is appropriate to modify an ACDP, other than a General ACDP, the Department will notify the permittee by regular, registered or certified mail of the modification and will include the proposed modification and the reasons for the modification. The modification will become effective upon mailing unless the permittee requests a hearing within 20 days. Such a request for hearing must be made in writing and must include the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011. If a hearing is requested, the existing permit will remain in effect until after a final order is issued in the hearing.

340-216-0090
Sources Subject to ACDPs and Fees ~~and Permit Duration~~

All ~~persons~~ air contaminant discharge sources listed in Table 1 OAR 340-216-0020 ~~required to~~must obtain a permit from the Department and are ~~shall be~~ subject to ~~a three part~~ fees as set forth in ~~consisting of a uniform non-refundable filing fee, an application processing fee, and an annual compliance determination fee which are determined by applying~~ **Table ~~1~~2** OAR 340-216-0020, ~~**Part II**~~. ~~The amount equal to the filing fee, application processing fee, and the annual compliance determination fee shall be submitted as a required part of any application for a new permit. The amount equal to the filing fee and the application processing fee shall be submitted with any application for modification of a permit.~~

~~(2) The fee schedule contained in the listing of air contaminant sources in Table 1 shall be applied to determine the ACDP user fees (**Table 1, Part I**.) and ACDP fees (**Table 1, Part II**.) on a Standard Industrial Classification (SIC) plant site basis.~~

~~(3) Modifications of existing, unexpired permits which are instituted by the Department or Regional Authority due to changing conditions or standards, receipt of additional information, or any other reason pursuant to applicable statutes and do not require refiling or review of an application or plans and specifications shall not require submission of the filing fee or the application processing fee.~~

~~(4) Applications for multiple source permits received pursuant to OAR 340-216-0070 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 1.**~~

~~(5) The annual compliance determination fee shall be paid at least 30 days prior to the start of each subsequent permit year. Failure to timely remit the annual compliance determination fee in accordance with the above shall be considered grounds for not issuing a permit or revoking an existing permit.~~

~~(6) If a permit is issued for a period less than one (1) 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 12 months, the applicable annual compliance determination fee shall be prorated by multiplying the annual compliance determination fee by the number of months covered by the permit and dividing by twelve (12).~~

~~(7) In no case shall a permit be issued for more than ten (10) years, except for synthetic minor source permits which shall not be issued for more than five (5) years.~~

(8) Upon accepting an application for filing, the filing fee shall be non-refundable.

(9) When an air contaminant source which is in compliance with the rules of a permit issuing agency relocates or proposes to relocate its operation to a site in the jurisdiction of another permit issuing agency having comparable control requirements, application may be made and approval may be given for an exemption of the application processing fee. The permit application and the request for such fee reduction shall be accompanied by:

(a) A copy of the permit issued for the previous location; and

(b) Certification that the permittee proposes to operate with the same equipment, at the same production rate, and under similar conditions at the new or proposed location. Certification by the agency previously having jurisdiction that the source was operated in compliance with all rules and regulations will be acceptable should the previous permit not indicate such compliance.

(10) If a temporary or conditional permit is issued in accordance with adopted procedures, fees submitted with the application for an ACDP shall be retained and be applicable to the regular permit when it is granted or denied.

(11) All fees shall be made payable to the permit issuing agency.

(12) Pursuant to ORS 468A.135, a regional authority may adopt fees in different amounts than set forth in **Table 1** provided such fees are adopted by rule and after hearing and in accordance with ORS 468.065(2).

(13) Sources which are temporarily not conducting permitted activities, for reasons other than regular maintenance or seasonal limitations, may apply for use of a modified annual compliance determination fee in lieu of an annual compliance determination fee determined by applying Table 1. A request for use of the modified annual compliance determination fee shall be submitted to the Department in writing along with the modified annual compliance determination fees on or before the due date of the annual compliance determination fee. The modified annual compliance determination fee shall be $539.

(14) Owners or operators who have received Department approval for payment of a modified annual compliance determination fee shall obtain authorization from the Department prior to resuming permitted activities. Owners or operators shall submit written notification to the Department at least thirty (30) days before startup specifying the earliest anticipated startup date, and accompanied by:

(a) Payment of the full annual compliance determination fee determined from **Table 1** if greater than six (6) months would remain in the billing cycle for the source; or

(b) Payment of 50% of the annual compliance determination fee determined from **Table 1** if six (6) months or less would remain in the billing cycle.

(15) Fees for general permits:

(a) The fees for source assignment to a general permit shall be seventy-five percent of the applicable fees in **Table 1**, OAR 340-216-0090 except as provided in Subsection (d) of this Section. Fees shall be specified in the permit;

(b) The Department may provide in the permit that the annual compliance determination fee in OAR 340-216-0090 **Table 1** shall be paid annually or at less frequent intervals;

(c) For initial assignment to a general permit, the fees shall be prorated to the next highest full year for the remaining life of the permit;

(d) Exceptions:

(A) The filing fee and compliance determination fee required by OAR 340-216-0090 Table 1 shall not be reduced;

(B) The initial permitting or construction fees required in OAR 340-216-0090 Table 1 shall not apply.

Stat. Auth.: ORS 468.020 & ORS 468A.040

Stats. Implemented: ORS 468.065

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033.12; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79;

DEQ 11-1983, f. & ef. 5-31-83; DEQ 6-1986, f. & ef. 3-26-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ17-1990, f. & cert. ef. 5-25-90; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0165; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. &cert. ef. 10-14-94; DEQ 22-1994. f. & cert. ef. 10-14-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 18-1997, f. 8-27-97, cert. ef. 10-1-97; DEQ 7-1998, f. & cert. ef. 5-5-98; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1750

340-216-0094

Temporary Closure

(1) Permittees who are temporarily suspending activities for which an ACDP is required may apply for a fee reduction due to temporary closure. However, the anticipated period of closure must exceed six months and must not be due to regular maintenance or seasonal limitations

(2) Annual fees for temporary closure are one half of the regular annual fee for the source.

(3) Sources who have received Department approval for payment of the temporary closure fee must obtain authorization from the Department prior to resuming permitted activities. Owners or operators must submit written notification, together with the prorated annual fee for the remaining months of the year, to the Department at least thirty (30) days before startup and specify in the notification the earliest anticipated startup date.

340-216-0100

Permit Program for Regional Air Pollution Authority

~~Subject to the provisions of this rule, the Commission authorizes the Regional Authority to issue, modify, renew, suspend, and revoke ACDPs for air contamination sources within its jurisdiction:~~

~~(1) Each permit proposed to be issued or modified by the Regional authority shall be submitted to the Department at least thirty (30) days prior to the proposed issuance date.~~

~~(2) A copy of each permit issued, modified, or revoked by the Regional authority shall be promptly submitted to the Department.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]~~

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0185; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1790

Table 1
OAR 340-216-0020

Part A: Activities and Sources

The following commercial and industrial sources must obtain a Basic ACDP under the procedures set forth in 340-216-0056 unless the source is required to obtain a different form of ACDP by Part B or C hereof:

1. ** Autobody Repair or Painting Shops painting more than 25 automobiles in a year.
2. Natural Gas and Propane Fired Boilers (with or without #2 diesel oil back-up[a]) of 10 or more MMBTU but less than 30 MMBTU/hr heat input constructed after June 9, 1989.
3. Bakeries, Commercial baking more than 500 tons of dough per year.

4. * Cereal Preparations and Associated Grain Elevators more than 2,000 but less than 10,000 tons per year throughput
~~4.~~5. Coffee Roasters roasting more than 6 tons coffee beans in a year, but less than 30 tons/yr.
6. * Flour, Blended and/or Prepared and Associated Grain Elevators more than 2,000 but less than 10,000 tons per year throughput
7. * Grain Elevators used for intermediate storage more than 1,000 but less than 10,000 tons/yr. throughput
~~5.~~8. Millwork (including kitchen cabinets and structural wood members) more than 5,000 but less than 25,000 bd. ft./maximum 8 hour input.
~~6.~~9. Non-Ferrous Metal Foundries more than one ton/yr. but less than 100 tons/yr. of metal charged
10. Pesticide Manufacturing more than 1,000 tons/yr. but less than 5,000 tons/yr.
11. Prepared feeds for animals and fowl and associated grain elevators more than 1,000 tons/yr. but less than 10,000 tons per year throughput
12. Rock, Concrete or Asphalt Crushing both portable and stationary more then 5,000 tons/yr. but less than 25,000 tons/yr. crushed
~~7.~~13. Sawmills and/or Planing Mills more than 5,000 but less than 25,000 bd. ft./maximum 8 hour finished product
14. * Seed Cleaning and Associated Grain Elevators more than 1,000 but less than 5000 tons per year throughput
~~8.~~15. Spray Paint Booths and surface coating operations whose actual or expected usage of coating materials is greater than 250 gallons per month, excluding sources that exclusively use non-VOC containing coatings (e.g. powder coating operations).
~~9.~~16. Wood Furniture and Fixtures more than 5,000 but less than 25,000 bd. ft./maximum 8 hour input

Part B: Activities and Sources

The following commercial and industrial sources must obtain either:

- a General ACDP, if one is available for the source classification and the source qualifies for a General ACDP under the procedures set forth in 340-216-0060;
- a Simple ACDP under the procedures set forth in 340-216-0064; or
- a Standard ACDP under the procedures set forth in 340-216-0066 if the source fits one of the criteria of Part C hereof.

1. Aerospace or Aerospace Parts Manufacturing
2. Aluminum Production - Primary
3. Ammonia Manufacturing
4. Animal Rendering and Animal Reduction Facilities
5. Asphalt Blowing Plants
6. Asphalt Felts or Coating
7. Asphaltic Concrete Paving Plants both stationary and portable
8. Bakeries, Commercial over 10 tons of VOC emissions per year
9. Battery Separator Manufacturing
10. Battery Manufacturing and Re-manufacturing
11. Beet Sugar Manufacturing
12. Boilers and other Fuel Burning Equipment over 10 MMBTU/hr. heat input, except exclusively Natural Gas and Propane fired units (with or without #2 diesel backup) under 30 MMBTU/hr. heat input
13. Building paper and Buildingboard Mills
14. Calcium Carbide Manufacturing
15. *** Can or Drum Coating
16. Cement Manufacturing
17. * Cereal Preparations and Associated Grain Elevators 10,000 or more tons/yr. throughput
18. Charcoal Manufacturing
19. Chemical Manufacturing and Distribution
20. Chlorine and Alkalies Manufacturing

21. Chrome Plating
22. Coffee Roasting (roasting more than 30 tons per year)
23. Concrete Manufacturing including Redimix and CTB
24. Crematory and Pathological Waste Incinerators
25. Electrical Power Generation from combustion (excluding units used exclusively as emergency generators)
26. Ethylene Oxide Sterilization
27. *** Flatwood Coating regulated by Division 232
28. *** Flexographic or Rotogravure Printing subject to RACT
~~30.~~29. * Flour, Blended and/or Prepared and Associated Grain Elevators 10,000 or more tons/yr. throughput
~~31.~~30. Galvanizing and Pipe Coating
~~32.~~31. *** Gasoline Plants and Bulk Terminals subject to OAR 232
~~33.~~32. Gasoline Terminals
~~34.~~33. Glass and Glass Container Manufacturing
~~35.~~34. * Grain Elevators used for intermediate storage 10,000 or more tons/yr. throughput
35. Grain terminal elevators
36. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries (not elsewhere identified)
~~36.~~37. Gypsum Products Manufacturing
~~37.~~38. Hardboard Manufacturing (including fiberboard)
~~38.~~39. Incinerators with two or more ton per day capacity
~~39.~~40. Lime Manufacturing
~~40.~~41. *** Liquid Storage Tanks subject to OAR Division 232
~~41.~~42. Magnetic Tape Manufacturing
~~42.~~43. Manufactured and Mobile Home Manufacturing
~~43.~~44. Marine Vessel Petroleum Loading and Unloading
~~44.~~45. Millwork (including kitchen cabinets and structural wood members) 25,000 or more bd. ft./maximum 8 hr. input
~~45.~~46. Molded Container
~~46.~~47. Motor Coach Manufacturing
~~47.~~48. Natural Gas and Oil Production and Processing and associated fuel burning equipment
~~48.~~49. Nitric Acid Manufacturing
~~49.~~50. Non-Ferrous Metal Foundries 100 or more tons/yr. of metal charged
~~50.~~51. Organic or Inorganic Industrial Chemical Manufacturing
~~51.~~52. *** Paper or other Substrate Coating
~~52.~~53. Particleboard Manufacturing (including strandboard, flakeboard, and waferboard)
54. Perchloroethylene dry cleaners that do not submit a complete Dry Cleaner Annual Hazardous Waste and Air Compliance Report by June 1 of any given year
~~53.~~55. Pesticide Manufacturing greater than 5,000 or more tons/yr. annual production
~~54.~~56. Petroleum Refining and Re-refining of Lubricating Oils and Greases including Asphalt Production by Distillation and the reprocessing of oils and/or solvents for fuels
~~55.~~57. Plywood Manufacturing and/or Veneer Drying
58. Prepared feeds for animals and fowl and associated grain elevators 10,000 or more tons per year throughput
~~56.~~59. Primary Smelting and/or Refining of Ferrous and Non-Ferrous Metals
~~57.~~60. Pulp, Paper and Paperboard Mills
~~58.~~61. Rock, Concrete or Asphalt Crushing both portable and stationary 25,000 or more tons/yr. crushed
~~59.~~62. Sawmills and/or Planing Mills 25,000 or more bd. ft./maximum 8 hr. finished product
~~60.~~63. Secondary Smelting and/or Refining of Ferrous and Non-Ferrous Metals
~~61.~~64. * Seed Cleaning and Associated Grain Elevators 5,000 or more tons/yr. throughput
~~62.~~65. Sewage Treatment Facilities employing internal combustion for digester gasses
~~63.~~66. Soil Remediation Facilities stationary or portable
~~64.~~67. Steel Works, Rolling and Finishing Mills
~~65.~~68. *** Surface Coating in Manufacturing subject to RACT

~~66.~~69. Surface Coating Operations with actual emissions of VOCs before add on controls of 10 or more tons/yr.
~~67.~~70. Synthetic Resin Manufacturing
~~68.~~71. Tire Manufacturing
~~69.~~72. Wood Furniture and Fixtures 25,000 or more bd. ft./maximum 8 hr. input
~~70.~~73. Wood Preserving (excluding waterborne)
~~71.~~74. All Other Sources not listed herein that the Department determines an air quality concern exists or one which would emit significant malodorous emissions
~~72.~~75. All Other Sources not listed herein which would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons a year of PM10 if located in a PM10 non-attainment area, or 10 or more tons of any single criteria pollutant in any part of the state

Part C: Activities and Sources

The following sources must obtain a Standard ACDP under the procedures set forth in 340-216-0066:

1. Incinerators for PCBs and / or other hazardous wastes
2. All Sources that the Department determines have emissions that constitute a nuisance
3. All Sources electing to maintain the source's baseline emission rate, or netting basis
4. All Sources subject to a RACT, BACT, LAER, NESHAP, NSPS, State MACT, or other significant Air Quality regulation(s), except:
   (a) Source categories for which a General ACDP has been issued, and
   (b) Sources with less than 10 tons/yr. actual emissions that are subject to RACT, NSPS or a NESHAP which qualify for a Simple ACDP
5. All Sources having the Potential to Emit more than 100 tons of any regulated air contaminant in a year
6. All Sources having the Potential to Emit more than 10 tons of a single hazardous air pollutant in a year
7. All Sources having the Potential to Emit more than 25 tons of all hazardous air pollutants combined in a year

Notes:

* Applies only to Special Control Areas
** Portland AQMA only
*** Portland AQMA, Medford-Ashland AQMA or Salem SATS only
(a) "back-up" means less than 10,000 gallons of fuel per year

TABLE 2
OAR 340-216-0020

Part 1. Initial Permitting Application Fees: (in addition to first annual fee)

a.	Short Term Activity ACDP	$ 250.00
b.	Basic ACDP	$ 100.00
c.	Assignment to General ACDP	$ 1,000.00
d.	Simple ACDP	$ 5,000.00
e.	Construction ACDP	$ 8,000.00
f.	Standard ACDP	$ 10,000.00
g.	Standard ACDP (PSD/NSR)	$ 35,000.00

Part 2. Annual Fees: (due 12/1 for 1/1 to 12/31 of the following year)

a.	Short Term Activity ACDP	$	NA
b.	Basic ACDP	$	100.00
c.	General ACDP		
	(A) Fee Class One	$	500.00
	(B) Fee Class Two	$	900.00
	(C) Fee Class Three	$	1,300.00
d.	Simple ACDP	$	2,000.00
e.	Standard ACDP	$	4,000.00

Part 3. Specific Activity Fees:

a.	Non-Technical Permit Modification (1)	$ 300.00
b.	Non-PSD/NSR Basic Technical Permit Modification (2)	$ 300.00
c.	Non-PSD/NSR Simple Technical Permit Modification(3)	$ 1,000.00
d.	Non-PSD/NSR Moderate Technical Permit Modification (4)	$ 5,000.00
e.	Non-PSD/NSR Complex Technical Permit Modification (5)	$ 10,000.00
f.	PSD/NSR Modification	$ 35,000.00
g.	Modeling Review (outside PSD/NSR)	$ 5,000.00
h.	Public Hearing at Source's Request	$ 2,000.00
i.	State MACT Determination	$ 5,000.00
j.	Compliance Order Monitoring (6)	$100.00/mo.

Part 4. Late Fees:

a.	8-30 days late	5% of annual fee
b.	31-60 days late	10% of annual fee
c.	61 or more days late	20% of annual fee

(1) Non-Technical modifications include, but are not limited to name changes, change of ownership and similar administrative changes.

(2) Basic Technical Modifications include, but are not limited to corrections of emission factors in compliance methods, changing source test dates for extenuating circumstances, and similar changes

(3) Simple Technical Modifications include, but are not limited to , incorporating a PSEL compliance method from a review report into an ACDP, modifying a compliance method to use different emission factors or process parameter, changing source test dates for extenuating circumstances, changing reporting frequency, incorporating NSPS and NESHAP requirements that do not require judgement, and similar changes.

(4) Moderate Technical Modifications include, but are not limited to incorporating a relatively simple new compliance method into a permit, adding a relatively simple compliance method or monitoring for an emission point or control device not previously addressed in a permit, revising monitoring and reporting requirements other than dates and frequency, adding a new applicable requirement into a permit due to a change in process or change in rules and that does not require judgment by the Department, incorporating NSPS and NESHAP requirements that do not require judgment, and similar changes

(5) Complex Technical Modifications include, but are not limited to incorporating a relatively complex new compliance method into a permit, adding a relatively complex compliance method or monitoring for an emission point or control devise not previously addressed in a permit, adding a relatively complex new applicable requirement into a permit due to a change in process or change in rules and that requires judgement by the Department, and similar changes.

(6) This is a one time fee payable when a Compliance Order is established in a Permit or a Department Order containing a compliance schedule becomes a Final Order of the Department and is based on the number of months the Department will have to oversee the Order.

TABLE 1 AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE (340-216-0090) Part I.		
Note: Fees in (A) through (H) are in addition to any other applicable fee.		
A.	Late Payment a) 8 - 30 days b) > 30 days	 $200 $400
B.	Ambient Monitoring Network Review	$1,170
C.	Modeling Review	$2,600
D.	Alternative Emission Control Review	$1,950
E.	Non-technical permit modification (name change, ownership transfer, and similar)	$65
F.	Initial Permitting or Construction a) Complex b) Moderately Complex c) Simple	 $28,600 $13,000 $2,600
G.	Elective Permits - Synthetic Minor Sources a) Permit Application or Modification b) Annual Compliance Assurance	 $2,192 $1,154
H.	Filing	$98

~~TABLE 1~~
~~AIR CONTAMINANT SOURCES AND~~
~~ASSOCIATED FEE SCHEDULE~~
~~(340-216-0090)~~
~~Part II.~~

~~Note: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable source categories.~~

~~No.~~	~~Air Contaminant Source~~	~~Standard Industrial Classification Number (Reference Only)~~	~~Application Processing Fee~~	~~Annual Compliance Determination Fee~~
~~1.~~	~~Seed cleaning and associated grain elevators in special control areas, commercial operations only~~	~~0723~~	~~801~~	~~1,221~~
~~2.~~	~~Reserved~~			
~~3.~~	~~Flour and other grain mill products and associated grain elevators in special control areas~~ ~~a) 10,000 or more tons/year~~ ~~b) Less than 10,000 tons/year~~	~~2041~~	 ~~2,603~~ ~~2,002~~	 ~~2,402~~ ~~1,031~~
~~4.~~	~~Cereal preparations and associated grain elevators in special control areas~~	~~2043~~	~~2,603~~	~~1,732~~
~~5.~~	~~Blended and prepared flour and associated grain elevators in special control areas~~ ~~a) 10,000 or more tons/year~~ ~~b) Less than 10,000 tons/year~~	~~2045~~	 ~~2,603~~ ~~2,002~~	 ~~1,732~~ ~~1,001~~
~~6.~~	~~Prepared feeds for animals and fowl and associated grain elevators in special control areas~~ ~~a) 10,000 or more tons/year~~ ~~b) Less than 10,000 tons/year~~	~~2048~~	 ~~2,603~~ ~~1,602~~	 ~~2,402~~ ~~1,892~~
~~7.~~	~~Beet sugar manufacturing~~	~~2063~~	~~3,403~~	~~11,922~~
~~8.~~	~~Animal reduction facilities~~ ~~a) 10,000 or more tons/year input~~ ~~b) Less than 10,000 tons/year input~~	~~2077~~	 ~~3,203~~ ~~2,402~~	 ~~3,844~~ ~~2,083~~
~~9.~~	~~Coffee roasting, 30 tons/year or more roasted product~~	~~2095~~	~~1,602~~	~~1,572~~
~~10.~~	~~Sawmills and/or planing mills~~ ~~a) 25,000 or more bd. ft./shift finished product or 10 or more employees per shift~~ ~~b) Reserved~~	~~2421, 2426~~	 ~~1,602~~	 ~~2,402~~
~~11.~~	~~Reserved~~			
~~12.~~	~~Reserved~~			

TABLE 1
AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE
(340-216-0090)
Part II.

Note: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable source categories.

No.	Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	Application Processing Fee	Annual Compliance Determination Fee
13.	Millwork (including kitchen cabinets and structural wood members) 25,000 or more bd. ft./ shift input or 10 or more employees per shift	2431, 2434, 2439	1,201	1,892
14.	Plywood manufacturing and/or veneer drying	2435, 2436		
	a) 25,000 or more sq. ft./hr., 3/8" basis finished product		5,005	4,845
	b) 10,000 or more but less than 25,000 sq. ft./hr., 3/8" basis finished product		3,604	3,273
	c) Less than 10,000 sq. ft./hr., 3/8" basis finished product		1,201	1,732
15.	Reserved			
16.	Wood preserving (excluding waterborne)	2491	2,002	1,921
17.	Particleboard manufacturing (including strandboard, flakeboard, and waferboard)	2493		
	a) 10,000 or more sq. ft./hr., 3/4" basis finished product		5,005	5,706
	b) Less than 10,000 sq. ft./hr., 3/4" basis finished product		2,402	2,722
18.	Hardboard manufacturing (incuding fiberboard)	2493		
	a) 10,000 or more sq. ft./hr., 1/8" basis finished product		5,005	4,685
	b) Less than 10,000 sq. ft./hr., 1/8" basis finished product		2,402	2,402
19.	Battery separator manufacturing	2499	2,002	4,164
20.	Furniture and fixtures	2511		
	a) 25,000 or more bd. ft./shift input or 10 or more employees per shift		1,201	1,892
	b) Reserved			
21.	Pulp mills, paper mills, and paperboard mills	2611, 2621, 2631		
	a) Kraft, sulfite, & neutral sulfite only		10,010	20,731
	b) Other 100 tons or more of emissions		10,010	20,731

TABLE 1
AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE
(340-216-0090)
Part II.

Note: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable source categories.

No.	Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	Application Processing Fee	Annual Compliance Determination Fee
22.	Building paper and building board mills	2621, 2493	1,602	1,572
23.	Alkalies and chlorine mfg. a) High cost b) Low cost	2812	 4,905 2,803	 5,506 4,134
24.	Calcium carbide manufacturing a) High cost b) Low cost	2819	 5,256 3,003	 5,506 4,134
25.	Nitric acid manufacturing a) High cost b) Low cost	2819	 3,504 2,002	 2,773 2,083
26.	Ammonia manufacturing a) High cost b) Low cost	2819	 3,504 2,002	 3,203 2,402
27.	Industrial inorganic and organic chemicals manufacturing (not elsewhere included) a) High cost b) Low cost	2819, 2851, 2869	 4,555 2,603	 3,923 2,954
28.	Synthetic resin manufacturing a) High cost b) Low cost	2821	 3,504 2,002	 3,203 2,402
29.	Charcoal manufacturing	2861	2,803	5,005
30.	Pesticide manufacturing	2879	5,005	20,731
31.	Petroleum refining a) Refining, general b) Asphalt production by distillation	2911	 10,010 2,002	 20,731 2,402
32.	Reserved			
33.	Asphalt blowing plants	2952	2,002	3,114
34.	Asphaltic concrete paving plants a) Stationary b) Portable	2951	 1,001 1,001	 1,182 1,502
35.	Asphalt felts or coating	2952	1,001	1,802
36.	Rerefining of lubricating oils and greases, and reprocessing of oils and solvents for fuel	2992	1,802	2,243
37.	Glass container manufacturing	3221	2,002	2,954
38.	Cement manufacturing	3241	6,406	15,185
39.	Concrete manufacturing, including redimix and CTB	3271, 3272, 3273	400	641
40.	Lime manufacturing	3274	3,054	1,572

TABLE 1
AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE
(340-216-0090)
Part II.

Note: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable source categories.

No.	Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	Application Processing Fee	Annual Compliance Determination Fee
41.	Gypsum products	3275	1,602	1,732
42.	Rock crusher	1442, 1446, 3295		
	a) Stationary		901	1,182
	b) Portable		901	1,502
43.	Steel works, rolling and finishing mills, electro-metallurgical products	3312, 3313	5,005	4,134
44.	Incinerators	4953		
	a) 250 or more tons/day capacity or any off-site infectious waste incinerator		24,024	10,351
	b) 50 or more but less than 250 tons/day capacity		6,006	3,143
	c) 2 or more but less than 50 tons/day capacity		1,001	1,221
	d) Crematoriums and pathological-waste incinerators, less than 2 tons/day capacity		1,001	1,221
	e) PCB and/or other hazardous waste incinerator		24,024	10,351
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/year production		5,005	3,623
	b) Less than 3,500 tons/year production		1,201	1,892
46.	Primary aluminum production	3334	10,010	20,731
47.	Primary smelting of zirconium or hafnium	3339	10,010	20,731
48.	Primary smelting and refining of ferrous and nonferrous metals (not elsewhere classified)	3331, 3339		
	a) 2,000 or more tons/year production		5,005	8,969
	b) Less than 2,000 tons/year production		1,001	3,463
49.	Secondary smelting and refining of nonferrous metals, 100 or more tons/year metal charged	3341	2,402	2,402

~~TABLE 1~~
~~AIR CONTAMINANT SOURCES AND~~
~~ASSOCIATED FEE SCHEDULE~~
~~(340-216-0090)~~
~~Part II.~~

~~Note: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable source categories.~~

~~No.~~	~~Air Contaminant Source~~	~~Standard Industrial Classification Number (Reference Only)~~	~~Application Processing Fee~~	~~Annual Compliance Determination Fee~~
~~50.~~	~~Nonferrous metal foundries, 100 or more tons/year metal charged~~	~~3363, 3364, 3365, 3366, 3369~~	~~1,201~~	~~2,083~~
~~51.~~	~~Reserved~~			
~~52.~~	~~Galvanizing and pipe coating (excluding all other activities)~~	~~3479~~	~~1,001~~	~~1,572~~
~~53.~~	~~Battery manufacturing~~	~~3691~~	~~1,201~~	~~2,083~~
~~54.~~	~~Grain elevators, intermediate storage only, located in special control areas (not elsewhere classified)~~	~~4221~~		
	~~a) 20,000 or more tons/year grain processed~~		~~1,802~~	~~3,273~~
	~~b) Less than 20,000 tons/year grain processed~~		~~1,001~~	~~1,572~~
~~55.~~	~~Electric power generation*~~	~~4911~~		
	~~a) Wood or coal fired, 25 MW or more~~		~~40,040~~	~~20,731~~
	~~b) Reserved~~			
	~~c) Oil or natural gas fired, 25 MW or more~~		~~3,604~~	~~5,005~~
~~56.~~	~~Fuel burning equipment for gas production and/or distribution, 10 million or more Btu/hr. heat input~~	~~4922, 4925~~		
	~~a) Natural gas transmission~~		~~3,804~~	~~2,402~~
	~~b) Natural gas production and/or mfg.~~		~~3,804~~	~~2,402~~
~~57.~~	~~Terminal elevators primarily engaged in buying and/or marketing grain, in special control areas~~	~~5153~~		
	~~a) 20,000 or more tons/year grain processed~~		~~5,005~~	~~4,134~~
	~~b) Less than 20,000 tons/year grain processed~~		~~1,401~~	~~1,572~~

TABLE 1
AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE
(340-216-0090)
Part II.

Note: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable source categories.

No.	Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	Application Processing Fee	Annual Compliance Determination Fee
58.	Fuel burning equipment within the boundaries of the Portland and Medford-Ashland Air Quality Maintenance Areas, Salem Area Transportation Study Boundary, and Grants Pass, Klamath Falls, and LaGrande Urban Growth Areas **, ***, ****	4961		
	a) Residual or distillate oil fired, 250 million or more Btu/hr. heat input		3,203	3,143
	b) Residual or distillate oil fired, 10 or more but less than 250 million Btu/hr. heat input		2,002	1,732
	c) Reserved			
59.	Fuel burning equipment within the boundaries of the Portland and Medford-Ashland Air Quality Maintenance Areas, Salem Area Transportation Study Boundary, and Grants Pass, Klamath Falls, and LaGrande Urban Growth Areas **, ***, ****	4961		
	a) Wood or coal fired, 35 million or more Btu/hr. heat input		3,203	3,143
	b) Wood or coal fired, less than 35 million Btu/hr. heat input		801	1,732
60.	Fuel burning equipment outside the boundaries of the Portland and Medford-Ashland Air Quality Maintenance Areas, Salem Area Transportation Study Boundary, and Grants Pass, Klamath Falls, and LaGrande Urban Growth Areas **, ***, ****	4961		
	All oil fired 30 million or more Btu/hr. heat input, and all wood and coal fired 10 million or more Btu/hr. heat input		2,002	1,732

TABLE 1
AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE
(340-216-0090)
Part II.

Note: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable source categories.

No.	Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	Application Processing Fee	Annual Compliance Determination Fee
61.	Sources installed in or after 1971 not listed herein which would emit 5 or more tons/yr. PM_{10} in a PM_{10} nonattainment area, or 10 or more tons/yr. of any air contaminants in any part of the state. This includes but is not limited to particulates, SO_x, or Volatile Organic Compounds (VOC), if the source were to operate uncontrolled a) High cost b) Medium cost c) Low cost	any	 18,018 5,005 1,201	 12,813 2,243 961
62.	Sources installed in or after 1971 not listed herein which would emit significant malodorous emissions, as determined by Departmental review of sources which are known to have similar air contaminant emissions. a) High cost b) Medium cost c) Low cost	any	 18,018 5,005 1,201	 12,813 2,243 961
63.	Sources not listed herein for which an air quality problem is identified by the Department or which are not otherwise required to obtain a permit a) High cost b) Medium cost c) Low cost	any	 18,018 5,005 1,201	 12,813 2,243 961
64.	Bulk gasoline plants regulated by OAR 340-232-0080 *****	5171	801	1,031
65.	Bulk gasoline terminals *****	5171	8,008	3,463
66.	Liquid storage tanks, 39,000 gallons or more capacity, regulated by OAR 340-232-0150 (not elsewhere included) *****	5169, 5171	400/tank	711/tank

TABLE 1
AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE
(340-216-0090)
Part II.

Note: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable source categories.

No.	Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	Application Processing Fee	Annual Compliance Determination Fee
67.	Can or drum coating *****	3411, 3412		
	a) 50,000 or more units/month		12,012	6,217
	b) Less than 50,000 units/month		801	1,382
68.	Paper or other substrate coating *****	2672, 3861	12,012	6,217
69.	Coating flat wood regulated by OAR 340-232-0220 *****	2435	4,004	2,083
70.	Surface coating, manufacturing *****	any		
	a) 100 or more tons VOC/yr.		4,004	2,763
	b) 10 or more but less than 100 tons VOC/yr.		1,201	1,382
	c) Less than 10 tons VOC/yr. (at sources' request)		400	581
71.	Flexographic or rotogravure printing, 60 or more tons VOC/yr. per plant *****	2754, 2759	4,505	4,004
72.	Reserved			
73.	Non-major sources subject to NESHAPS rules (except demolition, renovation and Perchloroethylene Dry Cleaning)	any	801	1,001
74.	Major sources requiring toxic air pollutant review, including Maximum Available Control Technology (MACT), (not elsewhere classified)	any	2,002	1,921
75.	Soil remediation plants	1799		
	a) Stationary		2,002	1,892
	b) Portable		2,002	2,402

* Excluding hydro-electric and nuclear generating projects.
** Including co-generation facilities of less than 25 megawatts.
*** Legal descriptions and maps of these areas are on file in the Department.
**** Fees will be based on the total aggregate heat input of all fuel burning equipment at the site.
***** Permits for sources in categories 64 through 71 are required only if the source is located in the Portland AQMA, Medford-Ashland AQMA, or Salem SATS.

DIVISION 218

OREGON TITLE V OPERATING PERMITS

340-218-0010
Policy and Purpose

These rules establish a program to implement Title V of the FCAA for the State of Oregon as part of the overall industrial source control program:

(1) All sources subject to this division shall have an Oregon Title V Operating Permit that assures compliance by the source with all applicable requirements in effect as of the date of permit issuance.

(2) The requirements of the Oregon Title V Operating Permit program, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the national acid rain program, except as provided herein.

(3) All sources subject to this division are exempt from the following:

(a) Registration as required by ORS 468A.050 and OAR 340-210-0100 through 340-210-0120~~;~~; and

~~(b) Notice of Construction and Approval of Plans, OAR 340-210-0200 through 340-210-0220;~~

(~~e~~b) Air Contaminant Discharge Permits, OAR 340 division 216, unless required by OAR 340-216-0020 sections (2) or (4), or OAR 340-224-0010(1).~~; and~~

~~(d) OAR Chapter 340, Division 14.~~

(4) Subject to the requirements in this Division, the Lane Regional Air Pollution Authority is designated by the Commission as the permitting agency to implement the Oregon Title V Operating Permit program within its area of jurisdiction. The Regional Authority's program is subject to Department oversight. The requirements and procedures contained in this Division pertaining to the Oregon Title V Operating Permit program shall be used by the Regional Authority to implement its permitting program until the Regional Authority adopts superseding rules which are at least as restrictive as state rules.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2100

340-218-0020
Applicability

(1) Except as provided in Section (4) of this rule, this division applies to the following sources:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the FCAA;

(c) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the FCAA;

(d) Any affected source under Title IV; and

(e) Any source in a source category designated by the Commission pursuant to this rule.

(2) The owner or operator of a source with an Oregon Title V Operating Permit whose potential to emit later falls below the emission level that causes it to be a major source, and which is not otherwise required to have an Oregon Title V Operating Permit, may submit a request for revocation of the Oregon Title V Operating Permit. Granting of the request for revocation does not relieve the source from compliance with all applicable requirements or ACDP requirements.

(3) Synthetic minor sources.

(a) A source which would otherwise be a major source subject to this division may choose to become a synthetic minor source by limiting its emissions below the emission level that causes it to be a major source through ~~production or operational~~ limits contained in an ACDP issued by the Department under 340 division 216.

(b) The reporting and monitoring requirements of the emission limiting conditions contained in the ACDPs of synthetic minor sources issued by the Department under 340 division 216 ~~shall~~must meet the requirements of OAR 340-212-0120 through 340-212-016~~5~~0 and OAR 340 division 214.

(c) Synthetic minor sources who request to increase their potential to emit above the major source emission rate thresholds ~~shall~~ will become subject to this division and ~~shall~~ must submit a permit application under OAR 340-218-0040 ~~in accordance with OAR 340-216-0080.~~and obtain an Oregon Title V Operating Permit before increasing emissions above the major source emission rate thresholds.

(d) Synthetic minor sources that exceed the limitations on potential to emit are in violation of OAR 340-218-0020(1)(a).

(4) Source category exemptions ~~and deferrals~~.

(a) The following source categories are exempted from the obligation to obtain an Oregon Title V Operating Permit:

(A) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA — Standards of Performance for New Residential Wood Heaters;

(B) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M — National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation; and

(C) All sources that are not major sources, provided the sources are not:

(i) Affected sources;

(ii) Solid waste incineration units required to obtain a permit pursuant to section 129(c) of the FCAA; or

(iii) Specifically required to obtain an Oregon Title V Operating Permit by a rule adopted in OAR 340 Divisions 230 or 244 ~~or 230~~.

~~(b) Permit deferral. A source with the potential to emit at or above major source thresholds need not apply for an Oregon Title V Operating Permit or obtain a synthetic minor permit before December 31, 1999 if the source maintains actual emissions below 50 percent of those thresholds for every consecutive twelve month period since January 25, 1994 and is not otherwise required to obtain an Oregon Title V Operating Permit or synthetic minor permit.~~

~~(A) The owner or operator of a source electing to defer permitting under this paragraph shall maintain on site records adequate to demonstrate that actual emissions for the entire source are below 50 percent of major source thresholds.~~

~~(B) Recorded information shall be summarized in a monthly log, maintained for five years, and be available to Department and EPA staff on request.~~

(~~e~~b) Any source listed in OAR 340-218-0020(1) exempt from the requirement to obtain a permit under this rule may opt to apply for an Oregon Title V Operating Permit.

(5) Emissions units and Oregon Title V Operating Permit program sources. The Department ~~shall~~ will include in the permit all applicable requirements for all relevant emissions units in the Oregon Title V Operating Permit source, including any equipment used to support the major industrial group at the site.

(6) Fugitive emissions. Fugitive emissions from an Oregon Title V Operating Permit program source ~~shall~~ must be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(7) Insignificant activity emissions. All emissions from insignificant activities, including categorically insignificant activities and aggregate insignificant emissions, shall be included in the determination of the applicability of any requirement.

(8) Oregon Title V Operating Permit program sources that are required to obtain an ACDP, OAR 340 division 216, or a Notice of Approval, OAR 340-~~218-0190~~,-210-0200 through 340-210-0250, because of a Title I modification, ~~shall~~ must operate in compliance with the Oregon Title V Operating Permit until the Oregon Title V Operating Permit is revised to incorporate the ACDP or the Notice of Approval for the Title I modification.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020, ORS 468.065, ORS 468A.040 & ORS 468A.310

Stats. Implemented: ORS 468.020, ORS 468.065, ORS 468A.025 & ORS 468A.310

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 24-1995, f. &cert. ef. 10-11-95; DEQ 1-1997, f. & cert. ef. 1-21-97; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2110

340-218-0030
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.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99

340-218-0040
Permit Applications

(1) Duty to apply. For each Oregon Title V Operating Permit program source, the owner or operator ~~shall~~ must submit a timely and complete permit application in accordance with this rule:

(a) Timely application:

(A) A timely application for a source that is in operation as of the effective date of the Oregon Title V Operating Permit program is one that is submitted 12 months after the effective date of the Oregon Title V Operating Permit program in Oregon or on or before such earlier date as the Department may establish. If an earlier date is established, the Department will provide at least six (6) months for the owner or operator to prepare an application. A timely application for a source that is not in operation or that is not subject to the Oregon Title V Operating Permit program as of the effective date of the Oregon Title V Operating Permit program is one that is submitted within 12 months after the source becomes subject to the Oregon Title V Operating Permit program.

(B) Any Oregon Title V Operating Permit program source required to have obtained a permit prior to construction under the ACDP program, OAR 340 division 216; New Source Review program, OAR 340 division 224; or the ~~construction/operation modification~~Notice of Construction and Approval of Plans rules, OAR 340-210-0200 through 340-210-0250-~~218-0190~~; ~~shall~~ must file a complete application to obtain the Oregon Title V Operating Permit or permit revision within 12 months after commencing operation. Commencing operation ~~shall~~ will be considered initial startup. Where an existing Oregon Title V Operating Permit would prohibit such construction or change in operation, the owner or operator ~~shall~~ must obtain a permit revision before commencing operation;

(C) Any Oregon Title V Operating Permit program source owner or operator ~~shall~~ must follow the appropriate procedures under this division prior to commencement of operation of a source permitted under the ~~construction/operation modification~~Notice of Construction and Approval of Plans rules, OAR 340-~~218-0190~~-210-0200 through 340-0210-0250;

(D) For purposes of permit renewal, a timely application is one that is submitted at least 12 months prior to the date of permit expiration, or such other longer time as may be approved by the Department that ensures that the term of the permit will not expire before the permit is renewed. If more than 12 months is required to process a permit renewal application, the Department ~~shall~~ will provide no less than six (6) months for the owner or operator to prepare an application. In no event ~~shall~~ will this time be greater than 18 months;

(E) Applications for initial phase II acid rain permits shall be submitted to the Department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides;

(F) Applications for Compliance Extensions for Early Reductions of HAP ~~shall~~ must be submitted before proposal of an applicable emissions standard issued under section 112(d) of the FCAA and shall be in accordance with provisions prescribed in OAR 340-244-0100 through 340-244-0180.

(b) Complete application:

(A) To be deemed complete, an application ~~shall~~ must provide all information required pursuant to section (3) of this rule. The application ~~shall~~ must include ~~six (6)~~four (4) copies of all required forms and exhibits in hard copy and one (1) copy in electronic format as specified by the Department. Applications for permit revision need to supply information required under section (3) of this rule only if it is related to the proposed change. Information required under section (3) of this rule ~~shall~~ must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official ~~shall~~ must certify the submitted information is in accordance with section (5) of this rule;

(B) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits, clearly identified, will not be accepted by the Department for filing and ~~shall~~ will be returned to the applicant for completion;

(C) If the Department determines that additional information is necessary before making a completeness determination, it may request such information in writing and set a reasonable deadline for a response. The application will not be considered complete for processing until the adequate information has been received. When the information in the application is deemed adequate, the applicant will be notified that the application is complete for processing;

(D) Unless the Department determines that an application is not complete within 60 days of receipt of the application, such application ~~shall~~ will be deemed to be complete, except as otherwise provided in OAR 340-218-0120(1)(e). If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. If the additional information is not provided by the deadline specified, the application ~~shall~~will be determined to be incomplete, and the application shield ~~shall~~will cease to apply;

(E) Applications determined or deemed to be complete ~~shall~~will be submitted by the Department to the EPA as required by OAR 340-218-0230(1)(a);

(F) The source's ability to operate without a permit, as set forth in 340-218-0120(2), ~~shall~~will be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Department.

(2) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application ~~shall~~must, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant ~~shall~~must provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(3) Standard application form and required information. Applications ~~shall~~must be submitted on forms and in electronic formats specified by the Department. Information as described below for each emissions unit at an Oregon Title V Operating Permit program source ~~shall~~must be included in the

application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, including those requirements that apply to categorically insignificant activities, or to evaluate the fee amount required. The application ~~shall~~must include the elements specified below:

(a) Identifying information, including company name and address, plant name and address if different from the company's name, owner's name and agent, and telephone number and names of plant site manager/contact;

(b) A description of the source's processes and products by **Standard Industrial Classification Code** including any associated with each alternative operating scenario identified by the owner or operator and related flow chart(s);

(c) The following emissions-related information for all requested alternative operating scenarios identified by the owner or operator:

(A) All emissions of pollutants for which the source is major, all emissions of regulated air pollutants and all emissions of pollutants listed in OAR 340-224-0040. A permit application ~~shall~~must describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under section (3) of this rule. The Department ~~shall~~ may require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed;

(B) Identification and description of all points of emissions described in paragraph (3)(c)(A) of this rule in sufficient detail to establish the basis for fees and applicability of requirements of the FCAA and state rules;

(C) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method and to establish PSELs for all regulated air pollutants except as restricted by OAR 340-222-0060 and OAR 340-222-0070:

(i) If a short term PSEL is required, ~~A~~an applicant may request that a period longer than ~~hourly~~ daily be used for the short term PSEL provided that the requested period is consistent with the means for demonstrating compliance with any other applicable requirement and the PSEL requirement, and:

(I) The requested period is no longer than the shortest period of the Ambient Air Quality Standards for the pollutant or ~~, which shall be no longer than~~ daily for VOC and NOx; or

(II) The applicant demonstrates that the requested period, if longer than the shortest period of the Ambient Air Quality Standards for the pollutant, is the shortest period compatible with source operations but no longer than monthly~~.~~

(ii) The requirements of the applicable rules ~~shall~~must be satisfied for any requested increase in PSELs, establishment of baseline emissions rates, requested emission reduction credit banking, or other PSEL changes.

(D) Additional information as determined to be necessary to establish any alternative emission limit in accordance with OAR 340-226-0400, if the permit applicant requests one;

(E) The application ~~shall~~must include a list of all categorically insignificant activities and an estimate of all emissions of regulated air pollutants from those activities which are designated insignificant because of aggregate insignificant emissions. Owners or operators that use more than 100,000 pounds per year of a mixture that contains not greater than 1% by weight of any chemical or compound regulated under Divisions 200 through 268 of this chapter, and not greater than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens ~~shall~~must contact the supplier and manufacturer of the mixture to try and obtain information other than Material Safety Data Sheets in order to quantify emissions;

(F) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel sulfur content, fuel use, raw materials, production rates, and operating schedules;

(G) Any information on pollution prevention measures and cross-media impacts the owner or operator wants the Department to consider in determining applicable control requirements and evaluating compliance methods; and

(H) 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 Department to establish operational and maintenance requirements under OAR 340-226-0120(1) and (2);

(I) Identification and description of air pollution control equipment, including estimated efficiency of the control equipment, and compliance monitoring devices or activities;

(J) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the Oregon Title V Operating Permit program source;

(K) Other information required by any applicable require-ment, including information related to stack height limitations developed pursuant to OAR 340-212-0130;

(L) Calculations on which the information in items (A) through (K) of this section is based.

(d) A plot plan showing the location of all emissions units identified by Universal Transverse Mercator or "UTM" as provided on United States Geological Survey maps and the nearest residential or commercial property;

(e) The following air pollution control requirements:

(A) Citation and description of all applicable requirements; and

(B) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(f) The following monitoring, recordkeeping, and reporting requirements:

~~(A) A proposed Enhanced Monitoring Protocol as required by the FCAA;~~

(~~B~~A) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including OAR 340-212-0200 through 340-212-0280;

(~~C~~B) Proposed periodic monitoring to determine compliance where an applicable requirement does not require periodic testing or monitoring;

(~~D~~C) The proposed use, maintenance, and installation of monitoring equipment or methods, as necessary;

(~~E~~D) Documentation of the applicability of the proposed ~~Enhanced M~~monitoring ~~P~~protocol, such as test data and engineering calculations;

(~~F~~E) Proposed consolidation of reporting requirements, where possible;

(~~G~~F) A proposed schedule of submittal of all reports; and

(~~H~~G) Other similar information as determined by the Department to be necessary to protect human health or the environment or to determine compliance with applicable requirements.

(g) Other specific information that may be necessary to implement and enforce other applicable requirements of the FCAA or state rules or of this division or to determine the applicability of such requirements;

(h) An explanation of any proposed exemptions from otherwise applicable requirements.

(i) A copy of any existing permit attached as part of the permit application. Owners or operators may request that the Department make a determination that an existing permit term or condition is no longer applicable by supplying adequate information to support such a request. The existing permit term or condition ~~shall~~will remain in effect unless or until the Department determines that the term or condition is no longer applicable by permit modification.

(j) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing off-permit changes for permit renewals;

(k) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing section 502(b)(10) changes for permit renewals;

(l) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing emissions trading under the PSEL including but not limited to proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable if the applicant requests such trading;

(m) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing emissions trading, to the extent that the applicable requirements provide for trading without a case-by-case approval of each emissions trade if the applicant requests such trading;

(n) A compliance plan that contains all the following:

(A) A description of the compliance status of the source with respect to all applicable requirements.

(B) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(C) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule ~~shall~~will include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance and interim measures to be taken by the source to minimize the amount of excess emissions during the scheduled period. This compliance schedule ~~shall~~must resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance ~~shall~~must be supplemental to, and ~~shall~~must not sanction noncompliance with, the applicable requirements on which it is based.

(D) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(E) The compliance plan content requirements specified in this section ~~shall~~will apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the FCAA with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(o) Requirements for compliance certification, including the following:

(A) A certification of compliance with all applicable requirements by a responsible official consistent with section (5) of this rule and section 114(a)(3) of the FCAA;

(B) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(C) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department; and

(D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the FCAA or state rules.

(p) A Land Use Compatibility Statement (LUCS), if applicable, to assure that the type of land use and activities in conjunction with that use have been reviewed and approved by local government before a permit is processed and issued.

(q) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the FCAA.

(r) For purposes of permit renewal, the owner or operator ~~shall~~must submit all information as required in section (3) of this rule. The owner or operator may identify information in its previous permit application for emissions units that should remain unchanged and for which no changes in applicable requirements have occurred and provide copies of the previous permit application for only those emissions units.

(4) Quantifying Emissions:

(a) When quantifying emissions for purposes of a permit application, modification, or renewal an owner or operator ~~shall~~must use the most representative data available or required in a permit condition. The Department ~~shall~~ will consider the following data collection methods as acceptable for determining air emissions:

(A) Continuous emissions monitoring system data obtained in accordance with the Department's **Continuous Monitoring Manual (January, 1992)**;

(B) Source testing data obtained in accordance with the Department's **Source Sampling Manual (January, 1992)** except where material balance calculations are more accurate and more indicative of an emission unit's continuous operation than limited source test results (e.g. a volatile organic compound coating operation);

(C) Material balance calculations;

(D) Emission factors subject to Department review and approval; and

(E) Other methods and calculations subject to Department review and approval.

(b) When continuous monitoring or source test data has previously been submitted to and approved by the Department for a particular emissions unit, that information ~~shall~~must be used for quantifying emissions. Material balance calculations may be used as the basis for quantifying emissions when continuous monitoring or source test data exists if it can be demonstrated that the results of material balance calculations are more indicative of actual emissions under normal continuous operating conditions. Emission factors or other methods may be used for calculating emissions when continuous monitoring data, source test data, or material balance data exists if the owner or operator can demonstrate that the existing data is not representative of actual operating conditions. When an owner or operator uses emission factors or other methods as the basis of calculating emissions, a brief justification for the validity of the emission factor or method ~~shall~~must be submitted with the calculations. The Department ~~shall~~ will review the validity of the emission factor or method during the permit application review period. When an owner or operator collects emissions data that is more representative of actual operating conditions, either as required under a specific permit condition or for any other requirement imposed by the Department, the owner or operator ~~shall~~must use that data for calculating emissions when applying for a permit modification or renewal. Nothing in this provision ~~shall~~ requires owners or operators to conduct monitoring or testing solely for the purpose of quantifying emissions for permit applications, modifications, or renewals.

(5) Any application form, report, or compliance certification submitted pursuant to this division ~~shall~~must contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this division shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2120

340-218-0050

Standard Permit Requirements

Each permit issued under this division ~~shall~~must include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance:

(a) The permit ~~shall~~must specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(b) For sources regulated under the national acid rain program, the permit ~~shall~~must state that, where an applicable requirement of the FCAA or state rules is more stringent than an applicable requirement of regulations promulgated under Title IV of the FCAA, both provisions ~~shall~~must be incorporated into the permit and ~~shall~~ will be enforceable by the EPA;

(c) For any alternative emission limit established in accordance with OAR 340-226-0400, the permit ~~shall~~must contain an equivalency determination and provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. The Department ~~shall~~ will issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources.

(3) Monitoring and related recordkeeping and reporting requirements:

(a) Each permit ~~shall~~must contain the following requirements with respect to monitoring:

(A) A monitoring protocol to provide accurate and reliable data that:

(i) Is representative of actual source operation;

(ii) Is consistent with the averaging time in the permit emission limits;

(iii) Is consistent with monitoring requirements of other applicable requirements; and

(iv) Can be used for compliance certification and enforcement.

(B) All emissions monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including OAR 340-212-0200 through 340-212-0280 and any other procedures and methods that may be promulgated pursuant to sections 504(b) or 114(a)(3) of the FCAA. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(C) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to OAR 340-218-0050(3)(c). Such monitoring requirements ~~shall~~must assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Continuous monitoring and source testing ~~shall~~must be conducted in accordance with the Department's **Continuous Monitoring Manual (January, 1992)** and the **Source Sampling Manual (January, 1992)**, respectively. Other monitoring ~~shall~~must be conducted in accordance with Department approved procedures. The monitoring requirements may include but ~~shall~~ are not ~~be~~ limited to any combination of the following:

(i) Continuous emissions monitoring systems (CEMS);

(ii) Continuous opacity monitoring systems (COMS);

(iii) Continuous parameter monitoring systems (CPMS);

(iv) Continuous flow rate monitoring systems (CFRMS);

(v) Source testing;

(vi) Material balance;

(vii) Engineering calculations;

(viii) Recordkeeping; or

(ix) Fuel analysis; and

(D) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods;

(E) A condition that prohibits any person from knowingly rendering inaccurate any required monitoring device or method;

(F) Methods used to determine actual emissions for fee purposes ~~shall~~must also be used for compliance determination and can be no less rigorous than the requirements of OAR 340-218-0080. For any assessable emission for which fees are paid on actual emissions, the compliance monitoring protocol ~~shall~~must include the method used to determine the amount of actual emissions;

(G) Monitoring requirements ~~shall~~must commence on the date of permit issuance unless otherwise specified in the permit.

(b) With respect to recordkeeping, the permit ~~shall~~must incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The date(s) analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of such analyses;

(vi) The operating conditions as existing at the time of sampling or measurement; and

(vii) The records of quality assurance for continuous monitoring systems (including but not limited to quality control activities, audits, calibrations drifts).

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit;

(C) Recordkeeping requirements ~~shall~~must commence on the date of permit issuance unless otherwise specified in the permit.

(c) With respect to reporting, the permit ~~shall~~must incorporate all applicable reporting requirements and require the following:

(A) Submittal of four (4) copies of reports of any required monitoring at least every 6 months, completed on forms approved by the Department. Unless otherwise approved in writing by the Department, six month periods are January 1 to June 30, and July 1 to December 31. The reports required by this rule ~~shall~~must be submitted within 30 days after the end of each reporting period, unless otherwise approved in writing by the Department. One copy of the report ~~shall~~must be submitted to the Air Quality Division, two copies to the regional office, and one copy to the EPA. All instances of deviations from permit requirements ~~shall~~must be clearly identified in such reports:

(i) The semi-annual report ~~shall~~ will be due on July 30, unless otherwise approved in writing by the Department, and ~~shall~~must include the semi-annual compliance certification, OAR 340-218-0080;

(ii) The annual report ~~shall~~ will be due on February 15, unless otherwise approved in writing by the Department, but ~~shall~~ may not be due ~~no~~ later than March 15, and ~~shall~~must consist of the annual reporting requirements as specified in the permit; the emission fee report; the emission statement, if applicable, OAR 340-214-0220; the excess emissions upset log, OAR 214-0340; the annual certification that the risk management plan is being properly implemented, OAR 340-224-0230; and the semi-annual compliance certification, OAR 340-218-0080.

(B) Prompt reporting of deviations from permit requirements that do not cause excess emissions, including those attributable to upset conditions, as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. "Prompt" means within seven (7) days of the deviation. Deviations that cause excess emissions, as specified in OAR 340-214-0300 through 340-214-0360 ~~shall~~must be reported in accordance with OAR 340-214-0340;

(C) Submittal of any required source test report within 30 days after the source test unless otherwise approved in writing by the Department or specified in a permit;

(D) All required reports ~~shall~~must be certified by a responsible official consistent with OAR 340-218-0040(5);

(E) Reporting requirements ~~shall~~must commence on the date of permit issuance unless otherwise specified in the permit.

(d) The Department may incorporate more rigorous monitoring, recordkeeping, or reporting methods than required by applicable requirements in an Oregon Title V Operating Permit if they are contained in the permit application, are determined by the Department to be necessary to determine compliance with applicable requirements, or are needed to protect human health or the environment.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder:

(a) No permit revision ~~shall~~ will be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement;

(b) No limit ~~shall~~ may be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement;

(c) Any such allowance ~~shall~~must be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(a) The permittee ~~shall~~must comply with all conditions of the Oregon Title V Operating Permit. Any permit condition noncompliance constitutes a violation of the FCAA and state rules and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;

(b) The need to halt or reduce activity ~~shall~~ will not be a defense. It ~~shall~~ will not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit;

(c) The permit may be modified, revoked, reopened and reissued, or terminated for cause as determined by the Department. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;

(d) The permit does not convey any property rights of any sort, or any exclusive privilege;

(e) The permittee ~~shall~~must furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee ~~shall~~must also furnish to the Department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the EPA along with a claim of confidentiality.

(7) A provision to ensure that an Oregon Title V Operating Permit program source pays fees to the Department consistent with the fee schedule.

(8) Terms and conditions for reasonably anticipated alternative operating scenarios identified by the owner or operator in its application as approved by the Department. Such terms and conditions:

(a) ~~Shall~~Must require the owner or operator, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) ~~Shall~~Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions under each such alternative operating scenario; and

(c) ~~Shall~~Must ensure that the terms and conditions of each such alternative operating scenario meet all applicable requirements and the requirements of this division.

(9) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with the PSELs. Such terms and conditions:

(a) ~~Shall~~Must include all terms required under OAR 340-218-0050 and OAR 340-218-0080 to determine compliance;

(b) ~~Shall~~Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions that allow such increases and decreases in emissions;

(c) ~~Shall~~Must ensure that the trades are quantifiable and enforceable;

(d) ~~Shall~~Must ensure that the trades are not Title I modifications;

(e) ~~Shall~~Must require a minimum 7-day advance, written notification to the Department and the EPA of the trade that ~~shall~~must be attached to the Department's and the source's copy of the permit. The written notification ~~shall~~must state when the change will occur and ~~shall~~must describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit; and

(f) ~~Shall~~Must meet all applicable requirements and requirements of this division.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emission trade. Such terms and conditions:

(a) ~~Shall~~Must include all terms required under OAR 340-218-0050 and OAR 340-218-0080 to determine compliance;

(b) ~~Shall~~Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions that allow such increases and decreases in emissions; and

(c) ~~Shall~~Must meet all applicable requirements and requirements of this division.

(11) Terms and conditions allowing for off-permit changes, OAR 340-218-0140(2).

(12) Terms and conditions allowing for section 502(b)(10) changes, OAR 340-218-0140(3).

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2130

340-218-0060

State-Enforceable Requirements

The Department ~~shall~~ will specifically designate as not being federally enforceable any terms and conditions included in the permit that are not required under the FCAA or under any of its applicable requirements. Terms and conditions so designated are subject to the requirements of OAR 340-218-0040 through 340-218-0220, other than those contained in OAR 340-218-0070. All terms and conditions in an Oregon Title V Operating Permit are enforceable by the Department.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2140

340-218-0070

Federally Enforceable Requirements

The Department ~~shall~~ will specifically designate as being federally enforceable under the FCAA any terms and conditions included in the permit that are required under the FCAA or under any of its applicable requirements. Federally enforceable conditions are subject to enforcement actions by the EPA and citizens.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2150

340-218-0080

Compliance Requirements

All Oregon Title V Operating Permits ~~shall~~must contain the following elements with respect to compliance:

(1) Consistent with OAR 340-218-0050(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

(2) A requirement that any document (including but not limited to reports) required by an Oregon Title V Operating Permit ~~shall~~must contain a certification by a responsible official or the designated representation for the acid rain portion of the permit that meets the requirements of OAR 340-218-0040(5).

(3) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee ~~shall~~must allow the Department or an authorized representative to perform the following:

(a) Enter upon the permittee's premises where an Oregon Title V Operating Permit program source is located or emissions-related activity is conducted, or where records ~~shall~~must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that ~~shall~~must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) As authorized by the FCAA or state rules, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(4) A schedule of compliance consistent with OAR 340-218-0040(3)(n)(c).

(5) Progress reports consistent with an applicable schedule of compliance and OAR 340-218-0040(3)(n)(c) to be submitted at least semi-annually, or at a more frequent period if specified in the applicable requirement or by the Department. Such progress reports ~~shall~~must contain the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(6) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits ~~shall~~must include each of the following:

(a) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the Department) of submissions of compliance certifications;

(b) In accordance with OAR 340-218-0050(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means ~~shall~~must include, at a minimum, the methods and means required under OAR 340-218-0050(3). If necessary, the owner or operator also ~~shall~~must identify any other material information that must be included in the certification to comply with section 113(c)(2) of the FCAA, which prohibits knowingly making a false certification or omitting material information;

(C) The status of compliance with terms and conditions of the permit for the period covered by the certification, based on the method or means designated in paragraph (6)(c)(B) of this rule. The certification ~~shall~~must identify each deviation and take it into account in the compliance certification. The certification ~~shall~~must also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under OAR 340-200-0020; and

(D) Such other facts as the Department may require to determine the compliance status of the source.

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Department; and

(e) Notwithstanding any other provision contained in any applicable requirement, the owner or operator may use monitoring as required under OAR 340-218-0050(3) and incorporated into the permit, in addition to any specified compliance methods, for the purpose of submitting compliance certifications.

(7) Annual certification that the risk management plan is being properly implemented, OAR 340-224-0230.

(8) Such other provisions as the Department may require in order to protect human health or the environment.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2160

340-218-0090

General Permits

(1) The Department may, after notice and opportunity for public participation provided under OAR 340-218-0210, issue general permits covering numerous similar sources in specific source categories as defined in section (2) of this rule. General permits ~~shall~~must comply with all requirements applicable to other Oregon Title V Operating Permits.

(2) The owner or operator of an existing major HAP source which meets all of the following criteria may apply to be covered under the terms and conditions of a general permit:

(a) The source is a major source under section 112 of the Act only;

(b) No emissions standard for existing sources, promulgated pursuant to section 112(d) of the FCAA or adopted under OAR 340-244-0200 through 340-244-0220, applies to the source; and

(c) The Department does not consider the source to be a problem source based on its complaint record and compliance history.

(3) Notwithstanding the shield provisions of OAR 340-218-0110, the source ~~shall~~ will be subject to enforcement action for operation without an Oregon Title V Operating Permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits ~~shall~~ will not be authorized for affected sources under the national acid rain program unless provided in regulations promulgated under Title IV of the FCAA.

(4)(a) Oregon Title V Operating Permit program sources that would qualify for a general permit ~~shall~~must apply to the Department for coverage under the terms of the general permit or ~~shall~~must apply for an Oregon Title V Operating Permit consistent with OAR 340-218-0040.

(b) The Department may, in the general permit, provide for applications which deviate from the requirements of OAR 340-218-0040, provided that such applications meet the requirements of Title V of the FCAA and include all information necessary to determine qualification for, and compliance with, the general permit.

(c) Without repeating the public participation procedures required under OAR 340-218-0210, the Department ~~shall~~ may grant an owner's or operator's request for authorization to operate under a general permit if the source meets the applicability criteria for the general permit, but such a grant ~~shall~~ will not be a final permit action for purposes of judicial review.

(5) When an emissions limitation applicable to a general permit source is promulgated by the EPA pursuant to 112(d), or adopted by the state pursuant to OAR 340-244-0200 through OAR 340-244-0220, the source ~~shall~~must:

(a) Immediately comply with the provisions of the applicable emissions standard; and

(b)(A) Within 12 months of standard promulgation, apply for an operating permit, pursuant to OAR 340-218-0040, if three (3) or more years are remaining on the general permit term; or

(B) Apply for an operating permit at least 12 months prior to permit expiration, pursuant to OAR 340-218-0040, if less than three (3) years remain on the general permit term.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2170

340-218-0100

Temporary Sources

The Department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation ~~shall~~must be temporary and involve at least one change of location during the term of the permit. ~~No~~ An affected source ~~shall~~ may not be permitted as a temporary source. Permits for temporary sources ~~shall~~must include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the Department at least ten days in advance of each change in location;

(3) Conditions that assure compliance with land use compatibility; and

(4) Conditions that assure compliance with all other provisions of this division.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2180

340-218-0110
Permit Shield

(1) Except as provided in this division, the Department ~~shall~~must expressly include in an Oregon Title V Operating Permit a provision stating that compliance with the conditions of the permit ~~shall~~ will be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An Oregon Title V Operating Permit that does not expressly state that a permit shield exists ~~shall~~ will be presumed not to provide such a shield.

(3) Changes made to a permit in accordance with OAR 340-218-0150(1)(h) and OAR 340-218-0180 ~~shall~~ will be shielded.

(4) Nothing in this rule or in any Oregon Title V Operating Permit ~~shall~~ may alter or affect the following:

(a) The provisions of ORS 468.115 (enforcement in cases of emergency) and ORS 468.035;

(b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) The applicable requirements of the national acid rain program, consistent with section 408(a) of the FCAA; or

(d) The ability of the Department to obtain information from a source pursuant to ORS 468.095 (investigatory authority, access to records).

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. &cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2190

340-218-0120

Permit Issuance

(1) Action on application:

(a) A permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(A) The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under OAR 340-218-0090;

(B) Except for modifications qualifying for minor permit modification procedures under OAR 340-218-0170, the Department has complied with the requirements for public participation under OAR 340-218-0210;

(C) The Department has complied with the requirements for notifying and responding to affected States under OAR 340-218-0230(2);

(D) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this division; and

(E) The EPA has received a copy of the proposed permit and any notices required under OAR 340-218-0230(1) and (2), and has not objected to issuance of the permit under OAR 340-218-0230(3) within the time period specified therein or such earlier time as agreed to with the Department if no changes were made to the draft permit.

(b) When a multiple-source permit includes air contaminant sources subject to the jurisdiction of the Department and the Regional Authority, the Department may require that it ~~shall~~ will be the permit issuing agency. In such cases, the Department and the Regional Authority ~~shall~~ will otherwise maintain and exercise all other aspects of their respective jurisdictions over the permittee;

(c) Denial of a Permit. If the Department proposes to deny issuance of a permit, permit renewal, permit modification, or permit amendment, it ~~shall~~must notify the applicant by registered or certified mail of the intent to deny and the reasons for denial. The denial ~~shall~~ will become effective 60 days from the date of mailing of such notice unless within that time the applicant requests a hearing. Such a request for hearing ~~shall~~must be made in writing to the Director and ~~shall~~must state the grounds for the request. Any hearing held ~~shall~~ will be conducted pursuant to the applicable provisions of ORS Chapter 183;

(d) The Department or Lane Regional Air Pollution Authority is the permitting authority for purposes of the 18 month requirement contained in 42 USC § 7661b(c) and this subsection. Except as provided under the initial transition plan or under regulations promulgated under Title IV of the FCAA

or under this division for the permitting of affected sources under the national acid rain program, the Department ~~shall~~ will take final action on each permit application (including a request for permit modification or renewal) within 18 months after receiving a complete application. In the case of any complete permit application containing an early reductions demonstration pursuant to OAR 340-224-0100, the Department ~~shall~~ will take final action within 9 months of receipt;

(e) The Department ~~shall~~ will promptly provide notice to the applicant of whether the application is complete. Unless the Department requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application ~~shall~~ will be deemed complete. For modifications processed through minor permit modification procedures, OAR 340-218-0170(2), the Department ~~shall~~ will not require a completeness determination;

(f) The Department ~~shall~~ will provide a review report that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Department ~~shall~~ will send this report to the EPA and to any other person who requests it;

(g) The submittal of a complete application ~~shall~~ will not affect the requirement that any source have a Notice of Approval in accordance with OAR 340-~~218-0190~~-210-0200 through 340-0210-0250 or a preconstruction permit in accordance with OAR 340 division 216 or OAR 340 division 224;

(h) Failure of the Department to take final action on a complete application or failure of the Department to take final action on an EPA objection to a proposed permit within the appropriate time ~~shall~~ will be considered to be a final order for purposes of ORS Chapter 183;

(i) If the final permit action being challenged is the Department's failure to take final action, a petition for judicial review may be filed any time before the Department denies the permit or issues the final permit.

(2) Requirement for a permit:

(a) Except as provided in OAR 340-218-0120(2)(b), OAR 340-218-0140(3), and OAR 340-218-0170(2)(d), no Oregon Title V Operating Permit program source may operate after the time that it is required to submit a timely and complete application after the effective date of the program, except in compliance with a permit issued under an Oregon Title V Operating Permit program;

(b) If an Oregon Title V Operating Permit program source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have an Oregon Title V Operating Permit is not a violation of this division until the Department takes final action on the permit application, except as noted in this rule. This protection ~~shall~~ will cease to apply if, subsequent to the completeness determination made pursuant to OAR 340-218-0120(1)(e), and as required by OAR 340-218-0040(1)(b), the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being needed to process the application. If the final permit action being challenged is the Department's failure to take final action, a petition for judicial review may be filed any time before the Department denies the permit or issues the final permit.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2200

340-218-0130

Permit Renewal and Expiration

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected state and the EPA review, that apply to initial permit issuance; and

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with OAR 340-218-0040(1)(a)(D) and 340-218-0120(2). If a

timely and complete renewal application has been submitted, the existing permit ~~shall~~ will remain in effect until final action has been taken on the renewal application to issue or deny a permit.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2210

340-218-0140

Operational Flexibility

Operational flexibility provisions allow owners or operators to make certain changes at their facility without a permit modification. The following sections describe the provisions and the procedures owners or operators ~~shall~~must follow to utilize operational flexibility:

(1) Alternative Operating Scenarios. Owners or operators may identify as many reasonably anticipated alternative operating scenarios in the permit application as possible and request the approval of the Department for incorporation of the scenarios in the permit:

(a) Alternative operating scenarios mean the different conditions, including equipment configurations or process parameters, under which a source can operate that:

(A) Require different terms and conditions in the permit to determine compliance; or

(B) Trigger different applicable requirements.

(b) Alternative operating scenarios ~~shall~~must be identified in the permit application, approved by the Department; and listed in the permit;

(c) Changes between approved alternative operating scenarios listed in the permit can be made at any time. Owners or operators ~~shall~~must contemporaneously record in a log at the permitted facility any change from one alternative operating scenario to another.

(d) Owners or operators are not required to submit the record of changes of alternative operating scenarios on a periodic basis but ~~shall~~must make the record available or submit the record upon the request of the Department.

(e) The permit shield extends to all alternative operating scenarios listed in the permit.

(2) Off-permit Changes. Changes that qualify as off-permit do not require Department approval:

(a) Off-permit changes mean changes to a source that:

(A) Are not addressed or prohibited by the permit;

(B) Are not Title I modifications;

(C) Are not subject to any requirements under Title IV of the FCAA;

(D) Meet all applicable requirements;

(E) Do not violate any existing permit term or condition; and

(F) May result in emissions of regulated air pollutants subject to an applicable requirement, but not otherwise regulated under the permit or may result in insignificant changes as defined in OAR 340-200-0020.

(b) Off-permit changes can be made at any time. Owners or operators ~~shall~~must contemporaneously submit written notice to the Department and the EPA, except for changes that qualify as insignificant under OAR 340-200-0020. The written notice ~~shall~~must contain:

(A) A description of the change;

(B) The date on which the change will occur;

(C) Any change in emissions within the PSELs;

(D) Pollutants emitted;

(E) Any applicable requirement that would apply as a result of the change;

(F) Verification that the change is not addressed or prohibited by the permit;

(G) Verification that the change is not a Title I modification, such as an explanation that the change does not meet any of the Title I modification criteria;

(H) Verification that the change is not subject to any requirements under Title IV of the FCAA; and

(I) Verification that the change does not violate any existing permit term or condition.

(c) The permittee ~~shall~~must keep a record describing off-permit changes made at the facility that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those off-permit changes.

(d) Written notifications of off-permit changes ~~shall~~must be attached to the Department's and the source's copy of the permit.

(e) Terms and conditions that result from off-permit changes ~~shall~~ will be incorporated into the permit upon permit renewal, if applicable.

(f) The permit shield of OAR 340-218-0110 ~~shall~~ will not extend to off-permit changes.

(3) Section 502(b)(10) Changes. Changes that qualify as section 502(b)(10) changes do not require permit revision.

(a) Section 502(b)(10) changes mean changes that contravene an express permit term. Such changes do not include:

(A) Changes that would violate applicable requirements (including but not limited to increases in PSELs);

(B) Changes that contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements; and

(C) Changes that are Title I modifications.

(b) Section 502(b)(10) changes can be made at any time. Owners or operators ~~shall~~must submit a minimum 7-day advance, written notification to the Department and the EPA. The written notice ~~shall~~must contain:

(A) A description of the change;

(B) The date on which the change will occur;

(C) Any change in emissions within the PSELs;

(D) Any permit term or condition that is no longer applicable as a result of the change;

(E) Any new terms or conditions applicable to the change;

(F) Verification that the change does not cause or contribute to a violation of any applicable requirements, such as an explanation that the permit term or condition that is being contravened is not based on an applicable requirement;

(G) Verification that the change does not cause of contribute to an exceedance of the PSELs, such as calculations of emissions resulting from the change in relation to the PSEL; and

(H) Verification that the change is not a Title I modification, such as an explanation that the change does not meet any of the Title I modification criteria.

(c) Written notifications of section 502(b)(10) changes ~~shall~~must be attached to the Department's and the source's copy of the permit.

(d) Terms and conditions that result from section 502(b)(10) changes ~~shall~~ will be incorporated into the permit upon permit renewal, if applicable.

(e) The permit shield does not extend to section 502(b)(10) changes.

(4) The Department may initiate enforcement if a change under operational flexibility has been initiated and does not meet the applicable operational flexibility criteria.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 24-1994, f. &cert. ef. 10-28-94; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2220

340-218-0150

Administrative Permit Amendments

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of the responsible official(s) identified in the permit, or provides a similar minor administrative change at the source;

(c) Allows for a change in the name of the permittee;

(d) Allows for a change in ownership or operational control of a source where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;

(e) Requires more frequent monitoring or reporting by the permittee;

(f) Allows for a change in the date for reporting or source testing requirements for extenuating circumstances, except when required by a compliance schedule;

(g) Relaxes monitoring, reporting or recordkeeping due to a permanent source shutdown for only the emissions unit(s) being shutdown;

(h) Incorporates into the Oregon Title V Operating Permit the requirements from preconstruction review permits authorized under OAR 340 division 224 or OAR ~~340-218-0190~~340-210-0200 through 340-0210-0250, provided that the procedural requirements followed in the preconstruction review are substantially equivalent to the requirements of OAR 340-218-0120 through 340-218-0210 and OAR 340-218-0230 that would be applicable to the change if it were subject to review as a permit modification, compliance requirements are substantially equivalent to those contained in OAR 340-218-0050 through 340-218-0110, and no changes in the construction or operation of the facility that would require a permit modification under OAR 340-218-0160 through 340-218-0180 have taken place; or

(i) Corrects baseline or PSELs when more accurate emissions data is obtained but does not increase actual emissions.

(2) Administrative permit amendments for purposes of the national acid rain portion of the permit ~~shall~~ will be governed by regulations promulgated under Title IV of the FCAA.

(3) Administrative permit amendment procedures. An administrative permit amendment ~~shall~~ will be made by the Department consistent with the following:

(a) The owner or operator ~~shall~~must promptly submit an application for an administrative permit amendment upon becoming aware of the need for one on forms provided by the Department along with a copy of the draft amendment;

(b) The Department ~~shall~~ will take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this rule;

(c) The Department ~~shall~~ will issue the administrative permit amendment in the form of a permit addendum for only those conditions that will change;

(d) The Department ~~shall~~ will submit a copy of the permit addendum to the EPA;

(e) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request;

(f) If the source fails to comply with its draft permit terms and conditions upon submittal of the application and until the Department takes final action, the existing permit terms and conditions it seeks to modify may be enforced against it.

(4) The Department ~~shall~~must, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in OAR 340-218-0110 only for administrative permit amendments made pursuant to OAR 340-218-0150(1)(h) which meet the relevant requirements of OAR 340-218-0050 through 340-218-0240 for significant permit modifications.

(5) If it becomes necessary for the Department to initiate an administrative amendment to the permit, the Department ~~shall~~ will notify the permittee of the intended action by certified or registered mail. The action ~~shall~~ will become effective 20 days after the date of mailing unless within that time the permittee makes a written request for a hearing. The request ~~shall~~must state the grounds for the hearing. Any hearing held ~~shall~~ will be conducted pursuant to the applicable provisions of ORS Chapter 183.

Stat. Auth.: ORS 468.020 & ORS 468A.310
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2230

340-218-0160
Permit Modification

A permit modification is any revision to an Oregon Title V Operating Permit that cannot be accomplished under the Department's provisions for administrative permit amendments under OAR 340-218-0150. A permit modification for purposes of the acid rain portion of the permit ~~shall~~ will be governed by regulations promulgated under Title IV of the FCAA.

Stat. Auth.: ORS 468.020 & ORS 468A.310
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2240

340-218-0170
Minor Permit Modifications

(1) Criteria:

(a) Minor permit modification procedures may be used only for those permit modifications that:

(A) Do not violate any applicable requirement;

(B) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(C) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(D) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(i) A federally enforceable emissions cap assumed to avoid classification as a Title I modification; and

(ii) An alternative emissions limit approved pursuant to OAR 340-244-0100 through 340-244-0180.

(E) Do not increase emissions over the PSEL;

(F) Are not Title I modifications; and

(G) Are not required by OAR 340-218-0180 to be processed as a significant modification.

(b) Notwithstanding subsection (1)(a) of this rule, minor permit modification procedures may be used for permit modifications involving the use of emissions trading and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Oregon State Implementation Plan or in applicable requirements promulgated by the EPA.

(2) Minor permit modification procedures. A minor permit modification ~~shall~~ will be made by the Department consistent with the following:

(a) Application. An application requesting the use of minor permit modification procedures ~~shall~~must meet the requirements of OAR 340-218-0040(3), ~~shall~~must be submitted on forms and electronic formats provided by the Department, and ~~shall~~must include the following additional information:

(A) A description of the change, the change in emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with OAR 340-218-0040(5) of this rule, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the Department to use to notify the EPA and affected states as required under OAR 340-218-0230.

(b) EPA and affected state notification. Within five working days of receipt of a complete minor permit modification application, the Department ~~shall~~ will meet its obligation under OAR 340-218-0230(1)(a) and (2)(a) to notify the EPA and affected states of the requested permit modification. The Department promptly ~~shall~~ will send any notice required under OAR 340-218-0230(2)(b) to the EPA;

(c) Timetable for issuance. The Department ~~shall~~ will not issue a final permit modification until after the EPA's 45-day review period or until the EPA has notified the Department that the EPA will not object to issuance of the permit modification, whichever is first, although the Department can approve the permit modification prior to that time. Within 90 days of the Department's receipt of an application under minor permit modification procedures or 15 days after the end of the EPA's 45-day review period under OAR 340-218-0230(3), whichever is later, the Department ~~shall~~will:

(A) Issue the permit modification as proposed for only those conditions that will change;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification and transmit to the EPA the new proposed permit modifications as required by OAR 340-218-0230(1).

(d) Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files an application. After the source makes the change, and until the permitting authority takes any of the actions specified in paragraphs (2)(c)(A) through (C) of this rule, the source ~~shall~~must comply with both the applicable requirements governing the change and the draft permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its draft permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it;

(e) The Department may initiate enforcement if the modification has been initiated and does not meet the minor permit modification criteria;

(f) Permit shield. The permit shield under OAR 340-218-0110 does not extend to minor permit modifications.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2250

340-218-0180

Significant Permit Modifications

(1) Criteria. Significant modification procedures ~~shall~~must be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Significant modifications ~~shall~~must include:

(a) Increases in PSELs except those increases subject to OAR 340 ~~division 224~~-210-0200 through 340-210-0250; OAR 340-218-0150(1)(i); or OAR 340-~~218-0190~~ division 224;

(b) Every significant change in existing monitoring permit terms or conditions;

(c) Every relaxation of reporting or recordkeeping permit terms or conditions;

(d) Incorporation into the Oregon Title V Operating Permit the requirements from pre-construction review permits authorized under OAR 340 division 224 unless the incorporation qualifies as an administrative amendment;

(e) Incorporation into the Oregon Title V Operating Permit the requirements from preconstruction review permits authorized under OAR 340-~~218-0190~~-210-200 through 340-210-0250 unless otherwise specified in OAR 340-218-0190(~~3~~2)(~~g~~); and

(f) Nothing herein ~~shall~~ may be construed to preclude the permittee from making changes consistent with this division that would render existing permit compliance terms and conditions irrelevant.

(2) Significant permit modifications ~~shall~~ will be subject to all requirements of this division, including those for applications, public participation, review by affected States, and review by the EPA, as they apply to permit issuance and permit renewal.

(3) Major modifications, as defined in OAR 340-200-0020, ~~shall~~ require an ACDP under OAR 340 division 224.

(4) Constructed and reconstructed major hazardous air pollutant sources are subject to OAR 340-~~218-0190~~ 210-0200 through 340-210-0250 and OAR 340-244-0200.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2260

340-218-0190

Construction/Operation Modifications

(1) ~~Scope. This regulation applies to:~~Notice of Approval. The owner or operator of a major stationary source must obtain approval from the Department prior to construction or modification of any stationary source or air pollution control equipment in accordance with OAR 340-210-0200 through OAR 340-210-0250.

~~(a) Any stationary source; and~~

~~(b) Any air pollution control equipment used to comply with a Department requirement.~~

~~(2) Requirement:~~

~~(a) No owner or operator shall construct, fabricate, erect, install, establish, develop or operate a new stationary source or air pollution control equipment listed in section (1) of this rule without first notifying the Department in writing and obtaining approval.~~

~~(b) No owner or operator shall make any physical change or change in the method of operation that the source is physically unable to accommodate or replace any stationary source or air pollution control equipment listed in section (1) of this rule, covered by a permit under this division, without first notifying the Department in writing and obtaining approval if:~~

~~(A) Any stationary source's maximum capacity to emit any regulated air pollutant, excluding those pollutants listed in OAR 340-244-0040 or 340-244-0230, is increased on an hourly basis at full production, including air pollution control equipment; or~~

~~(B) The performance of any pollution control equipment used to comply with a Department requirement is degraded causing an increase of the amount of any air pollutant emitted or which results in the emission of any air pollutant not previously emitted (excluding routine maintenance).~~

~~(c) No owner or operator shall construct or reconstruct a major source of hazardous air pollutants without first notifying the Department in writing and obtaining approval if the source becomes subject to OAR 340-244-0200.~~

~~(3) Procedure:~~

~~(a) Notice. Any owner or operator required to obtain approval for a new, modified, or replaced stationary source or air pollution control equipment listed in section (1) of this rule shall notify the Department in writing on a form supplied by the Department.~~

~~(b) Submission of Plans and Specifications. The Department shall require the submission of plans and specifications for any stationary source or air pollution control equipment listed in section (1) of this rule being constructed or modified and its relationship to the production process. The following information shall be required for a complete application for a Notice of Approval:~~

~~(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 constructed or modified source;

(E) A description of the production processes and a related flow chart for the constructed or modified source;

(F) A plot plan showing the location and height of the constructed or modified stationary source. The plot plan shall also indicate the nearest residential or commercial property;

(G) Type and quantity of fuels used;

(H) The change in the amount, quantities emitted, nature and duration of regulated air pollutant emissions;

(I) Any information on pollution prevention measures and cross media impacts the owner or operator wants the Department to consider in determining applicable control requirements and evaluating compliance methods;

(J) 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 Department to establish operational and maintenance requirements under OAR 340-226-0120(1) and (2);

(K) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions;

(L) Land Use Compatibility Statement signed by a local (city or county) planner either approving or disapproving construction or modification to the source if required by the local planning agency;

(M) Corrections and revisions to the plans and specifications to insure compliance with applicable rules, orders and statutes; and

(N) Sufficient information for the Department to determine applicable emission limitations and requirements for hazardous air pollutant sources.

(c) Notice of Approval:

(A) For construction or modification of any stationary source or air pollution control equipment listed in section (1) of this rule that does not increase emissions above the facility-wide PSEL; or does not increase the amount of any air pollutant emitted by any individual stationary source above the significant emission rate, excluding any emissions decreases; or does not establish a federally enforceable limit on potential to emit; or does not establish a new applicable requirement as a result of a TACT determination under OAR 340-226-0130 or a MACT determination under OAR 340-244-0200:

(i) The Department shall, upon determining that the proposed construction or modification is, in the opinion of the Department, in accordance with the provisions of applicable rules, order, and statutes, notify the owner or operator that construction may proceed within 60 days of receipt of the required information;

(ii) A Notice of Approval to proceed with construction or modification shall allow the owner or operator to construct or modify the stationary source or air pollution control equipment listed in section (1) of this rule and operate it in accordance with provisions under OAR 340-218-0140, 340-218-0150 or 340-218-0160, whichever is applicable.

(iii) A Notice of Approval to proceed with construction or modification shall not relieve the owner or operator of the obligation of complying with applicable emission standards and orders.

(B) For construction or modification of any stationary source or air pollution control equipment listed section (1) of this rule that increases emissions above the facility-wide PSEL; or increases the amount of any air pollutant emitted by any individual stationary source above the significant emission rate, excluding any emissions decreases; or establishes a federally enforceable limit on potential to emit; or establishes a new applicable requirement as a result of a TACT determination under OAR 340-226-0130:

(i) The Department shall upon determining that the proposed construction or modification is in the opinion of the Department in accordance with the provisions of applicable rules, order, and statutes, issue public notice as to the intent to issue an approval for construction or modification within 180 days of receipt of the required information;

(ii) The public notice shall allow at least thirty (30) days for written comment from the public, and from interested State and Federal agencies, prior to issuance of the approval. Public notice shall include the name 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 Department;

(iii) In addition to the information required under OAR 340-011-0007, public notices for approval of construction or modification shall contain a determination of:

(I) Whether the proposed permitted emission would have a significant impact on a Class I airshed;

(II) Whether each proposed permitted emission is a criteria pollutant and whether the area in which the source is located is designated as attainment or nonattainment for that pollutant; and

(III) For each major source within an attainment area for which dispersion modeling has been performed as a requirement of the Notice of Approval, an indication of what impact each proposed permitted emission would have on the Prevention of Significant Deterioration Program within that attainment area.

(iv) The owner or operator may request that the external review procedures required under OAR 340-218-0210 and OAR 340-218-0230 be used instead of the notice procedures under subparagraphs (3)(c)(B)(ii) and (iii) of this rule to allow for subsequent incorporation of the Notice of Approval as an administrative amendment. The public notice shall state that the external review procedures are being used, if the applicant requests them;

(v) If, within 30 days after commencement of the public notice period, the Department 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 Department shall provide such a hearing before taking final action on the application, at a reasonable place and time and on reasonable notice. Requests for public hearing shall clearly identify the air quality concerns in the draft permit;

(vi) The Department shall give notice of any public hearing at least 30 days in advance of the hearing. Notice of such a hearing may be given, at the Department's discretion, either in the public notice under section (1) of this rule or in such other manner as is reasonably calculated to inform interested persons;

(vii) After the public notice period and the public hearing, if requested, the Department shall, upon determining that the proposed construction or modification is, in the opinion of the Department, in accordance with the provisions of applicable rules, order, and statutes, notify the owner or operator that construction may proceed;

(viii) A Notice of Approval to proceed with construction or modification shall allow the owner or operator to construct or modify the stationary source or air pollution control equipment listed in OAR 340-218-0190(1) and operate it in accordance with provisions under OAR 340-218-0140, 340-218-0150, or 340-218-0160, whichever is applicable;

(ix) A Notice of Approval to proceed with construction or modification shall not relieve the owner or operator of the obligation of complying with applicable emission standards and orders.

(d) Order Prohibiting Construction:

(A) If within the 60 day or 180 day review period, whichever is applicable, the Director determines that the proposed construction or modification is not in accordance with applicable statutes, rules, regulations and orders, the Director shall issue an order prohibiting the construction or modification of the stationary source or air pollution control equipment listed in section (1) of this rule. Said order is to be forwarded to the owner by certified mail. The Department shall issue public notice as to the intent to prohibit construction in accordance with OAR 340-218-0190(3)(c)(B)(ii) and (iii).

(B) Failure to issue such order within the 60 day or 180 day review period shall be considered a determination that the proposed construction, installation, or establishment may proceed, provided that it is in accordance with plans, specifications, and any corrections or revisions thereto, or other information, if any, previously submitted, and provided further that it shall not relieve the owner of the obligation of complying with applicable emission standards and orders.

~~(e) Hearing. Pursuant to law, an owner or operator against whom an order prohibiting construction is directed may within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, state the grounds for hearing, and be mailed to the Director of the Department. The hearing shall be conducted pursuant to the applicable provisions of ORS Chapter 183;~~

~~(f) Notice of Completion. Within thirty (30) days, or other period specified in the Oregon Title V Operating Permit, after any owner or operator has constructed or modified a stationary source or air pollution control equipment listed in section (1) of this rule, that owner or operator shall so report in writing on a form furnished by the Department, stating the date of completion of construction or modification and the date the stationary source or air pollution control equipment was or will be put in operation;~~

(~~g~~2) Incorporation into an Oregon Title V Operating Permit:

(~~A~~a) Where an Oregon Title V Operating Permit would allow incorporation of such construction or modification as an off-permit change (OAR 340-218-0140(2)) or a FCAA section 502(b)(10) change (OAR 340-218-0140(3)):

(~~i~~A) The owner or operator of the stationary source or air pollution control equipment listed in section (1) of this rule ~~shall~~must submit to the Department the applicable notice; and

(~~ii~~B) The Department ~~shall~~ will incorporate the construction or modification at permit renewal, if applicable.

(~~B~~b) Where an Oregon Title V Operating Permit would allow incorporation of such construction or modification as an administrative amendment (OAR 340-218-0150), the owner or operator of the stationary source or air pollution control equipment listed in section (1) of this rule may:

(~~i~~A) Submit the permit application information required under OAR 340-218-0150(3) with the information required under ~~subsection (3)(b) of this rule~~ OAR 340-210-0220(2) upon becoming aware of the need for an administrative amendment; and

(~~ii~~B) Request that the external review procedures required under OAR 340-218-0210 and OAR 340-218-0230 be used in addition to the public notice procedures of OAR 340, division 209 for Category III permit actions ~~instead of the notice procedures under subparagraphs (3)(c)(B)(ii) and (iii) of this rule~~ to allow for subsequent incorporation of the construction permit as an administrative amendment.

(~~C~~c) Where an Oregon Title V Operating Permit would require incorporation of such construction or modification as a minor permit modification (OAR 340-218-0170) or a significant permit modification (OAR 340-218-0180), the owner or operator of the stationary source or air pollution control equipment listed in section (1) of this rule ~~shall~~must submit the permit application information required under OAR 340-218-0040(3) within one year of initial startup of the construction or modification, except as prohibited in paragraph ~~(3)(g)(D)~~(2)(d) of this rule.

(~~D~~d) Where an existing Oregon Title V Operating Permit would prohibit such construction or change in operation, the owner or operator must obtain a permit revision before commencing operation.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2270

340-218-0200
Reopenings

(1) Reopening for cause:

(a) Each issued permit ~~shall~~must include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit ~~shall~~ will be reopened and revised under any of the following circumstances:

(A) Additional applicable requirements under the FCAA or state rules become applicable to a major Oregon Title V Operating Permit program source with a remaining permit term of 3 or more years. Such a reopening ~~shall~~ will be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to OAR 340-218-0130;

(B) Additional requirements (including excess emissions requirements) become applicable to an affected source under the national acid rain program. Upon approval by the EPA, excess emissions offset plans ~~shall~~ will be deemed to be incorporated into the permit;

(C) The Department or the EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit;

(D) The Department or the EPA determines that the permit ~~shall~~must be revised or revoked to assure compliance with the applicable requirements;

(E) The Department determines that the permit ~~shall~~must be revised or revoked to assure compliance with the National Ambient Air Quality Standards (NAAQS).

(b) Proceedings to reopen and issue a permit ~~shall~~must follow the same procedures as apply to initial permit issuance and ~~shall~~ affect only those parts of the permit for which cause to reopen exists. Such reopening ~~shall~~ will be made as expeditiously as practicable;

(c) Reopenings under subsection (1)(a) of this rule ~~shall~~ may not be initiated before a notice of such intent is provided to the source by the Department at least 30 days in advance of the date that the permit is to be reopened, except that the Department may provide a shorter time period in the case of an emergency.

(2) Reopening for cause by the EPA:

(a) The Department ~~shall~~will, within 90 days after receipt of a notification from the EPA of reopening for cause, forward to the EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The EPA may extend this 90-day period for an additional 90 days if the EPA finds that a new or revised permit application is necessary or that the permittee ~~shall~~must submit additional information;

(b) The Department ~~shall~~ will have 90 days from receipt of an EPA objection to resolve any objection that the EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the EPA's objection or determine not to reissue the permit in accordance with the EPA's objection;

(c) The Department ~~shall~~ will provide at least 30 days' notice to the permittee in writing of the reasons for any such action and provide an opportunity for a hearing;

(d) Proceedings to terminate, revoke, or modify and reissue a permit initiated by the EPA ~~shall~~must follow the same procedures as apply to initial permit issuance and ~~shall~~ affect only those parts of the permit for which cause to reopen exists. Such reopening ~~shall~~ will be made as expeditiously as practicable by the Department.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2280

340-218-0210
Public Participation

(1) Except for modifications qualifying for minor permit modification procedures and administrative amendments, all permit proceedings, including initial permit issuance, significant modifications, ~~construction/operation modification~~Notice of Construction and Approval of Plans~~s~~ when there is an increase of emissions above the PSEL, and renewals, ~~shall~~must provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit in

accordance the procedures in OAR 340, division 209 for Category III permit actions. ~~These procedures shall include the following:~~

~~(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located or in a Department publication designed to give general public notice; to persons on a mailing list developed by the Department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.~~

~~(2) The notice shall identify:~~

~~(a) The affected facility;~~

~~(b) The name and address of the permittee;~~

~~(c) The name and address of the Department processing the permit;~~

~~(d) The activity or activities involved in the permit action;~~

~~(e) The emissions change involved in any permit modification;~~

~~(f) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, except for information entitled to confidential treatment, and all other materials available to the Department that are relevant to the permit decision are available for review;~~

~~(g) A brief description of the comment procedures required by this division; and~~

~~(h) A brief description of the procedures to request a hearing or the time and place of any hearing that may be held.~~

~~(3) The Department shall provide such notice and opportunity for participation by affected States as is provided for by OAR 340-218-0230.~~

~~(4) Timing:~~

~~(a) The Department shall provide at least 30 days for public comment;~~

~~(b) If, within 30 days after commencement of the public notice period, the Department 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 Department shall provide such a hearing before taking final action on the application, at a reasonable place and time and on reasonable notice. Requests for public hearing shall clearly identify the air quality concerns in the draft permit;~~

~~(c) The Department shall give notice of any public hearing at least 30 days in advance of the hearing. Notice of such a hearing may be given, at the Department's discretion, either in the public notice under section (1) of this rule or in such other manner as is reasonably calculated to inform interested persons.~~

~~(5) The Department shall consider all relevant written comments submitted within a time specified in the notice of public comment and all relevant comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 working days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision.~~

~~(6) The Department shall keep a record of the commenters and also of the issues raised during the public participation process and such records shall be available to the public in the same location(s) as listed in subsection (2)(f) of this rule. Such record may be in summary form rather than a verbatim transcript.~~

(~~7~~2) Any person who submitted written or oral comments during the public participation process described in ~~this rule~~OAR 340 division 209 ~~shall~~ will be an adversely affected or aggrieved person for purposes of ORS 183.484.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. &cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2290

340-218-0220

Contested Permits

(1) A final permit issued by the Department ~~shall~~ will become effective upon the date it was signed by the Air Quality Division Administrator or his or her designated representative, unless the applicant requests a hearing before the Commission or its authorized representative. A final permit issued by LRAPA ~~shall~~ will become effective upon the date it was signed by the LRAPA Director or his or her designated representative, unless the applicant requests a hearing before LRAPA's Board of Directors.

(2) The request for hearing must be in writing within 20 days of the date of mailing of the notification of issuance of the permit. The applicant ~~shall~~must specify which permit conditions are being challenged and why, including each alleged factual or legal objection.

(3)(a) Permit conditions that are not contested, including any conditions that are severable from those contested, ~~shall be~~will remain in effect upon the date the permit was signed by the Air Quality Division Administrator or the LRAPA Director;

(b) Upon such request for review, the effect of the contested conditions, as well as any conditions that are not severable from those contested, ~~shall~~ will be stayed only upon a showing that, during the pendency of the appeal, compliance with the contested conditions would require substantial expenditures or losses that would not be incurred if the applicant prevails on the merits of the review; and also that there exists a reasonable likelihood of success on the merits. The ~~Commission~~ Department may require that the contested conditions not be stayed if it finds that substantial endangerment of public health or welfare would result from the staying of the conditions. The ~~Commission~~Department must deny or grant the stay within 30 days.

(4) If an applicant requests a hearing pursuant to this section, then any adversely affected or aggrieved person, as those terms have been construed under ORS Chapter 183, may petition the Commission to be allowed to intervene in the contested case hearing to challenge any permit condition. This petition must be in writing and must be filed with the Commission at least 21 days before the date set for hearing. ~~It shall~~The petition must specify which permit conditions are being challenged and the reasons for those challenges, including each alleged factual or legal objection.

(5) Any hearing held under this section ~~shall~~ will be conducted pursuant to the applicable provisions of ORS Chapter 183 and OAR Chapter 340, Division 11.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2300

340-218-0230

Permit Review by the EPA and Affected States

(1) Transmission of information to the EPA:

(a) The Department ~~shall~~ will provide to the EPA a copy of each permit application (including any application for permit modification), each proposed permit except when a draft permit has been submitted and the EPA determines that the submittal of the draft permit is adequate, and each final Oregon Title V Operating Permit;

(b) The requirements of OAR 340-218-0230(1)(a) and (2)(a) may be waived for any category of sources (including any class, type, or size within such category) other than major sources if allowed by the EPA;

(c) The Department ~~shall~~ will keep for 5 years such records and submit to the EPA such information as the EPA may reasonably require to ascertain whether the Department program complies with the requirements of the FCAA or state rules or of this division.

(2) Review by affected states:

(a) The Department ~~shall~~ will give notice of each draft permit to any affected State on or before the time that the Department provides this notice to the public under OAR 340-218-0210, except to the extent that OAR 340-218-0170 requires the timing of the notice to be different;

(b) The Department, as part of the submittal of the proposed permit to the EPA (or as soon as possible after the submittal for minor permit modification procedures allowed under OAR 340-218-0170), ~~shall~~ will notify the EPA and any affected State in writing of any omission by the Department of any recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice ~~shall~~ will include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements or the requirements of this division.

(3) EPA objection:

(a) No permit for which an application ~~shall~~must be transmitted to the EPA under section (1) of this rule ~~shall~~ may be issued as drafted if the EPA objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information or such earlier time as agreed to by the EPA;

(b) The Department ~~shall~~will, within 90 days after the date of an objection under subsection (3)(a) of this rule, revise and submit a proposed permit in response to the objection, or determine not to issue the permit;

(c) If the Department determines not to issue the permit, notice of the determination ~~shall~~ will be provided to the source by certified or registered mail.

(4) Public petitions to the EPA:

(a) If the EPA does not object in writing under section (3), any person may petition the EPA within 60 days after the expiration of the EPA's 45-day review period to make such objection. Any such petition ~~shall~~must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in OAR 340-218-0210, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period;

(b) If the EPA objects to the permit as a result of a petition filed under this section, the Department ~~shall~~ may not issue the permit until the EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection;

(c) If the Department has issued a permit prior to receipt of an EPA objection under OAR 340-218-0230, the EPA will modify, terminate, or revoke such permit, and ~~shall~~must do so consistent with the procedures in OAR 340-218-0200(2)(b) except in unusual circumstances, and the Department may thereafter issue only a revised permit that satisfies the EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The Department ~~shall~~ may not issue an Oregon Title V Operating Permit (including a permit renewal or modification) until affected States and the EPA have had an opportunity to review the proposed permit as required under this rule.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2310

340-218-0240
Enforcement

(1) Whenever it appears to the Department that any activity in violation of a permit that results in air pollution or air contamination is presenting an imminent and substantial endangerment to the public health, the Department may enter a cease and desist order pursuant to ORS 468.115 or seek injunction relief pursuant to ORS 468.100.

(2)(a) Whenever the Department has good cause to believe that any person is engaged in or about to engage in acts or practices that constitute a violation of any part of the stationary source air permitting rules or any provision of a permit issued pursuant to these rules, the Department may seek injunctive relief in court to enforce compliance thereto or to restrain further violations;

(b) The proceedings authorized by subsection (a) of this section may be instituted without the necessity of prior agency revocation of the permit or during a permit revocation proceeding if one has been commenced.

(3) In addition to the enforcement authorities contained in sections (1) and (2) of this rule and any other penalty provided by law, any person who violates any of the following ~~shall~~ will incur a civil penalty as authorized under ORS 468.140 and established pursuant to OAR Chapter 340, Division 12:

(a) Any applicable requirement;

(b) Any permit condition;

(c) Any fee or filing requirements;

(d) Any duty to allow or carry out inspection, entry or monitoring activities; or

(e) Any rules or orders issued by the Department.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2320

340-218-0250

Permit Program For Regional Air Pollution Authority

Subject to the provisions of this rule, the Commission authorizes the Regional Authority to issue, modify, renew, suspend, and revoke Oregon Title V Operating Permits for air contamination sources within its jurisdiction:

(1) Each permit proposed to be issued or modified by the Regional authority ~~shall~~must be submitted to the Department at least thirty (30) days prior to the proposed issuance date.

(2) A copy of each permit issued, modified, or revoked by the Regional authority ~~shall~~ must be promptly submitted to the Department.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0185; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1790

DIVISION 220

OREGON TITLE V OPERATING PERMIT FEES

340-220-0010

Purpose, Scope And Applicability

(1) The purpose of this division is to provide owners and operators of Oregon Title V Operating Permit program sources and the Department with the criteria and procedures to determine emissions and fees based on air emissions and specific activities.

(2) This division applies to Oregon Title V Operating Permit program sources as defined in OAR 340-200-0020.

(3) The owner or operator may elect to pay emission fees for each assessable emission on either actual emissions or permitted emissions.~~:~~

~~(a) Actual emissions; or~~

~~(b) Permitted emissions.~~

(4) If the assessable emission is of a regulated air pollutant listed in OAR 340-244-0040 and there are no applicable methods to demonstrate actual emissions, the owner or operator may propose that the Department approve an emission factor based on the best representative data to demonstrate actual emissions for fee purposes.

(5) Sources subject to the Oregon Title V Operating Permit program defined in OAR 340-200-0020, are subject to both an annual base fee established under OAR 340-220-0030 and an emission fee calculated pursuant to OAR 340-220-0040.~~the following fees~~:

~~(a) Emission fees, (OAR 340-220-0040); and~~

~~(b) Annual base fee (OAR 340-220-0030).~~

(6) Sources subject to the Oregon Title V Operating Permit program may also be subject to user fees (OAR 340-220-0050 and 340-216-0090).

(7) The Department will credit owners and operators of new Oregon Title V Operating Permit program sources for the unused portion of paid Annual ~~Compliance Determination~~ Fees. The credit will begin from the date the Department receives the Title V permit application.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2560

340-220-0020

Definitions

The definitions in OAR 340-200-0020, ~~340-218-0030~~ and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 ~~or 340-218-0030~~, the definition in this rule applies to this division.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99

340-220-0030

Annual Base Fee

~~(1)~~ The Department ~~shall~~ will assess an annual base fee of $2,884 for each source subject to the Oregon Title V Operating Permit program. The fee covers

~~(2) The annual base fee shall be paid to cover~~ the period from November 15 of the current calendar year to November 14 of the following year.

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580

340-220-0040
Emission Fee

(1) The Department ~~shall~~ will assess an emission fee of $33.63 per ton to each source subject to the Oregon Title V Operating Permit Program.

(2) The emission fee ~~shall~~ will be applied to emissions from the previous calendar year based on the elections made according to OAR 340-220-0190.

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995. f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590

340-220-0050
Specific Activity Fees

The Department will assess ~~S~~specific activity fees ~~shall be assessed by the Department~~ for an Oregon Title V Operating Permit program source ~~with any one of the following activities~~ as follows:

(1) Existing Source Permit Revisions:
(a) Administrative* — $288;
(b) Simple — $1,154;
(c) Moderate — $8,651;
(d) Complex — $17,303.
(2) Ambient Air Monitoring Review — $2,307.
*includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in OAR 340-218-0150 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600

340-220-0060
Pollutants Subject to Emission Fees

(1) The Department ~~shall~~ will assess emission fees on assessable emissions up to and including 4,000 tons per year for each regulated pollutant.

(2) If the emission fee on PM_{10} emissions is based on the permitted emissions for a source that does not have a PSEL for PM_{10}, the Department ~~shall~~ will assess the emission fee on the permitted emissions for particulate matter (PM).

(3) The owner or operator ~~shall~~must pay emission fees on all assessable emissions.

(4) The Department ~~shall~~ will assess emission fees only once for a regulated ~~air~~ pollutant that the permitee can demonstrate, using procedures approved by the Department, is accounted for in more than one category of assessable emissions (e.g., a Hazardous Air Pollutant~~s~~ that is also demonstrated to be a Criteria Pollutant).

(5) Fees for newly regulated pollutants are effective on the date the pollutant becomes regulated. During the first year that the pollutant is regulated, the fee may be prorated according the number of months that the pollutant is regulated.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2610

340-220-0070

Exclusions

(1) The Department ~~shall~~ will not assess emission fees on newly permitted major sources that have not begun initial operation.

(2) The Department ~~shall~~ will not assess emission fees on carbon monoxide. However, sources that emit or are permitted to emit 100 tons or more per year of carbon monoxide are subject to the emission fees on all other regulated air pollutants pursuant to OAR 340-220-0010.

(3) The Department ~~shall~~ will not assess emission fees on any device or activity ~~which~~ that did not operate at any time during the calendar year.

(4) If an owner or operator of an Oregon Title V Operating Permit program source operates a device or activity for less than 5% of the permitted operating schedule, the owner or operator may elect to report emissions based on a proration of the permitted emissions for the actual operating time.

(5) The Department ~~shall~~ will not assess emission fees on emissions categorized as credits or unassigned PSELs within an Oregon Title V Operating Permit.

(6) The Department ~~shall~~ will not assess emission fees on categorically insignificant emissions as defined in OAR 340-200-0020.

(7) The Department ~~shall~~ will not assess emission fees on Hazardous Air Pollutants that are also Criteria Pollutants.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. &cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2620

340-220-0080

References

Reference documents used in this division include the **Department Source Sampling Manual and the Department Continuous Monitoring Manual**.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 13-1994, f. & ef. 5-19-94; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2630

340-220-0090

Election for Each Assessable Emission

(1) The owner or operator ~~shall~~must ~~make an~~ elect~~ion~~ to pay emission fees on either actual emissions, ~~or~~ permitted emissions, or a combination of both for the previous calendar year for each assessable emission and notify the Department in accordance with OAR 340-220-0110.

(2) The owner or operator may elect to pay emission fees on permitted emissions for hazardous air pollutants. An owner or operator may elect a Hazardous Air Pollutant PSEL in accordance with OAR 340-222-0060. The HAP PSEL ~~shall~~ will only be used for fee purposes.

(3) If an owner or operator fails to notify the Department of the election for an assessable emission, the Department ~~shall~~ will assess emission fees for the assessable emission based on permitted emissions.

(4) If the permit or review report does not identify permitted emissions for an assessable emission, the Department ~~shall~~ will develop permitted emissions representative of the assessable emissions.

(5) An owner or operator may elect to pay emission fees on the aggregate limit for insignificant emissions that are not categorically exempt insignificant emissions.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. &cert. ef. 5-23-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2640

340-220-0100

Emission Reporting

(1) Using a form(s) developed by the Department ~~T~~the owner or operator ~~shall~~must, ~~using a form(s) developed by the Department,~~ report the following for each assessable emission or group of assessable emissions:

(a) PM_{10}, or if a permit specifies Particulate Matter (PM), then PM;

(b) Sulfur Dioxide as SO_2;

(c) Oxides of Nitrogen (NO_X) as Nitrogen Dioxide (NO_2);

(d) Total Reduced Sulfur (TRS) as H_2S in accordance with OAR 340-234-0010;

(e) Volatile Organic Compounds as:

(A) VOC for material balance emission reporting; or

(B) Propane (C_3H_8), unless otherwise specified by permit, ~~or~~ OAR Chapter 340, or a method approved by the Department, for emissions verified by source testing.

(f) Fluoride as F;

(g) Lead as Pb;

(h) Hydrogen Chloride as HCl;

(i) Estimate of Hazardous Air Pollutants as specified in a Department approved method.

(2) The owner or operator ~~shall~~must report emissions in tons per year and as follows:

(a) Round up to the nearest whole ton for emission values 0.5 and greater; and

(b) Round down to the nearest whole ton for emission values less than 0.5.

(3) The owner or operator electing to pay emission fees on actual emissions ~~shall~~must:

(a) Submit complete information on the forms including all assessable emissions; and

(b) Submit documentation necessary to support emission calculations.

(4) The owner or operator electing to pay on actual emissions ~~for an assessable emission shall~~must report total emissions, including those emissions in excess of 4,000 tons for each assessable emission.

(5) The owner or operator electing to pay on permitted emissions for an assessable emission ~~shall~~must identify such an election on the form(s) developed by the Department.

(6) If more than one permit is in effect for a calendar year for an Oregon Title V Operating Permit program source, the owner or operator electing to pay on permitted emissions ~~shall~~must pay on the most current permitted or actual emissions.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 12-1995, f. &cert. ef. 5-23-95; DEQ 19-1996, f. &

cert. ef. 9-24-96; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2650

340-220-0110

Emission Reporting and Fee Procedures

(1) The owner or operator ~~shall~~must submit the required form(s), including the ~~owner's or operator's~~ election for each assessable emission, to the Department with the annual permit report in accordance with annual reporting procedures.

(2) The owner or operator may request that information, other than emission information, submitted pursuant to this division be exempt from disclosure in accordance with OAR 340-214-0130.

(3) Records developed in accordance with these rules are subject to inspection and entry requirements in OAR 340-218-0080. The owner or operator ~~shall~~must retain records for ~~a period of~~ at least five years in accordance with OAR 340-218-0050(3)(b)(B).

(4) The Department may accept the information submitted or request additional information from the owner or operator. The owner or operator ~~shall~~must submit additional actual emission information requested by the Department within 30 days of the date of the request~~of receiving a request from the Department~~. The Department may approve a request ~~from an owner or operator~~ for ~~an extension of~~additional time, ~~of~~ up to 30 days, to submit the requested ~~additional~~ information ~~under extenuating circumstances~~.

(5) If the Department determines the actual emission information submitted for any assessable emission does not meet the criteria in this division, the Department ~~shall~~ will assess the emission fee on the permitted emission for that assessable emission.

(6) The owner or operator ~~shall~~must submit emission fees payable to the Department by the later of:

(a) August 1 for emission fees from the previous calendar year; or

(b) Thirty days after the Department mails the fee invoice.

(7) Department acceptance of emission fees ~~shall~~ does not indicate approval of data collection methods, calculation methods, or information reported on Emission Reporting Forms. If the Department determines initial emission fee assessments were inaccurate or inconsistent with this division, the Department may assess or refund emission fees up to two years after emission fees are received by the Department.

(8) The Department ~~shall~~ will not revise a PSEL solely due to an emission fee payment.

(9) Owners or operators operating sources pursuant to OAR 340 division 218 ~~shall~~must submit the emission reporting information with the annual permit report.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2660

340-220-0120

Actual Emissions

An owner or operator electing to pay on actual emissions ~~shall~~must obtain emission data and determine assessable emissions using one of the following methods:

(1) Continuous monitoring systems used in accordance with OAR 340-220-0130;

(2) Verified emission factors developed for that particular source in accordance with OAR 340-220-0170 for:

(a) Each assessable emission; or

(b) A combination of assessable emissions if there are multiple devices or activities venting to the atmosphere through one common emission point (e.g., stack). The owner or operator ~~shall~~must have a verified emission factor plan approved by the Department ~~prior to~~before conducting the source testing in accordance with OAR 340-220-0170.

(3) Material balances determined in accordance with OAR 340-220-0140, OAR 340-220-0150, or OAR 340-220-0160; or

(4) Verified emission factors for source categories developed in accordance with OAR 340-220-0170(11).

(5) For specific assessable emissions of regulated air pollutants listed under OAR 340-244-0040 ~~and~~ but not subject by permit to a Plant Site Emission Limit, and where the Department determines there are not applicable methods to demonstrate actual emissions, the owner or operator ~~shall~~must use the best representative data to develop an emission factor, subject to Department approval.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. &cert. ef. 5-23-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2670

340-220-0130

Determining Emissions from Continuous Monitoring Systems

(1) The owner or operator ~~shall~~must use data collected in accordance with Oregon Title V Operating Permit conditions, applicable rules in OAR Chapter 340, or the **Department's Continuous Monitoring Manual**.

(2) If the owner or operator has continuous monitoring data ~~that comprises~~from less than ~~ninety percent (~~90%~~)~~ of the plant operating time, the ~~actual~~ emissions during the period when the continuous monitoring system was not operating ~~shall~~must be determined from the 90th percentile of the continuous monitoring data.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 22-1995, f. &cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2680

340-220-0140

Determining Emissions Using Material Balance

The owner or operator may elect to use material balance to determine actual emissions:

(1) If the amount of material added to a process, less the amount consumed and~~/or~~ recovered ~~from~~ in a process, can be documented in accordance with Department approved permit conditions and in accordance with this division.

(2) The owner or operator ~~shall~~ may only apply material balance calculations to VOC or sulfur dioxide emissions in accordance with OAR 340-220-0150 and 340-220-0160 respectively.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2690

340-220-0150

Determining VOC Emissions Using Material Balance

The owner or operator may determine the amount of VOC emissions for an assessable emission by using material balance. The owner or operator using material balance to calculate VOC emissions ~~shall~~ must determine the amount of VOC added to the process, the amount of VOC consumed in the process, and~~/or~~ the amount of VOC recovered in the process, if any, by testing in accordance with **40 Code of Federal Regulations (CFR) Part 60 Appendix A EPA Method 18, 24, 25**, a material balance method,

or an equivalent plant specific method specified in the ~~federal~~ Oregon Title V ~~o~~Operating ~~p~~Permit using the following equation: [Equation not included. See ED. NOTE.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

[ED. NOTE: The equation 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 468.020, ORS 468A.025, and ORS 468A.315.

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 2-1996, f. & cert. ef. 1-29-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2700

340-220-0160

Determining Sulfur Dioxide Emissions Using Material Balance

(1) The owner or operator may determine ~~S~~sulfur dioxide emissions for Oregon Title V Operating Permit program sources ~~may be determined~~ by measuring the sulfur content of fuels and assuming that all of the sulfur in the fuel is oxidized to sulfur dioxide.

(2) The owner or operator ~~shall~~must ensure that ASTM methods were used to measure the sulfur content in fuel for each quantity of fuel burned.

(3) The owner or operator ~~shall~~must determine sulfur dioxide emissions for each quantity of fuel burned, determining quantity by a method that is reliable for the source, by performing the following calculation: [Equation not included. See ED. NOTE.]

(4) For coal-fired steam generating units, owners or operators of major sources must use the following equation ~~shall be used by owners or operators of major sources~~ to account for sulfur retention: [Equation not included. See ED. NOTE.]

(5) Total sulfur dioxide emissions for the year ~~shall~~must be the sum ~~total~~ of each quantity burned, calculated in accordance with section (3) of this rule and reported in units of tons per ~~/~~year.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

[ED. NOTE: The equation 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 468.020, ORS 468A.025, & ORS 468A.315.

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 2-1996, f. & cert. ef. 1-29-96; DEQ10-1999, f. & cert. ef. 7-1-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2710

340-220-0170

Verified Emission Factors ~~Using Source Testing~~

(1) The owner or operator must verify emission factors before using them to determine assessable emissions. To verify emission factors, ~~used to determine assessable emissions~~ the owner or operator ~~shall~~must ~~either~~ perform either source testing in accordance with the Department's Source Sampling Manual or use other methods approved by the Department for source tests. Source tests ~~shall~~must be conducted in accordance with testing procedures on file at the Department and the Department approved pretest plan which must be submitted at least 15 days ~~in advance and approved by the Department~~before the testing. All test data and results ~~shall~~must be submitted for review to the Department within 30 days after testing, unless the Department approves otherwise or a different time period is specified in a permit.

[**NOTE:** ~~It is~~We recommended that the owner or operator notify the Department and obtain pre-approval of the ~~E~~emission ~~F~~factor source testing program ~~prior to~~before or as part of the ~~submittal of the~~ first source test notification.]

(2) The owner or operator ~~shall~~must conduct or have conducted at least three compliance source tests., ~~e~~Each test must consist~~ing~~ of at least three individual test runs for a total of at least nine test runs.

(3) The owner or operator ~~shall~~must monitor and record ~~or have monitored and recorded~~ applicable process and control device operating data.

(4) The owner or operator ~~shall~~must perform ~~or have performed~~ a source test either:

(a) In each of three quarters of the year with no two successive source tests performed any closer than 30 days apart; or

(b) At equal intervals over the operating period if the owner or operator demonstrates and the Department agrees that the device or activity operates or has operated for part of the year; or

(c) At any time during the year, if the owner or operator demonstrates, and the Department agrees, that the process is or was not subject to seasonal variations.

(5) The owner or operator ~~shall~~must conduct ~~or have conducted~~ the source tests to test the entire range of operating levels. At least one test ~~shall~~must be conducted at minimum operating conditions, ~~one test~~ at normal or average operating levels, and ~~one test~~ at anticipated maximum operating levels. If the process rate is constant, all tests ~~shall~~must be conducted at that rate. The owner or operator ~~shall~~must submit documentation to the Department demonstrating a constant process rate.

(6) The owner or operator ~~shall~~must determine ~~or have determined~~ an emission factor for each source test by dividing each test run ~~emissions~~, in pounds of emission per hour, by the applicable process rate during the source test run. At least nine emission factors ~~shall~~must be plotted against the respective process rates and a regression analysis performed to determine the best fit equation and the correlation coefficient ~~(R^2)~~. If the correlation coefficient is less than 0.50, which ~~would~~ indicates that there is a relatively weak relationship between emissions and process rates, the arithmetic average and standard deviation of at least nine emission factors ~~shall~~must be determined.

(7) The owner or operator ~~shall~~must determine the Emissions Estimate Adjustment Factor (EEAF) as follows:

(a) If the correlation coefficient (R^2) of the regression analysis is greater than 0.50, the EEAF ~~shall~~ will be $1+(1-R^2)$.

(b) If the correlation coefficient (R^2) is less than 0.50, the EEAF ~~shall~~ will be: [Equation not included. See ED. NOTE.]

(8) The owner or operator ~~shall~~must determine actual emissions for emission fee purposes using one of the following methods:

(a) If the regression analysis correlation coefficient is less than 0.50, the actual emissions ~~shall be~~ is the average emission factor determined from at least nine test runs multiplied by the EEAF multiplied by the total production for the entire year; or [Equation not included. See ED. NOTE.]

(b) If the regression analysis correlation coefficient is greater than 0.50, perform the following calculations ~~shall be performed~~:

(A) Determine the average emission factor (EF) for each production rate category (maximum = EF_{max}, normal = EF_{norm}, and minimum = EF_{min});

(B) Determine the total annual production and operating hours, production time (PT_{tot}), for the calendar year;

(C) Determine the total hours operating within the maximum production rate category (PT_{max}). The maximum production rate category is any operation rate greater than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2;

(D) Determine the total hours while operating within the normal production rate category (PT_{norm}). The normal production rate category is defined as any operating rate less than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2 and any operating rate greater than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2;

(E) Determine the total hours while operating within the minimum production rate category (PT_{min}). The minimum production rate category is defined as any operating rate less than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2;

(F) Actual emissions equals EEAF x ((PT_{max}/PT_{tot}) x EFmax + (PT_{norm}/PT_{tot}) x EF_{norm} + (PT_{min}/PT_{tot}) x EF_{min}.)

(9) The owner or operator ~~shall~~must determine emissions during startup and shutdown, and for emissions greater than normal, during conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions. The owner or operator ~~shall~~must apply 340-220-0170(9)(a) or 340-220-0170(9)(b), (c) and (d) in developing emission factors. The owner or operator ~~shall~~must apply the emission factor obtained to the total time the device or activity operated ~~in~~ under these conditions.

(a) All emissions during startup and shutdown, and emissions greater than normal ~~shall be~~ are assumed equivalent to operation without an air pollution control device, unless the owner or operator accurately demonstrate~~sd by the owner or operator and approved by the Department~~otherwise in accordance with OAR 340-220-0170(9)(b), (9)(c), (9)(d), and (9)(e), and approved by the Department. The emission factor plus the EEAF ~~shall~~must be adjusted by the air pollution control device collection efficiency as follows: [Equation not included. See ED. NOTE.]

(b) During process startups a Department approved source test ~~shall~~ may be performed to determine an average startup factor. The average of at least three tests runs plus the standard deviation ~~shall~~ will be used to determine actual emissions during startups.

(c) During process shutdowns a Department approved source test ~~shall~~ may be performed to determine an emission factor for shutdowns. The average of at least three test runs plus the standard deviation ~~shall~~ will be used to determine actual emissions during shutdowns.

(d) During routine maintenance activity the owner or operator ~~shall~~may:

(A) Perform routine maintenance activity during source testing for verified emission factors; or

(B) Determine emissions in accordance with Section (a) of this rule.

(e) The emission factor need not be adjusted if the owner or operator demonstrates to the Department that the pollutant emissions do not increase during startup and shutdown, and for conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions (e.g. NO_x emissions during an ESP failure).

(10) A verified emission factor developed pursuant to this division and approved by the Department can not be used if a process change occurs that would affect the accuracy of the verified emission factor.

(11) The owner or operator may elect to use verified emission factors for source categories if the Department determines the following criteria are met:

(a) The verified emission factor for a source category ~~shall~~must be based on verified emission factors from at least three individual sources within the source category;

(b) Verified emission factors from sources within a source category ~~shall~~must be developed in accordance with this rule;

(c) The verified emission factors from the sources ~~shall~~must not differ from the mean by more than twenty percent; and

(d) The source category verified emission factor ~~shall~~must be the mean of the source verified emission factors plus the average of the source emission estimate adjustment factors.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 24-1994, f. &cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2720

340-220-0180
Late and Underpayment of Fees

(1) Notwithstanding any enforcement action, the owner or operator ~~shall~~ will be subject to a late payment fee of:

(a) Two hundred dollars for payments postmarked more than seven or less than 30 days late; and

(b) Four hundred dollars for payments postmarked on or after 30 days late.

(2) Notwithstanding any enforcement action, the Department may assess an additional fee of the greater of $400 or 20 percent of the amount underpaid for substantial underpayment.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2730

340-220-0190
Failure to Pay Fees

Any owner or operator that fails to pay fees imposed by the Department under ~~these rules~~this division ~~shall~~must pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with **Section 6621(a)(2)** of the **Internal Revenue Code of 1986 (as amended). [Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]**

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2740

DIVISION 222

STATIONARY SOURCE PLANT SITE EMISSION LIMITS

340-222-0010
Policy

The Commission recognizes the need to establish a more definitive method for regulating increases and decreases in air emissions of permit holders ~~as contained in this division~~. However, ~~by the adoption of these rules~~except as needed to protect ambient air quality standards, prevention of significant deterioration increments and visibility, the Commission does not intend to: ~~Limit~~ limit the use of existing production capacity of any air quality permittee ~~(except for synthetic minor source permittees)~~; cause any undue hardship or expense to any permittee ~~due to the utilization of~~who wishes to use existing unused productive capacity; or create inequity within any class of permittees subject to specific industrial standards ~~which~~ that are based on emissions related to production. ~~PSELs can be established at levels higher than baseline provided a demonstrated need exists to emit at a higher level and PSD increments and air quality standards would not be violated and reasonable further progress in implementing control strategies would not be impeded.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0300; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1000

340-222-0020
Applicability

(1) Plant Site Emission Limits (PSELs) ~~shall~~ will be ~~incorporated~~ included in all Air Contaminant Discharge Permits (ACDP)~~s~~ and Oregon Title V Operating Permits, except as provided in ~~Section~~ section (3) ~~of this rule~~, as a means of managing airshed capacity by regulating increases and decreases in air emissions. Except as provided in OAR 340-222-0060 or 340-222-0070, all ACDP and Title V sources ~~subject to regular permit requirements shall be~~are subject to PSELs for all regulated pollutants. The Department will incorporate PSELs ~~will be incorporated~~ into permits when issuing a new permits or renewing or modifying an existing permit. ~~are renewed, modified, or newly issued.~~

(2) The emissions limits established by PSELs ~~shall~~ provide the basis for:
  (a) Assuring reasonable further progress toward attaining compliance with ambient air standards;
  (b) Assuring ~~that~~ compliance with ambient air standards and Prevention of Significant Deterioration increments ~~are being maintained~~;
  (c) Administering offset~~,~~ and banking ~~and bubble~~ programs; and
  (d) Establishing the baseline for tracking the consumption of Prevention of Significant Deterioration Increments.

(3) PSELs ~~shall~~ are not ~~be~~ required for:
  (a) ~~Insignificant discharge permits issued under OAR 340-216-0020(7)~~ Pollutants that will be emitted at less than the de minimis emission level listed in OAR 340-200-0020 from the entire source,
  (b) Short Term Activity and Regulated Source ACDPs, or
  (c) Hazardous air pollutants as listed in OAR 340-244-0040 Table 1.

~~(b) Minimal source permits issued under OAR 340-216-0020(8); or~~
~~(c) General permits issued under 216-0060 for sources that:~~
~~(A) Qualify for an insignificant discharge permit or minimal source permit; or~~
~~(B) Are not listed in OAR 340-216-0090 Table 1 but elect to obtain a synthetic minor permit.~~

(4) Generic PSELs may be used for any category of ACDP or Title V permit.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020 & ORS 468A.040
Stats Implemented: ORS 468.020, ORS 468.065 & ORS 468A.025
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0301; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1010

340-222-0030
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.

[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 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99

~~**340-222-0040**~~

Criteria for Establishing Plant Site Emission Limits

340-222-0040
Generic annual PSEL

(1) Sources with capacity less than the Significant Emission Rate (SER) will receive a Generic PSEL unless they have a netting basis and request a source specific PSEL under 340-222-0041.
(2) A Generic PSEL may be used for any pollutant that will be emitted at less than the SER. The netting basis for a source with a generic PSEL is zero.

340-222-0041
Source specific annual PSEL

(1) For sources with potential to emit less than the SER, that request a source specific PSEL, an initial source specific PSEL will be set equal to the Generic PSEL.
(2) For sources with potential to emit greater than or equal to the SER, an initial source specific PSEL will be set equal to the source's potential to emit or netting basis, whichever is less.
(3) If an applicant wants an annual PSEL at a rate greater than the netting basis, the applicant must:
(a) Demonstrate that the requested increase over the netting basis is less than the SER or
(b) For increases equal to or greater than the SER over the netting basis, but not subject to New Source Review (OAR 340 division 224):
(A) If located within an area designated as nonattainment in OAR 340-204-0030, obtain offsets and demonstrate a net air quality benefit in accordance with OAR 340-225-0090.
(B) If located within an area designated as maintenance in OAR 340-204-0040, either
(i) Obtain offsets and demonstrate a net air quality benefit in accordance with OAR 340-225-0090;
(ii) Obtain an allocation from an available growth allowance in accordance with the applicable maintenance plan; or

(iii) For carbon monoxide, demonstrate that the source or modification will not cause or contribute to an air quality impact equal to or greater than 0.5 mg/m3 (8 hour average) and 2 mg/m3 (1-hour average).

(C) If located within an attainment or unclassifiable area, conduct an air quality analysis, in accordance with OAR 340-225-0050(1) through (3) and 340-225-0060.

(D) For federal major sources demonstrate compliance with AQRV protection in accordance with OAR 340-225-0070.

(c) For increases equal to or greater than the SER over the netting basis and subject to New Source Review, demonstrate that the applicable New Source Review requirements have been satisfied.

340-222-0042
Short Term PSEL:

(1) For sources located in areas with established short term SER (OAR 340-200-0020 Table 3), PSELs are required on a short term basis for those pollutants that have a short term SER. The short term averaging period is daily, unless emissions cannot be monitored on a daily basis. The averaging period for short term PSELs can never be greater than monthly.

(a) For existing sources, the initial short term PSEL will be set as:

(A) the lesser of the short term capacity or the current permit's short term PSEL, if each is greater than or equal to the short term SER; or

(B) the generic PSEL, if either the short term capacity or the current short term PSEL is less than the short term SER.

(b) For new sources, the initial short term PSEL will be zero.

(2) If an applicant wants a short term PSEL at a rate greater than the initial short term PSEL, the applicant must:

(a) Demonstrate that the requested increase over the initial short term PSEL is less than the significant emission rate (Note: In this case new sources would get a generic PSEL); or

(b) For increases equal to or greater than the SER over the initial short term PSEL:

(A) Obtain offsets and demonstrate a net air quality benefit in accordance with OAR 340-225-0090;

(B) Obtain an allocation from an available growth allowance in accordance with the applicable maintenance plan; or

(C) For carbon monoxide, demonstrate that the source or modification will not cause or contribute to an air quality impact equal to or greater than 0.5 mg/m^3 (8 hour average) and 2 mg/m^3 (1 hour average).

(D) For federal major sources, demonstrate compliance with air quality related values (AQRV) protection in accordance with OAR 340-225-0070.

(3) Once the short term PSEL is increased pursuant to section (2) of this rule, the increased level becomes the initial short term PSEL for future evaluations.

340-222-0043
General Requirements for all PSEL

(1) No PSEL may allow emissions in excess of those allowed by any applicable federal or state regulation or by any specific permit conditions unless the source meets the specific provisions of OAR 340-226-0400 (Alternative Emission Controls).

(2) Source specific PSELs may be changed pursuant to the Department's rules for permit modifications when:

(a) Errors are found or better data is available for calculating PSELs

(b) More stringent control is required by a rule adopted by the Commission; or

(c) The Department modifies a permit pursuant to OAR 340-216-0084, Modification of a Permit, or OAR 340-218-0200, Reopenings.

(3) Annual PSELs are established on a rolling 12 consecutive month basis and will limit the source's potential to emit.

(4) In order to maintain the netting basis, permittees must maintain either a Standard ACDP or an Oregon Title V Operating Permit. A request by a permitee to be assigned any other type of an ACDP sets the netting basis at zero upon issuance of the other type of permit.

~~(1) 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 Department Rules:~~

~~(a) If an applicant requests that the PSEL be established at a rate higher than the baseline emission rate, the applicant shall:~~

~~(A) Demonstrate that the requested increase is less than the significant emission rate increase; or~~

~~(B) Provide an assessment of the air quality impact pursuant to procedures specified in OAR 340-224-0050 to 340-224-0070. A demonstration that no air quality standard or PSD increment will be violated in an attainment area or that a growth increment or offset is available in a nonattainment 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.~~

~~(b) Increases above baseline emission rates shall be subject to public notice and opportunity for public hearing pursuant to applicable permit requirements.~~

~~(2) 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.~~

~~(3) Mass emission limits may be established separately within a particular source for process emissions, combustion emissions, and fugitive emissions.~~

~~(4) Documentation of PSEL calculations shall be available to the permittee.~~

~~(5) For new sources, PSELs shall be based on application of applicable control equipment requirements and projected operating conditions.~~

~~(6) 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 OAR 340-226-0400 are met.~~

~~(7) PSELs may be changed pursuant to Department rules when:~~

~~(a) Errors are found or better data is available for calculating PSELs;~~

~~(b) More stringent control is required by a rule adopted by the Commission;~~

~~(c) An application is made for a permit modification pursuant to OAR 340 division 216, ACDPs, OAR 340 division 224, New Source Review, and approval can be granted based on growth increments, offsets, or available Prevention of Significant Deterioration increments, or OAR 340 division 218, Rules Applicable to Sources Required to Have Oregon Title V Operating Permits; or~~

~~(d) The Department finds it necessary to initiate modifications of a permit pursuant to OAR 340-014-0040, Modification of a Permit or OAR 340-218-0200, Reopenings.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0310; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1020

340-222-0045
Unassigned Emissions

(1) Purpose. The purpose of unassigned emissions is to track and manage the difference in the quantity of emissions between the netting basis and what the source could emit based on the facility's current physical and operational design.
(2) Establishing unassigned emissions.
(a) Unassigned emissions equal the netting basis minus the source's current PTE, minus any banked emission reduction credits. Unassigned emissions are zero if this result is negative.
(b) Unused capacity created after the effective date of this rule due to reduced potential to emit that is not banked or expired emission reduction credits (OAR 340-268-0030), increase unassigned emissions on a ton for ton basis.
(3) Maximum unassigned emissions
(a) Except as provided in paragraph (c) of this section, unassigned emissions will be reduced to not more than the SER (OAR 340-200-0020 Table 2) on July 1, 2007 and at each permit renewal following this date.
(b) The netting basis is reduced by the amount that unassigned emissions are reduced.
(c) In an AQMA where the EPA requires an attainment demonstration based on dispersion modeling, unassigned emissions are not subject to reduction under this rule.
(4) Using unassigned emissions
(a) Unassigned emissions may be used for internal netting to allow an emission increase at the existing source in accordance with the permit.
(b) Unassigned emissions may not be banked or transferred to another source.
(c) Emissions that are removed from the netting basis are unavailable for netting in any future permit actions.
(5) Upon renewal, modification or other reopening of a permit after July 1, 2002 the unassigned emissions will be established with an expiration date of July 1, 2007 for all unassigned emissions in excess of the SER. Each time the permit is renewed after July 1, 2007 the unassigned emissions will be established again and reduced upon the following permit renewal to no more than the SER for each pollutant in OAR 340-200-0020 Table 2.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020 & ORS 468A.310
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-222-0050
Temporary PSD Increment Allocation

~~(1) 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 provided it is demonstrated to the Department that:~~
~~(a) No ambient air quality standard is exceeded;~~
~~(b) No applicable PSD increment is exceeded;~~
~~(c) No nuisance condition is created;~~
~~(d) The applicant's proposed and approved objective continues to be realized.~~
~~(2) 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 Department, extraordinary circumstances exist.~~

~~(3) Such temporary allocation of a PSD increment shall be set forth in a specific permit condition issued pursuant to the Department's Notice and Permit Issuance or Modification Procedures.~~

~~(4) Such temporary allocations shall be specifically time limited and may be recalled under specified notice conditions.~~ [Repealed]

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020 & ORS 468A.310
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0320; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1040

340-222-0060
Plant Site Emission Limits for Sources of Hazardous Air Pollutants

(1) ~~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 OAR 340-222-0020 until such time as the Commission determines otherwise.~~

~~(2)~~ The Department may establish PSELs for hazardous air pollutants (HAPs) ~~for the following causes~~if an owner or operator:

(a) ~~An owner or operator e~~Elects to establish a PSEL for ~~any~~ combined ~~hazardous air pollutant~~HAPs emitted for purposes of determining emission fees as prescribed in OAR 340 division 220; or

~~(b) The source is subject to a hazardous air pollutant emission standard, limitation, or control requirement other than Plant Site Emission Limits.~~

(b) Asks the Department to create an enforceable PTE limit.

(~~3~~2) PSELs will be set only for individual or combined HAPs and will not list HAPs by name. The PSEL will be set on a rolling 12 month basis and will be either: ~~Procedures for establishing and modifying PSELs for hazardous air pollutant emissions shall be consistent with OAR 340-222-0040 except for the following:~~

(a) ~~A baseline emission rate shall not apply; and~~ The generic PSEL if the permittee proposes a limit less than that level; or

(b) The level the permittee establishes necessary for the source if greater than the generic PSEL.

(3) The Alternative Emissions Controls (Bubble) provisions of OAR 340-226-0400 ~~shall~~ do not apply to emissions of HAPs.

~~(4) PSELs established for hazardous air pollutants shall not be used for any provisions other than those prescribed in section (2) of this rule.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. &cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1050

340-222-0070
Plant Site Emission Limits for Insignificant Activities

(1) For purposes of establishing PSELs, emissions from categorically insignificant activities listed in OAR 340-200-0020 ~~shall~~ are not ~~be considered regulated air pollutants~~considered under OAR 340-222-0020~~ until such time as the Commission determines otherwise~~, except as provided in section (3) of this rule.

(2) For purposes of establishing PSELs, emissions from aggregate insignificant emissions listed in OAR 340-200-0020 ~~shall be~~are ~~considered regulated air pollutants~~considered under OAR 340-222-0020.

(3) For purposes of determining New Source Review or Prevention of Significant Deterioration applicability~~,~~ under OAR 340 division 224, emissions from insignificant activities ~~shall be~~ are considered.

[**NOTE**: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468.020, ORS 468A.025, ORS 468A.040, & ORS 468A.045.
Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 2-1996, f. & cert. ef. 1-29-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1060

340-222-0080
Plant Site Emission Limit Compliance

(1) The permittee must monitor pollutant emissions or other parameters that are sufficient to produce the records necessary for demonstrating compliance with the PSEL.

(2) The frequency of the monitoring and associated averaging periods must be as short as possible and consistent with that used in the compliance method.

(3) (a) For annual PSELs, the permittee must monitor appropriate parameters and maintain all records necessary for demonstrating compliance with the annual PSEL at least monthly and be able to determine emissions on a rolling 12 consecutive month basis.

(b) For short term PSELs, the permittee must monitor appropriate parameters and maintain all records necessary for demonstrating compliance with any short term PSEL at least as frequently as the short term PSEL averaging period.

(4) The applicant must specify in the permit application the method(s) for determining compliance with the PSEL. The Department will review the method(s) and approve or modify, as necessary, to assure compliance with the PSEL. The Department will include PSEL compliance monitoring methods in all permits that contain PSELs.

(5) Depending on source operations, one or more of the following methods may be acceptable:

(a) continuous emissions monitors,

(b) material balance calculations,

(c) emissions calculations using approved emission factors and process information,

(d) alternative production or process limits, and

(e) other methods approved by the Department.

(6) When annual reports are required, the permittee must include the emissions total for each consecutive 12 month period during the calendar year, unless otherwise specified by a permit condition.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

340-222-0090
Combining and Splitting Sources

(1) When two or more sources combine into one source:

(a) The sum of the netting basis for all the sources is the combined source netting basis.

(b) The combined source is regulated as one source, except:

(A) the simple act of combining sources, without an increase over the combined PSEL, does not subject the combined source to New Source Review.

(B) if the combined source PSEL, without a requested increase over the existing combined PSEL, exceeds the combined netting basis plus the SER, the source may continue operating at the existing combined source PSEL without becoming subject to New Source Review until an increase in the PSEL is requested or the source is modified. If an increase in the PSEL is requested or the source is modified, the Department will evaluate whether New Source Review applies.

(2) When one source is split into two or more separate sources:

(a) The netting basis and the SER for the original source is split amongst the new sources as requested by the original permittee.

(b) The split of netting basis and SER must either:

A. be sufficient to avoid New Source Review for each of the newly created sources or

B. the newly created source(s) that become subject to New Source Review must comply with the requirements of OAR 340 division 224 before beginning operation under the new arrangement.

(3) The owner of the device or emissions unit must maintain records of physical changes and changes in operation occurring since the baseline period.

[**NOTE**: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.:

DIVISION 224

MAJOR NEW SOURCE REVIEW

340-224-0010
Applicability and General Prohibitions

(1) This division applies to owners and operators of proposed major sources and major modifications of air contaminant sources. It does not apply to owners or operators of proposed non-major sources or non-major modifications. Such owners or operators are subject to other Department rules, including Highest and Best Practicable Treatment and Control Required (OAR 340-226-0100 through 340-226-0140), Notice of Construction and Approval of Plans (OAR 340-210-0200 through 340-210-0250), ACDPs (OAR 340 division 216), Emission Standards for Hazardous Air Contaminants (OAR 340 division 244), and Standards of Performance for New Stationary Sources (OAR 340 division 238).

(2) No owner or operator may begin construction of a major source or a major modification of an air contaminant source without having received an air contaminant discharge permit (ACDP) from the Department and having satisfied the requirements of this division.

~~(2) Owners or operators of proposed non-major sources or non-major modifications are not subject to these New Source Review rules. Such owners or operators are subject to other Department rules including Highest and Best Practicable Treatment and Control Required (OAR 340-226-0100 through 340-226-0140), Notice of Construction and Approval of Plans (OAR 340-210-0200 through 340-210-0220), ACDPs (OAR 340 division 216), Emission Standards for Hazardous Air Contaminants (OAR Chapter 340, Division 244), and Standards of Performance for New Stationary Sources (OAR 340 division 238).~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0220; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1900

340-224-0020
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.

[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 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99

340-224-0030
Procedural Requirements

(1) Information Required. The owner or operator of a proposed major source or major modification ~~shall~~ must submit all information ~~necessary~~ the Department needs to perform any analysis or make any determination required under ~~these rules~~this division and OAR 340 division 225. The information must be in writing on forms supplied by the Department and include the information for a standard ACDP as detailed in OAR 340 division 216. ~~Such information must include, but not be limited to:~~

~~(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;~~

~~(b) An estimate of the amount and type of each air contaminant emitted by the source in terms of hourly, daily, and yearly rates, showing the calculation procedure;~~

~~(c) A detailed schedule for construction of the source or modification;~~

~~(d) A detailed description of the air pollution control equipment and emission reduction processes which are planned for the source or modification, and any other information necessary to determine that BACT or LAER technology, whichever is applicable, would be applied;~~

~~(e) To the extent required by these rules, an analysis of the air quality and/or visibility impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts; and~~

~~(f) To the extent required by these rules, an analysis of the air quality and/or visibility impacts, and the nature and extent of all commercial, residential, industrial, and other source emission growth which has occurred since January 1, 1978, in the area the source or modification would affect~~.

~~(g) The owner or operator of a source for which an Oregon Title V Operating Permit has been issued who applies for a permit to construct or modify under this division may request that an enhanced New Source Review process be used, including the external review procedures required under OAR 340-218-0210 and OAR 340-218-0230 instead of the notice procedures under this rule to allow for subsequent incorporation of the construction permit as an administrative amendment. All information required under OAR 340-218-0040 shall be submitted as part of any such request.~~

(2) Other Obligations:

~~(a) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this division or with the terms of any approval to construct, or any owner or operator of a source or modification subject to OAR 340-224-0010 who commences construction without applying for and receiving an ACDP, is subject to appropriate enforcement action;~~

(~~b~~a) Approval to construct becomes invalid if construction is not commenced within 18 months after ~~receipt of~~the Department issues such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within 18 months of the scheduled time. The Department may extend the 18-month period ~~upon satisfactory showing that an extension is justified~~for good cause. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase ~~shall~~ must commence construction within 18 months of the projected and approved commencement date;

(~~c~~b) Approval to construct does not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state or federal law;

(~~d~~c) Approval to construct a source under an ACDP issued under paragraph (3)(b)~~(I)~~ of this rule ~~shall~~ authorizes construction and operation of the source, except as prohibited in subsection (~~e~~d) of this rule, until the later of:

(A) One year from the date of initial startup of operation of the major source or major modification; or

(B) If a timely and complete application for an Oregon Title V Operating Permit is submitted, the date of final action by the Department on the Oregon Title V Operating Permit application.

(ed) Where an existing Oregon Title V Operating Permit would prohibit ~~such~~ construction or change in operation, the owner or operator must obtain a permit revision before commencing construction or operation.

(3) ~~Public Participation~~Application Processing:

(a) Within 30 days after ~~receipt of~~receiving an application to construct, or any addition to such application, the Department ~~shall~~ will advise the applicant of any deficiency in the application or in the information submitted. For purposes of this section, ~~T~~the date the Department received ~~of the receipt of~~ a complete application ~~shall be, for the purpose of this section,~~ is the date on which the Department received all required information;

(b) Notwithstanding the requirements of OAR 340-~~014-0020~~216-0040 or OAR 340-218-0040, concerning permit application requirements, the Department will make a final determination on the application ~~but as expeditiously as possible and at least~~ within six months after ~~receipt of~~receiving a complete application~~, the Department shall make a final determination on the application~~. This involves performing the following actions in a timely manner:

(A) Making a preliminary determination whether construction should be approved, approved with conditions, or disapproved;

(B) Making the proposed permit available in accordance with the public participation procedures required by OAR 340 division 209 for Category IV. Extension of Construction Permits beyond the 18-month time period in paragraph (2)(a) of this rule are available in accordance with the public participation procedures required by Category II in lieu of Category IV. ~~for a 30-day period in at least one location a copy of the permit application, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination;~~

~~(C) Notify the public, by advertisement in a newspaper of general circulation in the area in which the proposed source or modification would be constructed, of the application, the preliminary determination, the extent of increment consumption that is expected from the source or modification, the opportunity for a public hearing and for written public comment and, if applicable, that an enhanced New Source Review process, including the external review procedures required under OAR 340-218-0210 and OAR 340-218-0230, is being used to allow for subsequent incorporation of the operating approval into an Oregon Title V Operating Permit as an administrative amendment;~~

~~(D) Send a copy of the notice of opportunity for public comment to the applicant and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency, any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification, and the EPA;~~

~~(E) Upon determination that significant interest exists, or upon written requests for a hearing from ten persons or from an organization or organizations representing at least ten persons, provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the~~

~~source or modification, the control technology required, and other appropriate considerations. For energy facilities, the hearing may be consolidated with the hearing requirements for site certification contained in OAR Chapter 345, Division 15;~~

~~(F) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 working days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed source or modification;~~

~~(G) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section;~~

~~(H) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source or modification.~~

~~(I) After the effective date of Oregon's program to implement the Oregon Title V Operating Permit program, the owner or operator of a source subject to OAR 340 218 0020 who has received a permit to construct or modify this division, shall submit an application for an Oregon Title V Operating Permit within one year of initial startup of the construction or modification, unless the Oregon Title V Operating Permit prohibits such construction or change in operation. The Oregon Title V Operating Permit application shall include the following information:~~

~~(i) Information required by OAR 340 218 0040, if not previously included in the ACDP application;~~

~~(ii) A copy of the existing ACDP;~~

~~(iii) Information on any changes in the construction or operation from the existing ACDP, if applicable; and~~

~~(iv) Any monitoring or source test data obtained during the first year of operation.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 18-1984, f. & ef. 10-16-84; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0230; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. &cert. ef. 10-28-94; DEQ 22-1995, f. &cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1910

340-224-0040
Review of New Sources and Modifications for Compliance With Regulations

The owner or operator of a proposed major source or major modification ~~shall~~ must demonstrate the ability of the proposed source or modification to comply with all applicable air quality requirements of the Department~~, including NSPS (OAR Division 238) and NESHAP (OAR Chapter 340, Division 244) and shall obtain an ACDP pursuant to OAR 340 division 216~~.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0235; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1920

340-224-0050
Requirements for Sources in Nonattainment Areas

Proposed major sources and major modifications that would emit a nonattainment pollutant within a designated nonattainment area, including VOC or NO_x in a designated Ozone Nonattainment Area~~, or a specified pollutant in any area listed in section (8) of this rule~~ must meet the requirements listed below:

(1) Lowest Achievable Emission Rate (LAER). The owner or operator ~~of the proposed major source or major modification shall~~must demonstrate that the source or modification will comply with the LAER for each nonattainment pollutant emitted at or above the significant emission rate. (SER)

(a) For a major modification, the requirement for LAER applies only to each ~~new~~ emissions unit that emits the pollutant in question and was installed since the baseline period or the most recent New Source Review construction approval for that pollutant, and~~or~~ to each modified emission unit that increases actual emissions of the pollutant in question above the netting basis.

(b) For phased construction projects, the LAER determination ~~of LAER~~ must be reviewed at the latest reasonable time before commencing~~ement of~~ construction of each independent phase.

(c) When determining LAER for a change that was made at a source before the current NSR application, the Department will consider technical feasibility of retrofitting required controls provided:

(A) the change was made in compliance with NSR requirements in effect when the change was made, and

(B) no limit will be relaxed that was previously relied on to avoid NSR.

(d) Individual modifications with potential to emit less than 10 percent of the SER are exempt from this section unless:

(A) they are not constructed yet;

(B) they are part of a discrete, identifiable, larger project that was constructed within the previous 5 years and is equal to or greater than 10 percent of the SER; or

(C) they were constructed without, or in violation of, the Department's approval.

~~(2) Source Compliance. The owner or operator of the proposed major source or major modification shall demonstrate that all major sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the state are in compliance or on a schedule for compliance with all applicable emission limitations and standards under the Act~~.

(~~3~~2) Offsets and Net Air Quality Benefit. The owner or operator ~~of the proposed major source or major modification shall~~ must ~~provide~~ obtain offsets and demonstrate that a net air quality benefit will be achieved as specified in OAR ~~340 division 268 and~~ 340-~~224~~225-0090.

~~(4) Net Air Quality Benefit. If emission reductions or offsets are required, the applicant shall demonstrate that a net air quality benefit will be achieved in the affected area as described in OAR 340-224-0090 and that the reductions are consistent with reasonable further progress toward attainment of the air quality standards. Applicants in an ozone nonattainment area shall demonstrate that the proposed VOC or NO_x offsets will result in a 10% net reduction in emissions, as required by OAR 340-224-0090(3)(c).~~

(~~5~~3) ~~Alternative Analysis~~Additional Requirements for Federal Major Sources:

(a) The owner or operator of a federal major source ~~the proposed major source or major modification shall~~ must ~~conduct an alternative analysis;~~

~~(b) This analysis must include an evaluation~~ evaluate ~~of~~ alternative sites, sizes, production processes, and environmental control techniques for ~~such~~ the proposed source or modification ~~which~~ and demonstrates that benefits of the proposed source or modification will significantly

outweigh the environmental and social costs imposed as a result of its location, construction or modification.

(b) The owner or operator of the federal major source must demonstrate that all major sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the state are in compliance, or are on a schedule for compliance, with all applicable emission limitations and standards under the Act.

(c) The owner or operator of a federal major source must meet the visibility impact requirements in OAR 340-225-0070.

(4) Special Exemption for the Salem Ozone Nonattainment area. Proposed major sources and major modifications located in or that impact the Salem Ozone Nonattainment Area are exempt from OAR 340-225-0090 and section (2) of this rule for VOC and NO_x emissions with respect to ozone formation in the Salem Ozone Nonattainment area.

~~(6) Proposed new major sources and major modifications in the Medford-Ashland Air Quality Maintenance Area (AQMA) with PM_{10} increases in excess of the significant emission rate must meet the requirements of this rule, OAR 340-224-0070 and OAR 340-240-0260.~~

[NOTE: this rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0240;DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 10-1995, f. &cert. ef. 5-1-95; DEQ 22-1995, f. &cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef.1-25-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1930

340-224-0060
Requirements for Sources in Maintenance Areas

Proposed major sources and major modifications that would emit a maintenance pollutant within a designated ozone or carbon monoxide maintenance area, including VOC or NO_x in a designated ozone maintenance area, must meet the requirements listed below:

(1) Best Available Control Technology (BACT). Except as provided in section (~~7~~4) of this rule, the owner or operator ~~of the proposed major source or major modification shall~~must apply BACT for each maintenance pollutant emitted at a ~~significant emission rate~~SER.

(a) For a major modification, the requirement for BACT applies only to

(A) each new emissions unit that emits the pollutant in question and was installed since the baseline period or the most recent New Source Review construction approval for that pollutant and ~~or~~

(B) each modified emissions unit that increases the actual emissions of the pollutant in question above the netting basis.

(b) For phased construction projects, the BACT determination ~~of BACT~~ must be reviewed at the latest reasonable time before commencement of construction of each independent phase.

(c) When determining BACT for a change that was made at a source before the current NSR application, the technical and economic feasibility of retrofitting required controls may be considered provided:

(A) the change was made in compliance with NSR requirements in effect at the time the change was made, and

(B) no limit is being relaxed that was previously relied on to avoid NSR.

(d) Individual modifications with potential to emit less than 10 percent of the significant emission rate are exempt from this section unless:

(A) they are not constructed yet;

(B) they are part of a discrete, identifiable larger project that was constructed within the previous 5 years and that is equal to or greater than 10 percent of the significant emission rate; or

(C) they were constructed without, or in violation of, the Department's approval.

~~(2) Source Compliance. The owner or operator of the proposed major source or major modification shall demonstrate that all major sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the state are in compliance or on a schedule for compliance with all applicable emission limitations and standards under the Act.~~

(~~3~~2) Air Quality Protection:

(a) Offsets ~~or Growth Allowance~~and Net Air Quality Benefit. Except as provided in subsections (b) and (c) of this ~~Section~~section, the owner or operator ~~of the proposed major source or major modification shall~~must ~~provide~~ obtain offsets and demonstrate that a net air quality benefit will be achieved in the area as specified in OAR ~~340 division 268, 340-240-0260, and~~ 340-~~224~~225-0090.

(b) Growth Allowance. ~~Except as provided in section (7) of this rule, the~~The requirements of this ~~Section~~ section may be met in whole or in part in an ozone or carbon monoxide maintenance area with an allocation by the Department from a growth allowance, if available, in accordance with ~~section (8) of this rule and~~ the applicable maintenance plan in the SIP adopted by the Commission and approved by EPA. An allocation from a growth allowance used to meet the requirements of this ~~Section~~ section is not subject to OAR ~~340 division 268 and~~ 340-~~224~~225-0090. Procedures for allocating the growth allowances for the Oregon portion of the Portland-Vancouver Interstate Maintenance Area for Ozone and the Portland Maintenance Area for Carbon Monoxide are contained in OAR 340-242-0430 and 340-242-0440.

(~~b~~c) Modeling. A proposed major source or major modification ~~which~~ that would emit carbon monoxide emissions within a carbon monoxide maintenance area is exempt from subsections (a) and (b) of this section if ~~it~~ the owner or operator can demonstrate that the source or modification will not cause or contribute to an air quality impact equal to or greater than 0.5 mg/m^3 (8 hour average) and 2 mg/m^3 (1-hour average).

~~(4) Net Air Quality Benefit. If emission reductions or offsets are required, the applicant shall demonstrate that a net air quality benefit will be achieved in the affected area as described in OAR 340-224-0090. Applicants in an ozone maintenance area shall demonstrate that the proposed VOC or NO_x offsets will result in a 10% net reduction in emissions, as required by OAR 340-224-0090(3)(c).~~

~~(5) Alternative Analysis:~~

~~(a) The owner or operator of the proposed major source or major modification shall conduct an alternative analysis;~~

~~(b) This analysis must include an evaluation of alternative sites, sizes, production processes, and environmental control techniques for such proposed source or modification which demonstrates that benefits of the proposed source or modification significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.~~

(~~6~~3) Additional Requirements for Federal Major Sources:

The owner of operator of a federal major source subject to this rule must provide an analysis of the air quality impacts for the proposed source or modification in accordance with OAR 340-225-0050 through 340-225-0070.

~~Additional Requirements For Listed Sources. In addition to other requirements of this rule, the following sources must comply with OAR 340-224-0070 for emissions of the maintenance pollutant:~~

~~(a) Sources with potential emissions of any regulated air pollutant equal to or greater than 250 tons/year; and~~

~~(b) Sources with potential emissions of any regulated air pollutant equal to or greater than 100 tons/year in the following source categories:~~

~~(A) Fossil-fuel-fired steam electric plants of more than 250 million BTU/hour heat input;~~

~~(B) Coal cleaning plants with thermal dryers;~~

~~(C) Kraft pulp mills;~~

~~(D) Portland cement plants;~~

~~(E) Primary Zinc Smelters;~~

~~(F) Iron and Steel Mill Plants;~~

~~(G) Primary aluminum ore reduction plants;~~

~~(H) Primary copper smelters;~~

~~(I) Municipal Incinerators capable of charging more than 250 tons of refuse per day;~~

~~(J) Hydrofluoric acid plants;~~

~~(K) Sulfuric acid plants;~~

~~(L) Nitric acid plants;~~

~~(M) Petroleum Refineries;~~

~~(N) Lime plants;~~

~~(O) Phosphate rock processing plants;~~

~~(P) Coke oven batteries;~~

~~(Q) Sulfur recovery plants;~~

~~(R) Carbon black plants, furnace process;~~

~~(S) Primary lead smelters;~~

~~(T) Fuel conversion plants;~~

~~(U) Sintering plants;~~

~~(V) Secondary metal production plants;~~

~~(W) Chemical process plants;~~

~~(X) Fossil-fuel-fired boilers, or combinations thereof, totaling more than 250 million BTU per hour heat input;~~

~~(Y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;~~

~~(Z) Taconite ore processing plants;~~

~~(AA) Glass fiber processing plants;~~

~~(BB) Charcoal production plants.~~

(~~7~~4) Contingency ~~p~~Plan ~~r~~Requirements. If the contingency plan in an applicable maintenance plan is implemented due to a violation of an ambient air quality standard, this section applies in addition to other requirements of this rule until the Commission adopts a revised maintenance plan and EPA approves it as a revision to the SIP.

(a) The requirement for BACT in section (1) of this rule is replaced by ~~a~~ the requirement for LAER contained in OAR 340-224-0050(1).

(b) An allocation from a growth allowance may not be used to meet the requirement for offsets in section (~~3~~2) of this rule.

(c) The exemption provided in section (~~3~~2) (~~b~~c) of this rule for major sources or major modifications within a carbon monoxide maintenance area no longer applies.

~~(8) Growth Allowance Allocation.~~

~~(a) Medford-Ashland Ozone. The growth allowance in the Medford Maintenance Area for Ozone is allocated on a first-come first-served basis depending on the date of submittal of a complete permit application. No single source shall receive an allocation of more than 50% of any remaining growth allowance. The allocation of emission increases from the growth allowance is calculated based on the ozone season (May 1 to September 30 of each year).~~

~~(b) Portland Ozone and Carbon Monoxide. Procedures for allocating the growth allowances for the Oregon portion of the Portland Vancouver Interstate Maintenance Area for Ozone and the Portland Maintenance Area for Carbon Monoxide are contained in OAR 340-242-0430 and 340-242-0440.~~

(~~9~~5) Pending Redesignation Requests. This rule does not apply to a proposed major source or major modification for which a complete application to construct was submitted to the Department before the maintenance area was redesignated from nonattainment to attainment by EPA. Such a source is subject to OAR 340-224-0050.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1935

340-224-0070
Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas

~~Except as provided in sections (9) and (10) of this rule, proposed~~ Proposed new ~~major~~ federal major sources or major modifications at federal major sources locating in areas designated attainment or unclassifiable must meet the following requirements:

(1) Best Available Control Technology (BACT). The owner or operator of the proposed major source or major modification ~~shall~~ must apply BACT for each pollutant emitted at a ~~significant emission rate~~SER over the netting basis.

(a) For a major modification, the requirement for BACT applies only to

(A) each new emissions unit that emits the pollutant in question and was installed since the baseline period or the most recent New Source Review construction approval for that pollutant and ~~or~~

(B) each modified emissions unit that increases the actual emissions of the pollutant in question above the netting basis.

(b) For phased construction projects, the BACT determination ~~of BACT~~ must be reviewed at the latest reasonable time before commencement of construction of each independent phase.

(c) When determining BACT for a change that was made at a source before the current NSR application, any additional cost of retrofitting required controls may be considered provided:

(A) the change was made in compliance with NSR requirements in effect at the time the change was made, and

(B) no limit is being relaxed that was previously relied on to avoid NSR.

(d) Individual modifications with potential to emit less than 10 percent of the significant emission rate are exempt from this section unless:

(A) they are not constructed yet;

(B) they are part of a discrete, identifiable larger project that was constructed within the previous 5 years and that is equal to or greater than 10 percent of the significant emission rate; or

(C) they were constructed without, or in violation of, the Department's approval.

(2) Air Quality Analysis: The owner of operator of a source subject to this rule must provide an analysis of the air quality impacts for the proposed source or modification in accordance with OAR 340-225-0050 through 340-225-0070.

~~(a) The owner or operator of the proposed major source or major modification shall demonstrate that the emissions of any pollutant at or above a significant emission rate would not cause or contribute to:~~

~~(A) An impact greater than significant air quality impact levels at any locality that does not or would not meet any state or national ambient air quality standard;~~

~~(B) An impact in any location in excess of any applicable increment established by the Prevention of Significant Deterioration (PSD) requirements, OAR 340-202-0210; or~~

~~(C) An impact greater than significant air quality impact levels on a designated nonattainment area or maintenance area. New sources or modifications of sources which would emit VOC or NO_x which may impact the Salem SKATS area are exempt from this demonstration with respect to ozone formation.~~

~~(b) The demonstration under subsection (a) of this section shall include the potential to emit from the proposed major source or major modification, in conjunction with all other applicable emission increases and creditable decreases, and includes secondary emissions.~~

~~(c) The owner or operator of a source or modification with the potential to emit at rates greater than the significant emission rate but less than 100 tons/year, and which is more than 50 kilometers from a nonattainment or maintenance area, is not required to assess the impact of the source or modification on the nonattainment area or maintenance area.~~

~~(d) If the owner or operator of a proposed major source or major modification provides emission offsets that result in a net air quality benefit pursuant to OAR 340-224-0090, the Department may consider the requirements of this section to have been met.~~

~~(3) Exemption for Sources Not Significantly Impacting or Contributing to Levels in Excess of Air Quality Standards or PSD Increment Levels. Except as provided in section (8), a proposed major source or major modification is exempt from sections (1), (5) and (6) of this rule if subsections (a) and (b) of this section are satisfied:~~

~~(a) The proposed major source or major modification does not:~~

~~(A) cause or contribute a significant air quality impact to air quality levels in excess of any state or national ambient air quality standard;~~

~~(B) cause or contribute to air quality levels in excess of any applicable increment established by the PSD requirements, OAR 340-202-0210; or~~

~~(C) impact a designated nonattainment or maintenance area; and~~

~~(b) The potential emissions of each regulated air pollutant from the source are less than 100 tons/year for sources in the following categories or less than 250 tons/year for sources not in the following source categories:~~

~~(A) Fossil fuel-fired steam electric plants of more than 250 million BTU/hour heat input;~~

~~(B) Coal cleaning plants with thermal dryers;~~

~~(C) Kraft pulp mills;~~

~~(D) Portland cement plants;~~

~~(E) Primary Zinc Smelters;~~

~~(F) Iron and Steel Mill Plants;~~

~~(G) Primary aluminum ore reduction plants;~~

~~(H) Primary copper smelters;~~

~~(I) Municipal Incinerators capable of charging more than 250 tons of refuse per day;~~

~~(J) Hydrofluoric acid plants;~~

~~(K) Sulfuric acid plants;~~

~~(L) Nitric acid plants;~~

~~(M) Petroleum Refineries;~~

~~(N) Lime plants;~~

~~(O) Phosphate rock processing plants;~~

~~(P) Coke oven batteries;~~

~~(Q) Sulfur recovery plants;~~

~~(R) Carbon black plants, furnace process;~~

~~(S) Primary lead smelters;~~

~~(T) Fuel conversion plants;~~

~~(U) Sintering plants;~~

~~(V) Secondary metal production plants;~~

~~(W) Chemical process plants;~~

~~(X) Fossil fuel fired boilers, or combinations thereof, totaling more than 250 million BTU per hour heat input;~~

~~(Y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;~~

~~(Z) Taconite ore processing plants;~~

~~(AA) Glass fiber processing plants;~~

~~(BB) Charcoal production plants.~~

~~[**NOTE:** Owners or operators of proposed sources which are exempted by this provision may be subject to other applicable requirements including, but not limited to, OAR 340-210-0200 through 340-210-0220, Notice of Construction and Approval of Plans, and OAR 340 division 216, ACDP.]~~

~~(4) Air Quality Models. All estimates of ambient concentrations required under this rule shall be based on the specified~~applicable air quality models, data bases, and other requirements specified in ~~**40 CFR Part 51, Appendix W, "Guidelines on Air Quality Models (Revised)" (July 1, 1996)**~~. ~~Where an air quality impact model specified in **40 CFR Part 51, Appendix W** is inappropriate, the model may be modified or another model substituted. Such a change shall be subject to notice and opportunity for public comment and shall receive approval of the Department and the EPA.~~

~~Methods like those outlined in the "**Interim Procedures for Evaluating Air Quality Models (Revised)" (U.S. Environmental Protection Agency, 1984)** should be used to determine the comparability of models.~~

(~~5~~3) Air Quality Monitoring:

~~(a)(A)~~ The owner or operator ~~of a proposed major source or major modification shall~~ of a source subject to this rule must conduct ambient air quality monitoring in accordance with the requirements in OAR 340-225-0050. ~~submit with the application, subject to approval of the Department, an analysis of ambient air quality in the area impacted by the proposed project. This analysis shall be conducted for each pollutant potentially emitted at a significant emission rate by the proposed source or modification. As necessary to establish ambient air quality, the analysis shall include continuous air quality monitoring data for any pollutant potentially emitted by the source or modification except for nonmethane hydrocarbons. Such data shall relate to, and shall have been gathered over the year preceding receipt of the complete application, unless the owner or operator demonstrates that such data gathered over a portion or portions of that year or another representative year would be adequate to determine that the source or modification would not cause or contribute to a violation of an ambient air quality standard or any applicable pollutant increment. Pursuant to the requirements of these rules, the owner or operator of the source shall submit for the approval of the Department, a preconstruction air quality monitoring plan.~~

~~(B) Air quality monitoring which is conducted pursuant to this requirement shall be conducted in accordance with **40 CFR 58 Appendix B, "Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring" (July 1, 1996)** and with other methods on file with the Department.~~

~~(C) The Department may exempt a proposed major source or major modification from preconstruction monitoring for a specific pollutant if the owner or operator demonstrates that the air quality impact from the emissions increase would be less than the amounts listed below or that the concentrations of the pollutant in the area that the source or modification would impact are less than the following significant monitoring concentrations:~~

~~(i) Carbon monoxide – 575 ug/m³, 8 hour average;~~

~~(ii) Nitrogen dioxide – 14 ug/m³, annual average;~~

~~(iii) Suspended Particulate Matter:~~

~~(I) TSP – 10 ug/m³, 24 hour average;~~

~~(II) PM_{10} – 10 ug/m³, 24 hour average.~~

~~(iv) Sulfur dioxide – 13 ug/m³, 24 hour average;~~

~~(v) Ozone – Any net increase of 100 tons/year or more of VOCs from a source or modification subject to PSD requires an ambient impact analysis, including the gathering of ambient air quality data;~~

~~(vi) Lead – 0.1 ug/m³, 24 hour average;~~

~~(vii) Mercury – 0.25 ug/m³, 24 hour average;~~

~~(viii) Beryllium – 0.0005 ug/m³, 24 hour average;~~

~~(ix) Fluorides – 0.25 ug/m³, 24 hour average;~~

~~(x) Vinyl chloride – 15 ug/m³, 24 hour average;~~

~~(xi) Total reduced sulfur – 10 ug/m³, 1 hour average;~~

~~(xii) Hydrogen sulfide – 0.04 ug/m³, 1 hour average;~~

~~(xiii) Reduced sulfur compounds – 10 ug/m³, 1 hour average.~~

(D) When PM_{10} preconstruction monitoring is required by this section, at least four months of data shall be collected including the season(s) which the Department judges to have the highest PM_{10} levels. PM_{10} shall be measured in accordance with **40 CFR part 50, Appendix J (July 1, 1996)**.

(b) The owner or operator of a proposed major source or major modification shall, after construction has been completed, conduct such ambient air quality monitoring as the Department may require as a permit condition to establish the effect which emissions of a pollutant, other than nonmethane hydrocarbons, may have, or is having, on air quality in any area which such emissions would affect.

(6) Additional Impact Analysis:

(a) The owner or operator of a proposed major source or major modification shall provide an analysis of the impairment to soils and vegetation that would occur as a result of the source or modification, and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator may be exempted from providing an analysis of the impact on vegetation having no significant commercial or recreational value;

(b) The owner or operator shall provide an analysis of the air quality concentration projected for the area as a result of general commercial, residential, industrial and other growth associated with the major source or modification.

(7) Sources Impacting Class I Areas:

(a) Where a proposed major source or major modification impacts or may impact a Class I area, the Department shall provide written notice to EPA and to the appropriate Federal Land Manager within 30 days of the receipt of such permit application, at least 30 days prior to Department Public Hearings and subsequently, of any preliminary and final actions taken with regard to such application;

(b) The Federal Land Manager shall be provided an opportunity in accordance with OAR 340-224-0030(3) to present a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality related values, including visibility, of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment for a Class I area. If the Department concurs with such demonstration, the permit shall not be issued.

(8) Additional Requirements In Special Areas:

(a) In addition to the other requirements of this rule, proposed major sources and major modifications that would emit PM_{10} in excess of the significant emission rate within the areas identified below shall meet the requirements in subsections (c) through (g) of this section.

(A) The Grants Pass UGB as defined in OAR 340-204-0010.

(B) The Klamath Falls UGB as defined in OAR 340-204-0010.

(C) The La Grande UGB as defined in OAR 340-204-0010.

(D) The Lakeview UGB as defined in OAR 340-204-0010.

(b) In addition to the other requirements of this rule, proposed major sources and major modifications that would emit VOC or NO_x in excess of the significant emission rate in the Salem SKATS area, as defined in OAR 340-204-0010, shall meet the requirements in subsections (c), (d), and (g) of this section. With respect to ozone formation in the Salem SKATS, these sources are exempt from section (2) of this rule.

~~(c) BACT. The owner or operator of the proposed major source or major modification shall apply BACT in accordance with section (1) of this rule. The exemption to BACT provided under section (3) of this rule does not apply to areas listed in subsections (a) and (b).~~

~~(d) Source Compliance. The owner or operator of the proposed major source or major modification shall demonstrate that all major sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the state are in compliance or on a schedule for compliance with all applicable emission limitations and standards under the Act.~~

~~(e) Air Quality Analysis. In addition to the requirements of subsection (2)(a), the owner or operator of the proposed major source or major modification that would emit PM_{10} in excess of the significant emission rate shall demonstrate that the emissions would not cause or contribute to an ambient air impact in areas listed in subsection (a) of this section that is equal to or greater than 4 micrograms per cubic meter of PM_{10} as an annual arithmetic mean, or 8 micrograms per cubic meter of PM_{10} as a 24 hour average concentration for any calendar day.~~

~~(f) If the owner or operator of a proposed major source or major modification provides emission offsets that result in a net air quality benefit pursuant to OAR 340-224-0090, the Department may consider the requirements of section (2) and subsection (e) of this section to have been met.~~

~~(g) This rule does not apply to a proposed major source or major modification for which a complete application to construct was submitted to the Department before the PM_{10} or ozone nonattainment area designation for the areas in this section was revoked by EPA. Such a source is subject to OAR 340-224-0050.~~

~~(9) Except as provided in OAR 340-224-0060(6), this rule does not apply to a maintenance pollutant in a designated ozone or carbon monoxide maintenance area with respect to the maintenance pollutant.~~

~~(10) Requirements for PM_{10} sources in the Medford-Ashland Air Quality Maintenance Area (AQMA) are as follows:~~

~~(a) Except as provided in subsection (b) of this section, this rule does not apply to proposed major sources or major modifications that would emit PM_{10} in excess of the significant emission rate. These sources are subject to the requirements of OAR 340-224-0050, and OAR 340-240-0260.~~

~~(b) Proposed major sources or major modifications that would emit PM_{10} in excess of the significant emission rate must comply with sections (2) through (7) of this rule, OAR 340-224-0050, and OAR 340-240-0260, if the source exceeds the size criteria specified in subsection (3)(b) of this rule.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
[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.025
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 14-1985, f. & ef. 10-16-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 8-1988, f. &cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 27-1992, f. & cert. ef. 11-12-92; Section (8) renumbered from 340-020-0241; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0245; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1940

340-224-0080
Exemptions

~~(1)~~ Temporary emission sources ~~which~~ that would be in operation at a site for less than two years, such as pilot plants and portable facilities, and emissions resulting from the construction phase of a new source or modification ~~shall~~ must comply with OAR 340-224-0050(1) ~~and (2)~~, OAR 340-224-0060(1) or OAR 340-224-0070(1), whichever is applicable, but are exempt from the remaining requirements of OAR 340-224-0050, OAR 340-224-0060 and OAR 340-224-0070 provided that the

source or modification would not impact a Class I area or an area ~~where~~ with a known violation of an applicable requirement ~~is known to be violated~~.

~~(2) Proposed increases in hours of operation or production rates which would cause emission increases above the levels allowed in a permit and would not involve a physical change in the source may be exempted from the requirement of OAR 340-224-0070(1) provided that the increases cause no exceedances of an increment or standard and that the net impact on a nonattainment area is less than the significant air quality impact levels. This exemption shall not be allowed for new sources or modifications that received permits to construct after January 1, 1978.~~

~~(3) Also refer to OAR 340-224-0070(3) for exemptions pertaining to sources smaller than the Federal Size Cutoff Criteria.~~

~~(4) Emissions of hazardous air pollutants that are subject to a MACT standard under OAR 340-244-0200 through 340-244-0220 shall not be subject to OAR 340-224-0070.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-020-047.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 25-1981, f. & cf. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0250; DEQ19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1950

340-224-0090
Requirements for Net Air Quality Benefit

~~Demonstrations of net air quality benefit for offsets shall include the following:~~

~~(1) A demonstration shall be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the new source or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in **40 CFR Part 51, Appendix W, "Guideline on Air Quality Models (Revised)" (July 1, 1996)**.~~

~~(2) Offsets for VOCs or nitrogen oxides shall be within the same nonattainment area or maintenance area as the proposed source. Offsets for particulate matter, PM_{10}, sulfur dioxide, carbon monoxide, nitrogen dioxide, lead, and other pollutants shall be within the area of significant air quality impact.~~

~~(3) Except as provided in Section (6) of this rule, new major sources or major modifications shall meet the following offset requirements:~~

~~(a) Within a designated nonattainment area or maintenance area, the offsets shall provide reductions which are equivalent or greater than the proposed increases. The offsets shall be appropriate in terms of short term, seasonal, and yearly time periods to mitigate the impacts of the proposed emissions;~~

~~(b) Outside a designated nonattainment area or maintenance area, owners or operators of proposed major sources or major modifications which have a significant air quality impact on the nonattainment area or maintenance area shall provide emission offsets which are sufficient to reduce impacts to levels below the significant air quality impact level within the nonattainment area or maintenance area;~~

~~(c) Within an ozone nonattainment area or ozone maintenance area, owners or operators of proposed major sources or major modifications which emit VOCs or nitrogen oxides shall provide emission reductions at a 1.1 to 1 ratio (i.e., demonstrate a 10% new reduction); and~~

~~(d) Within 30 kilometers of an ozone nonattainment area or ozone maintenance area, owners or operators of proposed major sources or major modifications which emit VOCs or nitrogen oxides shall provide reductions which are equivalent or greater than the proposed emission~~

~~increases unless the applicant demonstrates that the proposed emissions will not impact the nonattainment area or maintenance area.~~

~~(4) The emission reductions shall be of the same type of pollutant as the emissions from the new source or modification. Sources of PM_{10} shall be offset with particulate in the same size range.~~

~~(5) The emission reductions shall be contemporaneous, that is, the reductions shall take effect prior to the time of startup but not more than two years prior to the submittal of a complete permit application for the new source or modification. This time limitation may be extended through banking, as provided for in OAR 340 division 268, Emission Reduction Credit Banking. In the case of replacement facilities, the Department may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that net emissions are not increased during that time period.~~

~~(6) Special Requirements for Medford Maintenance Area for Ozone. Requirements for NO_x offsets in Section (3) of this rule do not apply to proposed major sources or major modifications in the Medford Maintenance Area for Ozone or within 30 kilometers of the Medford Maintenance Area for Ozone. VOC offsets in the Medford Maintenance Area must be equal to or greater than the proposed increase.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-20-47.]~~
~~Stat. Auth.: ORS 468.020~~
~~Stats. Implemented: ORS 468A.025~~
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & cf. 4-18-83; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0260; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1970 renumbered to 340-225-0090

340-224-0100
Fugitive and Secondary Emissions

Fugitive emissions ~~shall be~~ are included in the calculation of emission rates of all air contaminants. Fugitive emissions are subject to the same control requirements and analyses required for emissions from identifiable stacks or vents. Secondary emissions ~~shall~~ are not ~~be~~ included in calculations of potential emissions ~~which~~ that are made to determine if a proposed source or modification is major. Once a source or modification is identified as being major, secondary emissions ~~shall be~~are added to the primary emissions and become subject to the air quality impact analysis requirements in this division and OAR 340 division 225~~these rules~~.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. &cert. ef. 9-24-93; Renumbered from 340-020-0270; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1990

340-224-0110
Visibility Impact

~~Proposed major sources or major modifications located in Attainment, Unclassified, Nonattainment or Maintenance Areas must meet the following visibility impact requirements.~~

~~(1) Visibility impact analysis:~~

~~(a) The owner or operator of a proposed major source or major modification shall demonstrate that the potential to emit any pollutant at a significant emission rate in conjunction with all other applicable emission increases or decreases, including secondary emissions, permitted since January 1, 1984, shall not cause or contribute to significant impairment of visibility within any Class I area;~~

~~(b) Owners or operators of proposed sources which are exempted under OAR 340-224-0070(3) are not required to complete a visibility impact assessment to demonstrate that the sources do not~~

~~cause or contribute to significant visibility impairment within a Class I area. The visibility impact assessment for sources exempted under this section shall be completed by the Department;~~

~~(c) The owner or operator of a proposed major source or major modification shall submit all information necessary to perform any analysis or demonstration required by these rules pursuant to OAR 340-224-0030(1).~~

~~(2) Air quality models. All estimates of visibility impacts required under this rule shall be based on the models on file with the Department. Equivalent models may be substituted if approved by the Department. The Department will perform visibility modeling of all sources with potential emissions less than 100 tons/year of any individual pollutant and locating closer than 30 Km to a Class I area, if requested.~~

~~(3) Determination of significant impairment: The results of the modeling shall be sent to the affected land managers and the Department. The land managers may, within 30 days following receipt of the source's visibility impact analysis, determine whether or not impairment of visibility in a Class I area would result. The Department will consider the comments of the Federal Land Manager in its consideration of whether significant impairment will result. Should the Department determine that impairment would result, a permit for the proposed source will not be issued.~~

~~(4) Visibility monitoring:~~

~~(a) The owner or operator of a proposed major source or major modification which emit more than 250 tons per year of Particulate Matter, SO_2 or NO_2 shall submit with the application, subject to approval of the Department, an analysis of visibility in or adjacent to the Class I area impacted by the proposed project. As necessary to establish visibility conditions within the Class I area, the analysis shall include a collection of continuous visibility monitoring data for all pollutants emitted by the source that could potentially impact Class I area visibility. Such data shall relate to and shall have been gathered over the year preceding receipt of the complete application, unless the owner or operator demonstrates that data gathered over a shorter portion of the year for another representative year would be adequate to determine that the source or major modification would not cause or contribute to significant impairment. Where applicable, the owner or operator may demonstrate that existing visibility monitoring data may be suitable. Pursuant to the requirements of these rules, the owner or operator of the source shall submit, for the approval of the Department, a preconstruction visibility monitoring plan;~~

~~(b) The owner or operator of a proposed major source or major modification shall, after construction has been completed, conduct such visibility monitoring as the Department may require as a permit condition to establish the effect which emissions of pollutant may have, or is having, on visibility conditions with the Class I area being impacted.~~

~~(5) Additional impact analysis: The owner or operator of a proposed major source or major modification subject to OAR 340-224-0070(6)(a) shall provide an analysis of the impact to visibility that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or major modification.~~

~~(6) Notification of permit application:~~

~~(a) Where a proposed major source modification impacts or may impact visibility within a Class I area, the Department shall provide written notice to the EPA and to the appropriate Federal Land Manager within 30 days of the receipt of such permit application. Such notification shall include a copy of all information relevant to the permit application, including analysis of~~

~~anticipated impacts on Class I area visibility. Notification will also be sent at least 30 days prior to Department Public Hearings and subsequently of any preliminary and final actions taken with regard to such application;~~

~~(b) Where the Department receives advance notification of a permit application of a source that may affect Class I area visibility, the Department will notify all affected Federal Land Managers within 30 days of such advance notice;~~

~~(c) The Department will, during its review of source impacts on Class I area visibility pursuant to this rule, consider any analysis performed by the Federal Land Manager that is provided within 30 days of notification required by subsection (a) of this section. If the Department disagrees with the Federal Land Manager's demonstration, the Department will include a discussion of the disagreement in the Notice of Public Hearing;~~

~~(d) The Federal Land Manager shall be provided an opportunity in accordance with OAR 340-224-0030(3) to present a demonstration that the emissions from the proposed source or modification would have an adverse impact on visibility of any Federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment for a Class I area. If the Department concurs with such demonstration, the permit shall not be issued.~~

[**NOTE**: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 18-1984, f. & ef. 10-16-84; DEQ 14-1985, f. & ef. 10-16-85; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0276; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2000

DIVISION 225

AIR QUALITY ANALYSIS REQUIREMENTS

340-225-0010
Purpose

This division contains the definitions and requirements for air quality analysis referred to in OAR 340 divisions 200 through 268. It does not apply unless a rule in another division refers the reader here. For example, divisions 222 (Stationary Source Plant Site Emissions Limits) and 224 (Major New Source Review) refer the reader to provisions in this division for specific air quality analysis requirements.

340-225-0020
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) "Allowable Emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR parts 60 and 61;

(b) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition.

(2) "Background Light Extinction" means the reference levels (Mm^{-1}) shown in the estimates of natural conditions as referenced in the FLAG to be representative of the PSD Class I or Class II area being evaluated.

(3)"Baseline Concentration" means:

(a) Except as provided in subsection (c), the ambient concentration level for sulfur dioxide and PM10 that existed in an area during the calendar year 1978. If no ambient air quality data is available in an area, the baseline concentration may be estimated using modeling based on actual emissions for 1978. Actual emission increases or decreases occurring before January 1, 1978 must be included in the baseline calculation, except that actual emission increases from any source or modification on which construction commenced after January 6, 1975 must not be included in the baseline calculation;

(b) The ambient concentration level for nitrogen oxides that existed in an area during the calendar year 1988.

(c) For the area of northeastern Oregon within the boundaries of the Umatilla, Wallowa-Whitman, Ochoco, and Malheur National Forests, the ambient concentration level for PM10 that existed during the calendar year 1993. The Department may allow the source to use an earlier time period if the Department determines that it is more representative of normal emissions.

(4) "Competing PSD Increment Consuming Source Impacts" means the total modeled concentration above the modeled Baseline Concentration resulting from increased emissions of all other sources since the baseline concentration year that are within the Range of Influence of the source in question. Actual Emissions may be used if this analysis includes all emissions changes from all point, area, and mobile sources, otherwise Allowable Emissions must be used.

(5) "Competing NAAQS Source Impacts" means total modeled concentration resulting from allowable emissions of all other sources that are within the Range of Influence of the source in question.

(6) "FLAG " refers to the Federal Land Managers' Air Quality Related Values Work Group Phase I Report. See 66 Federal Register 2, January 3, 2001 at 382-383.

(7) "General Background Concentration" means impacts from natural sources and unidentified sources that were not explicitly modeled. The Department may determine this as site-specific ambient monitoring or representative ambient monitoring from another location.

(8) "Nitrogen Deposition" means the sum of anion and cation nitrogen deposition expressed in terms of the mass of total elemental nitrogen being deposited. As an example, Nitrogen Deposition for NH_4NO_3 is 0.3500 times the weight of NH_4NO_3 being deposited.

(9) "Ozone Precursor Significant Impact Distance" means:

(a) 30 kilometers for sources with permit applications deemed complete before January 1, 2003 that would impact the nonattainment area or maintenance area and have proposed emissions increases above the Significant Emission Rates for VOCs or NOx. These emissions increases are quantified relative to the baseline year or the date of the last PSD approval.

(b) For sources with permit applications deemed complete on or after January 1, 2003, the distance in kilometers from the source being evaluated to the closest boundary of an ozone nonattainment area or ozone maintenance area and is defined as follows. This equation only applies to sources that are would impact ozone concentrations in the nonattainment area or maintenance area and have proposed emissions increases above the Significant Emission Rates for VOCs or NOx.

$D = [(Q)/40]*30$ km. (30 km. $<=$ D $<=$ 100 km.)

where:

Q = the larger of NOx or VOC emissions increase from the source being evaluated in tons/year. This emissions increase is quantified relative to the baseline year or the date of the last PSD approval occurring since the baseline year or the date of the last PSD approval.

D = the Ozone Precursor Significant Impact Distance in kilometers.

The minimum value for D is 30 kilometers when D is calculated to be less than 30 kilometers.

The maximum value for D is 100 kilometers when D is calculated to exceed 100 kilometers.

An applicant may demonstrate to the Department that the source or proposed source would not significantly impact a nonattainment area or maintenance area. This demonstration may be based on an analysis of major topographic features, dispersion modeling, meteorological conditions, or other factors. If the Department determines that the source or proposed source would not significantly impact the nonattainment area or maintenance area under high ozone conditions, the Ozone Precursor Significant Impact Distance is zero kilometers.

(10) "Range of Influence" means:

(a) For PSD Class II and Class III areas, the Range of Influence of a competing source (in kilometers) is defined by:

ROI (km) = E (tons/year)/K

where:

ROI is the distance in kilometers from the source being evaluated to the location of a potential competing source in kilometers plus the radius of the Source Impact Area.

E is the emission rate of the competing source in tons/year.

K is a constant defined by pollutant and is defined in the table below:

Pollutant	PM10	SOx	NOx	CO	Lead
K	5	5	10	40	0.15

(b) For PSD Class I areas, the Range of Influence of a competing source includes emissions from all sources that occur within the modeling domain of the source being evaluated. The Department determines the modeling domain on a case-by-case basis.

(11) "Source Impact Area" means a circular area with a radius extending from the source to the largest distance to where predicted impacts from the source or modification equal or exceed the Significant Air Quality Impact levels set out in Table 1 of OAR 340, division 200. This definition only applies to PSD Class II areas and is not intended to limit the distance for PSD Class I modeling.

(12) "Sulfur Deposition" means the sum of anion and cation sulfur deposition expressed in terms of the total mass of elemental sulfur being deposited. As an example, sulfur deposition for (NH4)2SO4 is 0.2427 times the weight of (NH4)2SO4 being deposited.

340-225-0030
Procedural Requirements

Information Required. In addition to the requirements defined in OAR 340-216-0040, the owner or operator of a source (where required by divisions 222 or 224) must submit all information necessary to perform any analysis or make any determination required under these rules. Such information must include, but is not limited to:

(1) Emissions data for all existing and proposed emission points from the source or modification. This data must represent maximum emissions for the following averaging times by pollutant:

PM10	24 hours, annual
Sulfur Oxides	3 hour, 24 hours, annual
Nitrogen Oxides	annual
Carbon Monoxide	1 hour, 8 hours, annual
Lead	annual quarterly, annual

(2) Stack parameter data (height above ground, exit diameter, exit velocity, and exit temperature data for all existing and proposed emission points from the source or modification,

(3) An analysis of the air quality and visibility impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts; and

(4) An analysis of the air quality and visibility impacts, and the nature and extent of all commercial, residential, industrial, and other source emission growth, that has occurred since January 1, 1978, in the area the source or modification would significantly affect.

340-225-0040
Air Quality Models

All modeled estimates of ambient concentrations required under this rule must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, "Guidelines on Air Quality Models (Revised) " (July 1, 2000). Where an air quality impact model specified in 40 CFR Part 51, Appendix W is inappropriate, the methods published in the FLAG are generally preferred for analyses in PSD Class I areas. Where an air quality impact model specified in 40 CFR Part 51, Appendix W is inappropriate in PSD Class II and III areas, the model may be modified or another model substituted. Any change or substitution from models specified in 40 CFR Part 51, Appendix W is subject to notice and opportunity for public comment and must receive prior

written approval from the Department and the EPA. Where necessary, methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)" (U.S. Environmental Protection Agency, 1984) provide guidance in determining the comparability of models.

340-225-0050
Requirements for Analysis in PSD Class II and Class III Areas

Modeling: For determining compliance with the NAAQS and PSD Increments in PSD Class II and Class III areas, the following methods must be used:

(1) A single source impact analysis is sufficient to show compliance with standards and increments if modeled impacts from the source being evaluated are less than the Significant Air Quality Impact levels specified in OAR 340-200-0020, Table 1 for all pollutants.
(2) If the above requirement is not satisfied, the owner or operator of a proposed source or modification being evaluated must perform competing source modeling as follows:
  (a) For demonstrating compliance with the PSD Increments (as defined in OAR 340-202-0210, Table 1), the owner or operator of a proposed source or modification must show that modeled impacts from the proposed increased emissions (above the modeled Baseline Concentration) plus Competing PSD Increment Consuming Source Impacts (above the modeled Baseline Concentration) are less than the PSD increments for all averaging times.
  (b) For demonstrating compliance with the NAAQS, the owner or operator of a proposed source must show that the total modeled impacts plus total Competing NAAQS Source Impacts plus General Background Concentrations are less than the NAAQS for all averaging times.
(3) Additional Impact Modeling:
  (a) When referred to this rule by divisions 222 or 224, the owner or operator of a source must provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification, and general commercial, residential, industrial and other growth associated with the source or modification. As a part of this analysis, deposition modeling analysis is required for sources emitting heavy metals above the significant emission rates as defined in OAR 340-200-0020, Table 2. Concentration and deposition modeling may also be required for sources emitting other compounds on a case-by-case basis;
  (b) The owner or operator must provide an analysis of the air quality concentration projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.
(4) Air Quality Monitoring:
  (a)(A) When referred to this rule by divisions 222 or 224, the owner or operator of a source must submit with the application an analysis of ambient air quality in the area impacted by the proposed project. This analysis, which is subject to the Department's approval, must be conducted for each pollutant potentially emitted at a significant emission rate by the proposed source or modification. The analysis must include continuous air quality monitoring data for any pollutant that may be emitted by the source or modification, except for volatile organic compounds. The data must relate to the year preceding receipt of the complete application and must have been gathered over the same time period. The Department may allow the owner or operator to demonstrate that data gathered over some other time period would be adequate to determine that the source or modification would not cause or contribute to a violation of an ambient air quality standard or any applicable pollutant increment. Pursuant to the requirements of these rules, the owner or operator must submit for the Department's approval, a preconstruction air quality monitoring plan.

This plan must be submitted in writing at least 60 days prior to the planned beginning of monitoring and approved in writing by the Department before monitoring begins.

(B) Required air quality monitoring must be conducted in accordance with 40 CFR 58 Appendix B, "Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring" (July 1, 2000) and with other methods on file with the Department.

(C) The Department may exempt the owner or operator of a proposed source or modification from preconstruction monitoring for a specific pollutant if the owner or operator demonstrates that the air quality impact from the emissions increase would be less than the amounts listed below **or** that modeled competing source concentration (plus General Background Concentration) of the pollutant within the Source Impact Area are less than the following significant monitoring concentrations:

(i) Carbon monoxide - 575 ug/m^3, 8 hour average;

(ii) Nitrogen dioxide - 14 ug/m^3, annual average;

(iii) PM10 - 10 ug/m3, 24 hour average.

(iv) Sulfur dioxide - 13 ug/m3, 24 hour average;

(v) Ozone - Any net increase of 100 tons/year or more of VOCs from a source or modification subject to PSD requires an ambient impact analysis, including the gathering of ambient air quality data. However, requirement for ambient air monitoring may be exempted if existing representative monitoring data shows maximum ozone concentrations are less than 50% of the ozone NAAQS based on a full season of monitoring;

(vi) Lead - 0.1 ug/m^3, 24 hour average;

(vii) Fluorides - 0.25 ug/m^3, 24 hour average;

(viii) Total reduced sulfur - 10 ug/m^3, 1 hour average;

(ix) Hydrogen sulfide - 0.04 ug/m^3, 1 hour average;

(x) Reduced sulfur compounds - 10 ug/m^3, 1 hour average.

(D) The Department may allow the owner or operator of a source (where required by divisions 222 or 224) to substitute post construction monitoring for the requirements of (4)(a)(A) for a specific pollutant if the owner or operator demonstrates that the air quality impact from the emissions increase would not cause or contribute to an exceedance of any air quality standard. This analysis must meet the requirements of 340-225-0050 (2)(b) and must use representative or conservative General Background Concentration data.

(E) When PM10 preconstruction monitoring is required by this section, at least four months of data must be collected, including the season(s) the Department judges to have the highest PM10 levels. PM10 must be measured in accordance with 40 CFR part 50, Appendix J (July 1, 1999). In some cases, a full year of data will be required.

(b) After construction has been completed, the Department may require ambient air quality monitoring as a permit condition to establish the effect of emissions, other than volatile organic compounds, on the air quality of any area that such emissions could affect.

340-225-0060
Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas

For determining compliance with standards and increments in PSD Class I areas, the following methods must be used:

(1)Before January 1, 2003, the owner or operator of a source (where required by divisions 222 or 224) must model impacts and demonstrate compliance with standards and increments on all PSD Class I areas that may be affected by the source or modification.

(2) On or after January 1, 2003, the owner or operator of a source (where required by divisions 222 or 224) must meet the following requirements:

(a) A single source impact analysis will be sufficient to show compliance with increments if modeled impacts from the source being evaluated are demonstrated to be less than the impact levels specified in Table I below.

Table I
Significant Impact Levels for PSD Class I Areas

Pollutant	Averaging Time	PSD Class I Significant Impact Level
PM10	24 hour	0.30 μg/m3
PM10	Annual	0.20 μg/m3
SO2	3-hour	1.0 μg/m3
SO2	24-hour	0.20 μg/m3
SO2	Annual	0.10 μg/m3
NO2	Annual	0.10 μg/m3

(b) If the above requirement is not satisfied, the owner or operator must also show that the increased source impacts (above Baseline Concentration) plus Competing PSD Increment Consuming Source Impacts are less than the PSD increments for all averaging times

(c) A single source impact analysis will be sufficient to show compliance with standards if modeled impacts from the source being evaluated are demonstrated to be less than the impact levels specified in OAR 340-200-0020, Table 1 for all pollutants.

(d) If the requirement of (4) is not satisfied, and background monitoring data for each PSD Class I area shows that the NAAQS is more controlling than the PSD increment then the source must also demonstrate compliance with the NAAQS by showing that their total modeled impacts plus total modeled Competing NAAQS Source Impacts plus General Background Concentrations are less than the NAAQS for all averaging times.

340-225-0070
Requirements for Demonstrating Compliance with AQRV Protection

(1) Sources that are not Federal Major Sources are exempt from the requirements of the remainder of this rule.

(2) Notice of permit application for actions subject to the requirements of divisions 222 and 224:

(a) If a proposed major source or major modification could impact air quality related values (including visibility) within a Class I area, the Department will provide written notice to the EPA and to the appropriate Federal Land Manager within 30 days of receiving such permit application. The notice will include a copy of all information relevant to the permit application, including analysis of anticipated impacts on Class I area air quality related values (including visibility). The Department will also provide at least 30 days notice to EPA and the appropriate

Federal Land Manager of any scheduled public hearings and preliminary and final actions taken on the application;

(b) If the Department receives advance notice of a permit application for a source that may affect Class I area visibility, the Department will notify all affected Federal Land Managers within 30 days of receiving the advance notice;

(c) During its review of source impacts on Class I area air quality related values (including visibility) pursuant to this rule, the Department will consider any analysis performed by the Federal Land Manager that is received by the Department within 30 days of the notice required by subsection (a). If the Department disagrees with the Federal Land Manager's demonstration, the Department will include a discussion of the disagreement in the Notice of Public Hearing;

(d) As a part of the notification required in OAR 340-209-0060, the Department will provide the Federal Land Manager an opportunity to demonstrate that the emissions from the proposed source or modification would have an adverse impact on air quality related values (including visibility) of any federal mandatory Class I area. This adverse impact determination may be made even if there is no demonstration that a Class I maximum allowable increment has been exceeded. If the Department agrees with the demonstration, it will not issue the permit.

(3) Visibility impact analysis requirements:

(a) If divisions 222 or 224 require a visibility impact analysis, the owner or operator must demonstrate that the potential to emit any pollutant at a significant emission rate in conjunction with all other applicable emission increases or decreases, including secondary emissions, permitted since January 1, 1984 and other increases or decreases in emissions, will not cause or contribute to significant impairment of visibility on any Class I area. The Department also encourages the owner or operator to demonstrate that these same emission increases or decreases will not cause or contribute to significant impairment of visibility on the Columbia River Gorge National Scenic Area (if it is affected by the source);

(b) The owner or operator must submit all information necessary to perform any analysis or demonstration required by these rules pursuant to OAR 340-224-0030(1).

(c) Determination of significant impairment: The results of the modeling must be sent to the affected Federal Land Managers and the Department. The land managers may, within 30 days following receipt of the source's visibility impact analysis, determine whether or not significant impairment of visibility in a Class I area would result. The Department will consider the comments of the Federal Land Manager in its consideration of whether significant impairment will result. If the Department determines that impairment would result, it will not issue a permit for the proposed source.

(4) Types of visibility modeling required. For receptors in PSD Class I areas within the PSD Class I Range of Influence, a plume blight analysis or regional haze analysis is required.

(5) Criteria for visibility impacts:

(a) The owner or operator of a source (where required by divisions 222 or 224) is encouraged to demonstrate that their impacts on visibility satisfy the guidance criteria as referenced in the FLAG.

(b) If visibility impacts are a concern, the Department will consider comments from the Federal Land Manager when deciding whether significant impairment will result. Emission offsets may also be considered. If the Department determines that impairment would result, it will not issue a permit for the proposed source.

(6) Deposition modeling may be required for receptors in PSD Class I areas where visibility modeling is required. This may include, but is not limited to an analysis of Nitrogen Deposition and Sulfur Deposition.

(7) Visibility monitoring:

(a) If divisions 222 or 224 require visibility monitoring data, the owner or operator must use existing data to establish existing visibility conditions within Class I areas as summarized in the FLAG Report.

(b) After construction has been completed the owner or operator must conduct such visibility monitoring as the Department requires as a permit condition to establish the effect of the pollutant on visibility conditions within the impacted Class I area.

(8) Additional impact analysis: the owner or operator subject to OAR 340-224-0060(3) or OAR 340-224-0070(2) must provide an analysis of the impact to visibility that would occur as a result of the proposed source or modification and general commercial, residential, industrial, and other growth associated with the source or major modification.

(9) If the Federal Land Manager recommends and the Department agrees, the Department may require the owner or operator to analyze the potential impacts on other Air Quality Related Values and how to protect them. Procedures from the FLAG report should be used in this recommendation. Emission offsets may also be used. If the Federal Land Manager finds that significant impairment would result from the proposed activities and Department agrees, the Department will not issue a permit for the proposed source.

340-225-0090

Requirements for Demonstrating a Net Air Quality Benefit

Demonstrations of net air quality benefit for offsets must include the following:

(1) Except as provided in section (4) of this rule, if divisions 222 or 224 require a demonstration of a net air quality benefit for offsets, the owner or operator:

(a) Within a designated nonattainment area or maintenance area for pollutants other than ozone, offsets for PM10, sulfur dioxide, carbon monoxide, nitrogen dioxide, lead, and other pollutants may be from inside or outside the nonattainment or maintenance area. Emission offsets for new or modified sources in a nonattainment area must come from sources located within the same nonattainment area and must be at least one-for-one and sufficient to demonstrate reasonable further progress. These emission offsets must provide for a net air quality benefit, and must show an actual improvement in air quality as demonstrated by the modeling analysis. The demonstration must show that there will be a reduction in modeled levels at a majority of modeling receptors and impacts below the significant air quality impact levels at all other receptors. The Department may also require that air quality modeling be conducted according to the procedures specified in this division for this demonstration.

(b) Within an ozone nonattainment or maintenance area, owners or operators of sources (where required by divisions 222 or 224) that emit VOC or nitrogen oxides must provide pollutant-specific emission reductions at a 1.1 to 1 ratio (i.e., demonstrate a 10% new reduction). Offsets for VOC and nitrogen oxides must be within the same nonattainment or maintenance area as the proposed source or from upwind nonattainment areas if emissions from those areas impact the area in which the new or modified source is locating and the classification of the upwind area is equal to or more serious than the area in question. The offsets must be appropriate in terms of short term, seasonal, and yearly time periods to mitigate the impacts of the proposed emissions.

(c) Outside a designated ozone nonattainment or maintenance area, for VOC and NOx:

(A) For sources with permit applications deemed complete before January 1, 2003 that are capable of impacting the nonattainment area or maintenance area and have proposed emissions increases above the Significant Emission Rates for VOCs or NOx occurring since the baseline year or the date of the last PSD approval: Owners or operators of such sources within 30 kilometers of an ozone nonattainment area or ozone maintenance area shall provide reductions which are

equivalent or greater than the proposed emission increases unless the applicant demonstrates that the proposed emissions will not impact the nonattainment area or maintenance area.

(B) For sources with permit applications deemed complete on or after January 1, 2003 that are capable of impacting the nonattainment area or maintenance area and have proposed emissions increases above the Significant Emission Rates for VOCs or NOx occurring since the baseline year or the date of the last PSD approval: Owners or operators of such sources within 100 kilometers of an ozone nonattainment or maintenance area, that emit VOC or nitrogen oxides must provide offsets for both VOC and NOx within the nonattainment or maintenance area in the following amounts: required offset = [PSEL increase over the netting basis – ((40/30) * d] tons per year, where "d" is the distance the source is from the nonattainment or maintenance area in kilometers. VOC and NOx emissions from sources more than 100 kilometers from the area are deemed to not impact the area.

(d) Outside a designated nonattainment area or maintenance area, for pollutants other then VOC, owners or operators of proposed sources or modifications, must demonstrate that the pollutants will not have a significant air quality impact on the nonattainment area or maintenance area or must provide emission offsets sufficient to reduce impacts to levels below the significant air quality impact level within the nonattainment area or maintenance area. This demonstration may require that air quality modeling be conducted according to the procedures specified in this division; and

(e) In the Medford-Ashland AQMA, emissions offsets for PM10, must provide reductions in PM10 emissions equal to 1.2 times the emissions increase from the new or modified sources.

(2) The emission reductions must be of the same type of pollutant as the emissions from the new source or modification. Sources of PM_{10} must be offset with particulate in the same size range.

(3) The emission reductions must be contemporaneous, that is, the reductions must take effect before the time of startup but not more than two years before the submittal of a complete permit application for the new source or modification. This time limitation may be extended through banking, as provided for in OAR 340 division 268, Emission Reduction Credit Banking. In the case of replacement facilities, the Department may allow simultaneous operation of the old and new facilities during the startup period of the new facility if net emissions are not increased during that time period. Any emission reductions must be federally enforceable at the time of the issuance of the permit.

(4) Special Requirements for Medford Maintenance Area for Ozone. Requirements for NO_x offsets in Section (1) of this rule do not apply to proposed sources or modifications located in or near this area.

(5) Offsets required under this rule must meet the requirements of Emissions Reduction Credits in OAR 340 division 268.

[**NOTE**: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0260; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1970; renumbered from 340-224-0090

DIVISION 226

GENERAL EMISSION STANDARDS

[**NOTE:** Administrative Order DEQ 16 repealed previous rules OAR 340-021-0005 through 340-021-0031 (consisting of AP 1, filed 1-14-57; and SA 16, filed 2-13-62).]

340-226-0010
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) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, pollen, vapor, soot, carbon, acid or particulate matter, or any combination thereof.~~

~~(2) "Fugitive Emissions" means emissions of any air contaminant that escape to the atmosphere from any point or area not identifiable as a stack, vent, duct, or equivalent opening.~~

(~~3~~1) "New source" means, for purposes of OAR 340-226-0210, any air contaminant source installed, constructed, or modified after June 1, 1970.

(42) "Particulate matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with OAR 340-212-0120 and 212-0140. Sources with exhaust gases at or near ambient conditions may be tested with DEQ Method 5 or DEQ Method 8, as approved by the Department. Direct heat transfer sources ~~shall~~ must be tested with DEQ Method 7; indirect heat transfer combustion sources and all other non-fugitive emissions sources not listed above ~~shall~~ must be tested with DEQ Method 5 or an equivalent method approved by the Department;

(~~5~~3) "Refuse" means unwanted matter.

(~~6~~4) "Refuse burning equipment" means a device designed to reduce the volume of solid, liquid, or gaseous refuse by combustion.

(~~7~~5) "Standard conditions" means a temperature of 68° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(~~8~~6) "Standard cubic foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from fuel or refuse burning, "standard cubic foot" also implies adjustment of gas volume to that which would result at a concentration of 12% carbon dioxide or 50% excess air.

[**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.]

[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 & ORS 468A
Stats. Implemented: ORS 468.020 & ORS 468A.025
Hist.: DEQ 16, f. 6-12-70, ef. 7-11-70; DEQ 1-1984, f. & cf. 1-16-84; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0005

Highest and Best Practicable Treatment and Control

340-226-0100
Policy and Application

(1) As specified in OAR 340-226-0110 through 340-226-0140 and sections (2) through (5) of this rule, the highest and best practicable treatment and control of air contaminant emissions ~~shall~~ must in every case be provided so as to maintain overall air quality at the highest possible levels, and to maintain contaminant concentrations, visibility reduction, odors, soiling and other deleterious factors at the lowest possible levels. In the case of new sources of air contamination, particularly those located in areas with

existing high air quality, the degree of treatment and control provided ~~shall~~ must be such that degradation of existing air quality is minimized to the greatest extent possible.

(2) A source ~~shall be~~is ~~deemed to be~~ in compliance with section (1) of this rule if the source is in compliance with all other applicable emission standards and requirements contained in Divisions 200 through 268 of this Chapter.

(3) The Commission may adopt additional rules as necessary to ensure that the highest and best practicable treatment and control is provided as specified in section (1) of this rule. Such rules may include, but are not limited to, requirements:

(a) Applicable to a source category, pollutant or geographic area of the state;

(b) Necessary to protect public health and welfare for air contaminants that are not otherwise regulated by the Commission; or

(c) Necessary to address the cumulative impact of sources on air quality.

(4) The Commission encourages the owner or operator of a source to further reduce emissions from the source beyond applicable control requirements where feasible.

(5) Nothing in OAR 340-226-0100 through 340-226-0140 revokes or modifies any existing permit term or condition unless or until the Department revokes or modifies the term or condition by a permit revision. ~~Adoption of OAR 340-226-0100 through 340-226-0140 is not intended to withdraw authority for application of any existing policy for new sources of toxic and hazardous air pollutants to a federal operating permit program source until the effective date of the program.~~

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0001; DEQ19-1993, f. 11-4-93 & cert. ef. 1-1-94; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0600

340-226-0110
Pollution Prevention

The owner and operator of a source ~~is~~ are encouraged to take into account the overall impact of the control methods selected, considering risks to all environmental media and risks from all affected products and processes. The owner or operator of a source is encouraged, but not required, to ~~utilize~~ use the following hierarchy in controlling air contaminant emissions:

(1) Modify the process, raw materials or product to reduce the toxicity and~~/or~~ quantity of air contaminants generated;

(2) Capture and reuse air contaminants;

(3) Treat to reduce the toxicity and~~/or~~ quantity of~~f~~ air contaminants released; or

(4) Otherwise control emissions~~ of air contaminants~~.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ19-1993, f. 11-4-93 & cert. ef. 1-1-94; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0610

340-226-0120
Operating and Maintenance Requirements

(1) Operational, Maintenance and Work Practice Requirements:

(a) Where the Department has determined that specific operational, maintenance, or work practice requirements are appropriate to ensure that the owner or operator of a source is operating and maintaining air pollution control equipment and emission reduction processes at the highest reasonable efficiency and effectiveness to minimize emissions, the Department ~~shall~~ will establish such requirements by permit condition or notice of construction approval;

(b) Operational, maintenance, and work practice requirements include:

(A) Flow rates, temperatures, and other physical or chemical parameters related to the operation of air pollution control equipment and emission reduction processes;

(B) Monitoring, record-keeping, testing, and sampling requirements and schedules;

(C) Maintenance requirements and schedules; ~~or~~and

(D) Requirements that components of air pollution control equipment be functioning properly.

(2) Emission Action Levels:

(a) Where the Department has determined that specific operational, maintenance, or work practice requirements considered or required under section (1) of this rule are ~~not~~ insufficient to ensure that the owner or operator ~~of a source~~ is operating and maintaining air pollution control equipment and emission reduction processes at the highest reasonable efficiency and effectiveness, the Department may establish, by permit or Notice of Construction approval, specific emission action levels in addition to applicable emission standards. An emission action level ~~shall~~ will be established ~~at a level which~~that ensures ~~that~~ an air pollution control equipment or emission reduction process is operated at the highest reasonable efficiency and effectiveness to minimize emissions;

(b) If emissions from a source equal or exceed the applicable emission action level, the owner or operator of the source ~~shall~~must:

(A) Take corrective action as expeditiously as practical to reduce emissions to below the emission action level;

(B) Maintain records at the plant site for two years which document the exceedance, the cause of the exceedance, and the corrective action taken;

(C) Make such records available for inspection by the Department during normal business hours; and

(D) Submit such records to the Department upon request.

(c) The Department ~~shall~~ will revise an emission action level if it finds that such level does not reflect the highest reasonable efficiency and effectiveness of air pollution control equipment and emission reduction processes;

(d) An exceedance of an emission action level ~~which~~ that is more stringent than an applicable emission standard ~~shall~~ is not ~~be~~ a violation of such emission standard.

(3) In determining the highest reasonable efficiency and effectiveness for purposes of this rule, the Department ~~shall take into consideration~~considers operational variability and the capability of air pollution control equipment and emission reduction processes. If the performance of air pollution control equipment and emission reduction processes during start-up or shut-down differs from the performance under normal operating conditions, the Department ~~shall~~ determines the highest reasonable efficiency and effectiveness separately for these operating modes.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ19-1993, f. 11-4-93 & cert. ef. 1-1-94; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0620

340-226-0130

Typically Achievable Control Technology(TACT)

(1) Existing Sources. ~~The Department shall require a~~An existing emissions unit ~~to~~ must meet TACT for existing sources if:

(a) The emissions unit~~, for the pollutants emitted,~~ is not already subject to emission standards under OAR 340-232-0010 through 340-232-0240, OAR 340 Divisions 230, 234, 236, or 238, OAR 340-240-0110 through 340-240-0180, 340-240-0310(1), OAR 340-240-0320 through 340-240-0430, or OAR 340 Division 224 ~~at the time TACT is required~~for the pollutant emitted;

(b) The source is required to have a permit;

(c) The emissions unit has emissions of criteria pollutants equal to or greater than 5 tons per year of particulate or 10 tons per year of any gaseous pollutant; and

(d) The Department determines that air pollution control equipment and emission reduction processes in use for the emissions unit do not represent TACT, and that further emission control is necessary to address documented nuisance conditions, address an increase in emissions, ensure that the source is in compliance with other applicable requirements, or ~~to~~ protect public health or welfare or the environment.

(2) New and Modified Sources. ~~The Department shall require a~~A new or modified emissions unit ~~to~~ must meet TACT for new or modified sources if:

(a) The new or modified emissions unit~~, for the pollutants to be emitted,~~ is not subject to New Source Review requirements in OAR 340 Division 224, an applicable Standard of Performance for New Stationary Sources in OAR 340 Division 238, OAR 340-240-0110 through 340-240-0180, 340-240-0310(1), OAR 340-240-320 through 340-240-0430, or any other standard applicable only to new or modified sources in OAR 340 Divisions 230, 234, 236, or 238 ~~at the time TACT is required~~for the pollutant emitted;

(b) The source is required to have a permit;

(c) The emissions unit:

(A) If new, would have emissions of any criteria pollutant equal to or greater than 1 ton per year in any area, or of PM_{10} equal to or greater than 500 pounds per year in a PM_{10} nonattainment area; or

(B) If modified, would have an increase in emissions from the permitted level for the emissions unit of any criteria pollutant equal to or greater than 1 ton per year in any area, or of PM_{10} equal to or greater than 500 pounds per year in a PM_{10} nonattainment area; and

(d) The Department determines that the proposed air pollution control equipment and emission reduction processes do not represent TACT.

(3) ~~Prior to~~Before making a TACT determination, the Department ~~shall~~ will notify the owner or operator of a source ~~of its intent~~that it intends to make such a determination ~~utilizing~~ using information known to the Department. The owner or operator of the source may supply the Department with additional information by a reasonable date set by the Department ~~for use in making the TACT determination~~.

(4) The owner or operator of a source subject to TACT ~~shall~~ must submit, by a reasonable date established by the Department, compliance plans and specifications ~~by a reasonable date established by the Department~~ for the Department's approval ~~by the Department~~. The owner or operator of the source ~~shall~~ must demonstrate compliance in accordance with a method and compliance schedule approved by the Department.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468.020 & ORS 468A.025
Hist.: DEQ19-1993, f. 11-4-93 & cert. ef. 1-1-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0630

340-226-0140
Additional Control Requirements for Stationary Sources of Air Contaminants

In addition to other applicable requirements, ~~T~~the Department ~~shall~~ may establish control requirements ~~in addition to otherwise applicable requirements~~ by permit if necessary as specified in sections (1) through (5) of this rule:

(1) Requirements ~~shall~~ will be established to prevent violation of an Ambient Air Quality Standard caused or projected to be caused substantially by emissions from the source as determined by modeling, monitoring, or a combination thereof. For existing sources, the Department will conduct monitoring to confirm a violation of an Ambient Air Quality Standard ~~shall be confirmed by monitoring conducted by the Department~~.

(2) Requirements ~~shall~~ will be established to prevent significant impairment of visibility in Class I areas caused or projected to be caused substantially by a source as determined by modeling, monitoring,

or a combination thereof. For existing sources, the Department will conduct monitoring to confirm visibility impairment ~~shall be confirmed by monitoring conducted by the Department~~.

(3) A requirement applicable to a major source ~~shall~~ will be established if it has been adopted by EPA but has not otherwise been adopted by the Commission.

(4) An additional control requirement ~~shall~~ will be established if requested by the owner or operator of a source.

(5) Requirements ~~shall~~ will be established if necessary to protect public health or welfare for the following air contaminants and sources not otherwise regulated under Chapter 340, Divisions 20 through 32:

(a) Chemical weapons; and

(b) Combustion and degradation by-products of chemical weapons.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ19-1993, f. 11-4-93 & cert. ef. 1-1-94; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0640

Grain Loading Standards

340-226-0200
Applicability

OAR 340-226-0200 through 340-226-0210 apply in all areas of the state.

[**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.025
Hist.: DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0012

340-226-0210
Particulate Emission Limitations for Sources Other Than Fuel Burning and Refuse Burning Equipment

(1) No person ~~shall~~ may cause, suffer, allow, or permit ~~the~~ particulate matter emission ~~of particulate matter,~~ from any air contaminant source in excess of:

(a) 0.2 grains per standard cubic foot for existing sources~~;~~, or

(b) 0.1 grains per standard cubic foot for new sources.

(2) This rule does not apply to fuel or refuse burning equipment or to fugitive emissions.

[**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 468.020 & ORS 468A.025.

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0030

Particulate Emissions from Process Equipment

340-226-0300
Applicability

OAR 340-226-0300 through 340-226-0320 apply to all non-fugitive emissions from the following process equipment:

(1) Inertial separators without baghouses~~;~~

(2) Calciners~~;~~

(3) Material dryers~~;~~

(4) Material classifiers~~;~~

(5) Conveyors~~;~~

(6) Size reduction equipment~~,~~;
(7) Material storage structures~~,~~;
(8) Seed cleaning devices~~,~~; and
(9) Equipment other than that for which specific emission standards have been adopted.
[**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 468.020 & ORS 468A.025
Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0035

340-226-0310
Emission Standard

No person ~~shall~~ may cause, suffer, allow, or permit the emissions of particulate matter in any one hour from any process in excess of the amount shown in **Table 1**, for the process weight rate allocated to such process.

[**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.025
Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0040

340-226-0320
Determination of Process Weight

(1) Process weight is the total weight of all materials introduced into a piece of process equipment. Solid fuels charged are considered ~~as~~ part of the process weight, but liquid and gaseous fuels and combustion air are not.

(a) For a cyclical or batch operation, the process weight per hour is derived by dividing the total process weight by the number of hours in one complete operation, excluding any time during which the equipment is idle.

(b) For a continuous operation, the process weight per hour ~~will be~~is derived by dividing the process weight by a typical period of time, as approved by the Department.

(2) Where the nature of any process or operation or the design of any equipment permits more than one interpretation of this rule, the interpretation that results in the minimum value for allowable emission applies.

[**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 468.020 & ORS 468A.025.
Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0045

Alternative Emission Controls

340-226-0400
Alternative Emission Controls (Bubble)

(1) Alternative emission controls for VOC and NOx emissions may be approved in a Standard ACDP or Oregon Title V Operating Permit for use within a ~~plant site~~single source such that a specific ~~mass~~ emission limit ~~rules are~~ is exceeded, provided that:

(~~1~~a) Such alternatives are not specifically prohibited by a rule or permit condition.

(~~2~~b) Net emissions for each pollutant are not increased above the PSEL.

(~~3~~c) The net air quality impact is not increased as demonstrated by procedures required by OAR 340-224-0090, Requirements for Net Air Quality Benefit.

(~~4~~d) No other pollutants including malodorous, toxic or hazardous pollutants are substituted.

(~~5~~e) BACT and LAER, where required by a previously issued permit pursuant to OAR 340 division 224, NSPS (OAR 340 division 238), and NESHAP (OAR 340 division 244), where required, are not relaxed.

(~~6~~f) Specific ~~mass~~ emission limits are established for each emission unit involved such that compliance with the PSEL can be readily determined.

(~~7~~g) Application is made for a permit modification and such modification is approved by the Department.

(h) The reducing emission source reduces its allowable emission rate. Merely reducing production, throughput, or hours of operation is insufficient.

(2) Total emissions from the emission sources under the bubble will be established in the permit.

(3) Alternative emission controls, in addition to those allowed in (1) above, may be approved by the Department and EPA as a source specific SIP amendment.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0315; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1030

DIVISION 240

RULES FOR AREAS WITH UNIQUE AIR QUALITY NEEDS

340-240-0010
Purpose

The purpose of this Division is to deal specifically with the unique air quality control needs of the Medford-Ashland AQMA and Grants Pass UGB (OAR 340-240-0100 through 340-240-0270), the La Grande UGB (340-240-0300 through 340-240-0360, and the Lakeview UGB (OAR 340-240-0400 through 340-240-0440)

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, 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 340-030-0005

340-240-0020
Emission limitations

Emission limitations established herein and stated in terms of pounds per 1,000 square feet of production ~~shall~~ are to be computed on an hourly basis using the maximum 8 hour production capacity of the plant.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0007

340-240-0030
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) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(2) "Air Conveying System" means an air moving device, such as a fan or blower, associated ductwork, and a cyclone or other collection device, the purpose of which is to move material from one point to another by entrainment in a moving airstream.

(3) "Average Operating Opacity" means the opacity of emissions determined using EPA Method 9 on any three days within a 12-month period which are separated from each other by at least 30 days; a violation of the average operating opacity limitation is judged to have occurred if the opacity of emissions on each of the three days is greater than the specified average operating opacity limitation.

(4) "Charcoal Producing Plant" means an industrial operation which uses the destructive distillation of wood to obtain the fixed carbon in the wood.

(5) "Collection Efficiency" means the overall performance of the air cleaning device in terms of ratio of weight of material collected to total weight of input to the collector.

(6) "Department" means Department of Environmental Quality.

(7) "Design Criteria" means the numerical as well as verbal description of the basis of design, including but not necessarily limited to design flow rates, temperatures, humidities, contaminant descriptions in terms of types and chemical species, mass emission rates, concentrations, and specification of desired results in terms of final emission rates and concentrations, and scopes of vendor supplies and owner-supplied equipment and utilities, and a description of any operational controls.

(8) "Domestic Waste" means combustible household waste, other than wet garbage, such as paper, cardboard, leaves, yard clippings, wood, or similar materials generated in a dwelling housing four (4) families or less, or on the real property on which the dwelling is situated.

(9) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions.

(10) "Emission" means a release into the outdoor atmosphere of air contaminants.

(11) "EPA Method 9" means the method for Visual Determination of the Opacity of Emissions From Stationary Sources described as Method (average of 24 consecutive observations) in the Department Source Sampling Manual (January, 1992).

(12) "Facility" means an identifiable piece of process equipment. A stationary source may be comprised of one or more pollutant-emitting facilities.

(13) "Fuel Burning Equipment" means a device which burns a solid, liquid, or gaseous fuel, the principal purpose of which is to produce heat, except marine installations and internal combustion engines that are not stationary gas turbines.

(14) "Fuel Moisture Content By Weight Greater Than 20 Percent" means bark, hogged wood waste, or other wood with an average moisture content of more than 20 percent by weight on a wet basis as used for fuel in the normal operation of a wood-fired veneer dryer as measured by ASTM D4442-84 during compliance source testing.

(15) "Fuel Moisture Content By Weight Less Than 20 Percent" means pulverized ply trim, sanderdust, or other wood with an average moisture content of 20 percent or less by weight on a wet basis as used for fuel in the normal operation of a wood-fired veneer dryer as measured by ASTM D4442-84 during compliance source testing.

(16) "Fugitive Emissions" means dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof not easily given to measurement, collection and treatment by conventional pollution control methods.

(17) "General Arrangement", in the context of the compliance schedule requirements in section 340-002-0045(2), means drawings or reproductions which show as a minimum the size and location of the control equipment on a source plot plan, the location of equipment served by the emission-control system, and the location, diameter, and elevation above grade of the ultimate point of discharging contaminants to the atmosphere.

(18) "Grants Pass Urban Growth Area" and "Grants Pass Area" means the area within the Grants Pass Urban Growth Boundary as shown on the Plan and Zoning Maps for the City of Grants Pass as of 1 February 1988.

(19) "Hardboard" means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

(20) "La Grande Urban Growth Area" means the area within the La Grande Urban Growth Boundary as shown on the Plan and Zoning Maps for the City of La Grande as of 1 October 1991.

(21) "Lakeview Urban Growth Area" means the area within the Lakeview Urban Growth Boundary as shown on the Plan and Zoning Maps for the Town of Lakeview as of 25 October 1993.

(22) "Liquefied petroleum gas" has the meaning given by the American Society for Testing and Materials in ASTM D1835-82, "Standard Specification for Liquid Petroleum Gases."

(23) "Lowest Achievable Emission Rate" or "LAER" is defined in OAR 340-200-0020.

(24) "Maximum Opacity" means the opacity as determined by EPA Method 9 (average of 24 consecutive observations).

(25) "Medford-Ashland Air Quality Maintenance Area" and "Medford-Ashland AQMA" is defined as beginning at a point approximately one mile NE of the town of Eagle Point, Jackson County, Oregon, at the NE corner of Section 36, T35S, R1W; thence south along the Willamette Meridian to the SE corner of Section 25, T37S, R1W; thence SE along a line to the SE corner of Section 9, T39S, R2E; thence SSE to the corner of Section 22, T39S, R2E; thence south to the SE corner of Section 27, T39S, R2E; thence SW to the SE corner of Section 33, T39S, R2E; thence NW to the NW corner of Section 36, T39S, R1E; thence west to the SW corner of Section 26, T39S, T1E; thence west to the SW corner of Section 12, T39S, R1W; thence NW along a line to the SW corner of Section 20, T38S, R1W; thence west to the SW corner of Section 24, T38S, R2W; thence NW along a line to the SW corner of Section 4, T38S, R2W; thence west to the SW corner of Section 5, T38S, R2W; thence NW along a line to the SW corner of Section 31, T37S, R2W; thence north along a line to the Rogue River, thence north and east along the Rogue River to the north boundary of Section 32, T35S, R1W; thence east along a line to the point of beginning.

(26) "Modified Source" means any source with a major modification as defined in OAR 340-200-0020.

(27) "Natural gas" means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal component is methane.

(28) "New Source" means any source not in existence prior to April 7, 1978 or any source not having an ~~Air Contaminant Discharge~~ Permit as of April 7, 1978.

(29) "Odor" means that property of an air contaminant that affects the sense of smell.

(30) "Offset" is defined in OAR 340-200-0020.

(31) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background as measured in accordance with the Department's Source Sampling Manual (January, 1992). Unless otherwise specified by rule, opacity ~~shall~~ must be measured in accordance with EPA Method 9. For all standards, the minimum observation period ~~shall~~ must be six minutes, though longer periods may be required by a specific rule or permit condition. Aggregate times (e.g. 3 minutes in any one hour) consist of the total duration of all readings during the observation period that exceed the opacity percentage in the standard, whether or not the readings are consecutive. Alternatives to EPA Method 9, such as a continuous opacity monitoring system (COMS), alternate Method 1 (LIDAR), or EPA Methods 22, or 203, may be used if approved in advance by the Department, in accordance with the Source Sampling Manual.

(32) "Open Burning" means burning conducted in such a manner that combustion air and combustion products may not be effectively controlled including, but not limited to, burning conducted in open outdoor fires, burn barrels, and backyard incinerators.

(33) "Particleboard" means matformed flat panels consisting of wood particles bonded together with synthetic resin or other suitable binders.

(34) "Particulate Matter" means all solid or liquid material, other than uncombined water, emitted to the ambient air as measured in accordance with the Department Source Sampling Manual. Particulate matter emission determinations ~~shall~~ must consist of the average of three separate consecutive runs. For sources tested using DEQ Method 5 or DEQ Method 7, each run ~~shall~~ must have a minimum sampling time of one hour, a maximum sampling time of eight hours, and a minimum sampling volume of 31.8 dscf. For sources tested using DEQ Method 8, each run ~~shall~~ must have a minimum sampling time of 15 minutes and ~~shall~~ must collect a minimum particulate sample of 100 mg. Wood waste boilers and charcoal producing plants ~~shall~~ must be tested with DEQ Method 5; veneer dryers, wood particle dryers, fiber dryers and press/cooling vents ~~shall~~ must be tested with DEQ Method 7; and air conveying systems ~~shall~~ must be tested with DEQ Method 8 (January, 1992).

(35) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(36) "Press/Cooling Vent" means any opening through which particulate and gaseous emissions from plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

(37) "Rebuilt Boiler" means a physical change after April 29, 1988, to a wood-waste boiler or its air-contaminant emission control system which is not considered a "modified source" and for which the fixed, depreciable capital cost of added or replacement components equals or exceeds fifty percent of the fixed depreciable cost of a new component which has the same productive capacity.

(38) "Source" means any structure, building, facility, equipment, installation or operation, or combination thereof, which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person, or by persons under common control.

(39) "Standard Conditions" means a temperature of 60° Fahrenheit (15.6° Celsius) and a pressure of 14.7 pounds per square inch absolute (1.03 Kilograms per square centimeter).

(40) "Veneer" means a single flat panel of wood not exceeding 1/4 inch in thickness formed by slicing or peeling from a log.

(41) "Veneer Dryer" means equipment in which veneer is dried.

(42) "Wood-fired Veneer Dryer" means a veneer dryer which is directly heated by the products of combustion of wood fuel in addition to or exclusive of steam or natural gas or propane combustion.

(43) "Wigwam Fired Burner" means a burner which consists of a single combustion chamber, has the general features of a truncated cone, and is used for the incineration of wastes.

(44) "Wood Waste Boiler" means equipment which uses indirect heat transfer from the products of combustion of wood waste to provide heat or power.

[**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.]

[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 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 9-1979, f. & ef. 5-3-79; DEQ 3-1980, f. & ef. 1-28-80; DEQ 14-1981, f. & ef. 5-6-81; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0010

The Medford-Ashland Air Quality Maintenance Area and the Grants Pass Urban Growth Area

340-240-0100
Applicability

OAR 340-240-0100 through 340-240-0110 apply in the Medford-Ashland Air Quality Maintenance Area (AQMA) and the Grants Pass Urban Growth Area (Area), except that OAR 340-240-0130, 340-240-0180, and 340-240-0190 apply only in the Medford-Ashland AQMA.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 23-1991, 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 340-030-0012

340-240-0110
Wood Waste Boilers

(1) No person may cause or permit the emission of particulate matter from any wood waste boiler with a heat input capacity greater than 35 million BTU/hr in excess of 0.050 grain per dry standard cubic foot of exhaust gas, corrected to 12 percent carbon dioxide.

(2) No person owning or controlling any wood waste boiler with a heat input capacity greater than 35 million BTU/hour may cause or permit the emission of any air contaminant into the atmosphere for a period or periods aggregating more than 3 minutes in any one hour equal to or greater than 10 percent opacity, unless the permittee demonstrates by source test that the emission limit in paragraph (1) of this section can be achieved at higher visible emissions, but in no case may emissions equal or exceed 20% opacity for more than an aggregate of 3 minutes in any one hour. Specific opacity limits ~~shall~~ will be included in the ~~Air Contaminant Discharge~~ Permit for each affected source.

(3) In accordance with the compliance schedule in 340-240-0200(2), no person may cause or permit the emission of particulate matter from any boiler with a heat input capacity greater than 35 million Btu/hour unless the boiler has been equipped with emission control equipment which:

(a) Limits emissions of particulate matter to LAER as defined by the Department at the time the Department approves the control device; and

(b) Limits visible emissions such that their opacity does not exceed 5% for more than an aggregate of 3 minutes in any one hour, unless the permittee demonstrates by source test that emissions can be limited to LAER at higher visible emissions, but in no case may emissions equal or exceed 10% opacity for more than an aggregate of 3 minutes in any one hour. Specific opacity limits ~~shall~~ will be included in the ~~Air Contaminant Discharge~~ Permit for each affected source.

(c) For purposes of OAR 340-222-0040 and 340-268-0030, the boiler mass emission limits ~~shall~~ must be based on particulate matter emissions of 0.030 grains per standard dry cubic foot, corrected to 12% CO_2.

[**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 468.020 & ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 29-1980, f. & ef. 10-29-80; DEQ 14-1986, f. & ef. 6-20-86; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 22-1996, f. & cert. 10-22-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0015

340-240-0120

Veneer Dryer Emission Limitations

(1) No person ~~shall~~ is allowed to operate any veneer dryer such that visible air contaminants emitted from any dryer stack or emission point exceed the opacity limits specified in subsections (a) and (b) of this section or such that emissions of particulate matter exceed the mass emission limits of subsections (c) through (g) of this section:

(a) An average operating opacity of five percent; and

(b) A maximum opacity of ten percent, unless the permittee demonstrates by source test that the emission limits in subsections (c) through (g) of this section can be achieved at higher visible emissions than specified in subsections (a) and (b) of this section, but in no case ~~shall~~are emissions exceed the visible air contaminant limitations of OAR 340-234-0420(1)(b) allowed. Specific opacity limits ~~shall~~ will be included in the ~~Air Contaminant Discharge~~ Permit for each affected source;

(c) 0.30 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct natural gas or propane fired veneer dryers;

(d) 0.30 pounds per 1,000 square feet of veneer dried (3/8" basis) for steam heated veneer dryers;

(e) 0.40 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct wood fired veneer dryers using fuel which has a moisture content by weight less than 20 percent;

(f) 0.45 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct wood fired veneer dryers using fuel which has a moisture content by weight greater than 20 percent;

(g) In addition to subsections (e) and (f) of this section, 0.20 pounds per 1,000 pounds of steam generated in boilers which exhaust combustion gases to the veneer dryer.

(2) Exhaust gases from fuel-burning equipment vented to the veneer dryer are exempt from OAR 340-228-0210.

(3) No person ~~shall~~ is allowed to operate a veneer dryer unless:

(a) The owner or operator has submitted a program and time schedule for installing an emission-control system which has been approved in writing by the Department as being capable of complying with subsections (1)(a) through (g) of this rule;

(b) The veneer dryer is equipped with an emission-control system which has been approved in writing by the Department and is capable of complying with subsections (1)(a) through (g) of this rule; or

(c) The owner or operator has demonstrated and the Department has agreed in writing that the dryer is capable of being operated and is operated in continuous compliance with subsections (1)(a) through (g) of this rule.

(4) Each veneer dryer ~~shall~~ must be maintained and operated at all times such that air contaminant generating processes and all contaminant control equipment ~~shall be~~ are at full efficiency and effectiveness so that the emission of air contaminants is kept at the lowest practicable levels.

(5) No person ~~shall~~ is allowed to willfully cause or permit the installation or use of any means, such as dilution, which, without resulting in a reduction in the total amount of air contaminants emitted, conceals an emission which would otherwise violate this rule.

(6) Where effective measures are not taken to minimize fugitive emissions, the Department may require that the equipment or structures in which processing, handling and storage are done, be tightly closed, modified, or operated in such a way that air contaminants are minimized, controlled, or removed before discharge to the open air.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ23-1991, 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 340-030-0021

340-240-0130

Air Conveying Systems (Medford-Ashland AQMA Only)

All air conveying systems emitting greater than ten tons per year of particulate matter to the atmosphere at the time of adoption of this rule ~~shall~~must, with the prior written approval of the Department, be equipped with a control system with collection efficiency of at least 98.5 percent.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0025

340-240-0140

Wood Particle Dryers at Particleboard Plants

(1) No person ~~shall~~ is allowed to cause or permit the total emission of particulate matter from all wood particle dryers at a particleboard plant site to exceed 0.40 pounds per 1,000 square feet of board produced by the plant on a 3/4" basis of finished product equivalent.

(2) No person ~~shall~~ is allowed to cause or permit the visible emissions from the wood particle dryers at a particleboard plant to exceed ten percent opacity, unless the permittee demonstrates by source test that the particulate matter emission limit in section (1) of this rule can be achieved at higher visible emissions, but in no case ~~shall~~ are emissions equal or exceed 20 percent opacity allowed. Specific opacity limits ~~shall~~ will be included in the ~~Air Contaminant Discharge~~ Permit for each affected source.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 14-1981, f. & ef. 5-6-81; DEQ 14-1986, f. & ef. 6-20-86; DEQ 23-1991, 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 340-030-0030

340-240-0150

Hardboard Manufacturing Plants

(1) Emissions from Hardboard plants excluding press vents. No person ~~shall~~ is allowed to cause or permit the total emissions of particulate matter from a hardboard plant, excluding press/cooling vents, to exceed 0.25 pounds per 1,000 square feet of hardboard produced on a 1/8" basis of finished product equivalent.

(2) Emissions from Hardboard plants including press vents. No person ~~shall~~ is allowed to cause or permit the total emissions of particulate matter from a hardboard plant, including press/cooling vents, to exceed 0.55 pounds per 1,000 square feet of hardboard produced on a 1/8" basis of finished product equivalent.

(3) When calculating emissions for this section, emissions from truck dump and storage areas, fuel burning equipment, and refuse burning equipment are not included.

[**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 468.020 & ORS 468A.025

Hist.: DEQ 14-1981, f. & ef. 5-6-81; DEQ 14-1986, f. & ef. 6-20-86; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 2-1996, f. & cert. ef. 1-29-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0031

340-240-0160

Wigwam Waste Burners

No person owning or controlling any wigwam burner ~~shall~~ is allowed to cause or permit the operation of the wigwam burner.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 29-1980, f. & ef. 10-29-80; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0035

340-240-0170

Charcoal Producing Plants

(1) No person ~~shall~~ is allowed to cause or permit the emission of particulate matter from charcoal producing plant sources including, but not limited to, charcoal furnaces, heat recovery boilers, and wood dryers using any portion of the charcoal furnace off-gases as a heat source, in excess of a total from all sources within the plant site of 10.0 pounds per ton of char produced (5.0 grams per Kilogram of char produced).

(2) Emissions from char storage, briquette making, boilers not using charcoal furnace off-gases, and fugitive sources are excluded in determining compliance with section (1) of this rule.

(3) Charcoal producing plants as described in section (1) of this rule ~~shall~~ are~~be~~ exempt from the limitations of OAR 340-226-0210 sections (1) and (2), and 340-226-0310 which concern particulate emission concentrations and process weight.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 14-1986, f. & ef. 6-20-86; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0040

340-240-0180

Control of Fugitive Emissions (Medford-Ashland AQMA Only)

(1) All sawmills, all plywood mills and veneer manufacturing plants, particleboard and hardboard plants, charcoal manufacturing plants, asphalt plants, rock crushers, animal feed manufacturers, other major industrial facilities as identified by the Department, and sources subject to OAR 340-240-0360 ~~shall~~ must prepare and implement site-specific plans for the control of fugitive emissions. ~~(The air contaminant sources listed are described in OAR 340-216-0090, Table 1, paragraphs 10, 14, 17, 18, 29, 34 and 42, respectively.)~~

(2) Fugitive emission-control plans ~~shall~~ must identify reasonable measures to prevent particulate matter from becoming airborne. Special care will be taken by the facility to avoid the migration of material onto the public road system. Such reasonable measures ~~shall~~ include, but not be limited to the following:

(a) The systematic paving of all unpaved roads and areas on which vehicular traffic occurs. Until an area is paved, subsection (2)(b) applies;

(b) Scheduled application of asphalt, oil, water, or other suitable chemicals on unpaved roads, log storage or sorting yards, materials stockpiles, and other surfaces which can create airborne dust. Dust suppressant material must not adversely affect water quality;

(c) Periodic sweeping or cleaning of paved roads and other areas as necessary to prevent migration of material onto the public road system;

(d) Full or partial enclosure of materials stockpiled in cases where application of oil, water, or chemicals are not sufficient to prevent particulate matter from becoming airborne;

(e) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;

(f) Adequate containment during sandblasting or other similar operations;

(g) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne; and

(h) Procedures for the prompt removal of earth or other material from paved streets.

(3) Reasonable measures may include landscaping and using vegetation to reduce the migration of material onto public and private roadways.

(4) The facility owner or operator must supervise and control fugitive emissions and material that may become airborne caused by the activity of outside contractors delivering or removing materials at the site.

(5) The site-specific fugitive dust emissions control plan ~~shall~~ must be submitted to the Department prior to or within 60 days of permit issuance or renewal. The Department ~~shall~~ will approve or deny the plan within 30 days.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

[ED. NOTE: The table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 6-1983, f. & ef. 4-18-83; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ16-1998, f. & cert. ef. 9-23-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0043

340-240-0190
Requirement for Operation and Maintenance Plans (Medford-Ashland AQMA Only)

(1) Operation and Maintenance Plans ~~shall~~ must be prepared by all holders of ~~Air Contaminant Discharge~~ Permits ~~except minimal source permits and insignificant discharge permits~~ other than a Regulated Source ACDP. All sources subject to regular permit requirements ~~shall~~are ~~be~~ subject to operation and maintenance requirements.

(2) The purposes of the operation and maintenance plans are to:

(a) Reduce the number of upsets and breakdowns in particulate control equipment;

(b) Reduce the duration of upsets and downtimes; and

(c) Improve the efficiency of control equipment during normal operations.

(3) The operation and maintenance plans should consider, but not be limited to, the following:

(a) Personnel training in operation and maintenance;

(b) Preventative maintenance procedures, schedule and records;

(c) Logging of the occurrence and duration of all upsets, breakdowns and malfunctions which result in excessive emissions;

(d) Routine follow-up evaluation of upsets to identify the cause of the problem and changes needed to prevent a recurrence;

(e) Periodic source testing of pollution control units as required by ~~air contaminant discharge~~ the permits;

(f) Inspection of internal wear points of pollution control equipment during scheduled shutdowns; and

(g) Inventory of key spare parts.

[**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 468.020 & ORS 468A.025
Hist.: DEQ 6-1983, f. & ef. 4-18-83; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 22-1996, f. & cert. 10-22-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0044

340-240-0200
Emission-Limits Compliance Schedules

(1) Compliance with the emission limits for wood-waste boilers in the Grants Pass area and veneer dryers established in OAR 340-240-0110(1) and (2) and 340-240-0120 ~~shall~~must be provided according to the following schedules:

(a) By December 25, 1989, submit Design Criteria and a Notice of Intent to Construct for emission-control systems for Department review and approval;

(b) Within three months of receiving the Department's approval of the Design Criteria, submit a General Arrangement and copies of purchase orders for the emission-control devices;

(c) Within two months of placing purchase orders for emission-control devices, submit vendor drawings as approved for construction of the emission-control devices and specifications of other major

equipment in the emission-control system (such as fans, scrubber-medium recirculation and make up systems) in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied;

(d) Within one year of receiving the Department's approval of Design Criteria, complete construction;

(e) Within 15 months of receiving the Department's approval of Design Criteria, but no later than June 30, 1991, demonstrate compliance.

(2) Compliance with the emission limits for wood-waste boilers in OAR 340-240-0110(3) ~~shall~~must be provided according to OAR 340-240-0240 or the following schedule, whichever occurs first:

(a) By no later than September 1, 1993, submit Design Criteria and a Notice of Intent to Construct for emission-control systems for Department review and approval;

(b) Within three months of receiving the Department's approval of the Design Criteria, submit a General Arrangement and copies of purchase orders for the emission-control devices;

(c) Within two months of placing purchase orders for emission-control devices, submit vendor drawings as approved for construction of the emission-control devices and specifications of other major equipment in the emission-control system (such as fans, scrubber-medium recirculation and make up systems) in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied;

(d) Within one year of receiving the Department's approval of Design Criteria, complete construction;

(e) Within 15 months of receiving the Department's approval of Design Criteria, but no later than December 31, 1994, demonstrate compliance.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, 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 340-030-0046

340-240-0210

Continuous Monitoring

(1) The Department will require the installation and operation of instrumentation for measuring and recording emissions and/or the parameters which affect the emission of air contaminants from wood-waste fired boilers, veneer dryers, fiber dryers, and particle dryers to ensure that the sources and the air pollution control equipment are operated at all times at their full efficiency and effectiveness so that the emission of air contaminants is kept at the lowest practicable level. The instrumentation ~~shall~~must be periodically calibrated. The method and frequency of calibration ~~shall~~must be approved in writing by the Department. Continuous monitoring equipment and operation ~~shall~~ must be in accordance with continuous emission monitoring systems guidance provided by the Department and ~~shall~~ must be consistent, where applicable, with the EPA performance specifications and quality assurance procedures outlined in 40 CFR 60, Appendices B and F, and the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III. The recorded information ~~shall~~ must be kept for a period of at least one year and ~~shall~~ must be made available to the Department upon request. The selection, installation, and use of the instrumentation ~~shall~~ must be done according to the following schedule:

(a) By March 27, 1990, the persons responsible for the affected facilities ~~shall~~ must submit to the Department a plan for process and or emission monitoring. The Department's primary criterion for review and approval of the plans will be the ability of proposed instrumentation to demonstrate continuous compliance with OAR 340-240-0100 through 340-240-0110;

(b) Within one year from the Department's approval of the plan(s), but no later than July 1, 1992, the persons responsible for the affected facilities ~~shall~~ must purchase, install, place in operation the instrumentation as approved, verify that it is capable of demonstrating continuously the compliance

status of the affected facilities, and commence continuous monitoring and reporting results to the Department, at a frequency and in a form agreed upon by the Department and the responsible persons;

(c) The implementation date in subsection (1)(b) of this section can be extended up to one year, subject to Department approval, if justified by the persons responsible for the affected facilities based on unavailability of suitable equipment or other problems.

(2) At a minimum, the monitoring plan submitted under paragraph (1)(a) of this section ~~shall~~ must include:

(a) Continuous monitoring and monthly reporting of carbon monoxide concentration and oxygen concentration for any wood-waste fired boiler with a heat input capacity greater than 35 million BTU/hr or for any wood-waste boiler using a wet scrubber as pollution control equipment and steam production rate for any wood-waste fired boiler;

(b) Continuous monitoring and monthly reporting of pressure drop, scrubber water pressure, and scrubber water flow for any wood-waste fired boiler, veneer dryer, particle dryer, or fiber dryer using a wet scrubber as pollution control equipment;

(c) Continuous monitoring and monthly reporting of opacity for any wood-waste fired boiler not controlled by a wet scrubber; and

(d) Continuous availability by electronic means to the Department of the emission and performance data specified in subsection (2)(a) through (c) of this section for any wood-waste fired boiler subject to the emission requirements of OAR 340-240-0270.

[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.]

[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 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1996, f. & cert. 10-22-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0050

340-240-0220

Source Testing

(1) The person responsible for the following sources of particulate emissions ~~shall~~ must make or have made tests to determine the type, quantity, quality, and duration of emissions, and/or process parameters affecting emissions, in conformance with test methods on file with the Department at the following frequencies:

(a) Wood Waste Boilers with heat input capacity greater than 35 million Btu/hr. — Once every year;

(b) Veneer Dryers — Once every year during 1991, 1992, and 1993 and once every 3 years thereafter;

(c) Wood Particle Dryers at Hardboard and Particleboard Plants — Once every year;

(d) Charcoal Producing Plants — Once every year.

(e) Wood Waste Boilers with heat input capacity equal to or less than 35 million BTU/hr with dry emission control equipment — Once in 1992 and once every 3 years thereafter.

(2) Source testing ~~shall~~ must begin at these frequencies within 90 days of the date by which compliance is to be achieved for each individual emission source.

(3) These source testing requirements ~~shall~~ will remain in effect unless waived in writing by the Department because of adequate demonstration that the source is consistently operating at lowest practicable levels, or that continuous emission monitoring systems are producing equivalent information.

(4) Source tests on wood waste boilers ~~shall~~ must not be performed during periods of soot blowing, grate cleaning, or other abnormal operating conditions. The steam production rate during the source test ~~shall~~ will be considered the maximum permittee's steaming rate for the boiler.

(5) Source tests ~~shall~~ must be performed within 90 days of the startup of air pollution control systems.

[**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 468.020 & ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 14-1986, f. & ef. 6-20-86; DEQ 22-1988, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. &cert. ef. 3-10-93; DEQ 22-1996, f. & cert. 10-22-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0055

340-240-0230
New Sources

New sources ~~shall be~~ are required to comply with OAR 340-240-0110(3) and 340-240-0120 through 340-240-0260 immediately upon initiation of operation.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 22-1988, f. & cert. ef. 9-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0065

340-240-0240
Rebuilt Boilers

Rebuilt boilers ~~shall~~ must immediately comply with the requirements of OAR 340-240-0110(3) except that in the Grants Pass Urban Growth Area this provision will apply to sources that are rebuilt after they have complied with OAR 340-240-0110(1).

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 22-1988, f. & cert. ef. 9-26-89; DEQ 23-1991, 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 340-030-0067

340-240-0250
Open Burning

No open burning of domestic waste ~~shall be initiated~~ is allowed on any day or at any time when the Department advises fire permit issuing agencies that open burning is not allowed because of adverse meteorological or air quality conditions.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0070

~~**340-240-0260**~~
~~**Emission Offsets**~~

~~In the Medford-Ashland AQMA, emission offsets required in accordance with OAR 340-224-0050 or 340-224-0060 for new or modified sources shall provide reductions in emissions equal to 1.2 times the emission increase from the new or modified sources.~~

~~[**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 468.020~~

~~Stats. Implemented: ORS 468A.025~~

~~Hist.: DEQ 22-1989, f. &cert. ef. 9-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0111~~

340-240-0270

Dual-Fueling Feasibility Study for Wood-Waste Boilers

(1) On or before July 1, 1994, the owner or operator of a plant site in the Medford-Ashland AQMA where the total heat input capacity from all wood-waste boilers is greater than 35 million Btu/hr ~~shall~~ must submit to the Department the results of a dual-fueling feasibility study conducted in accordance with a study protocol submitted under section (2) of this rule which has been approved by the Department.

(2) On or before January 1, 1993, a person subject to section (1) of this rule ~~shall~~ must submit to the Department for approval a study protocol to evaluate the feasibility, costs and benefits of implementing a program to provide alternate fueling capability after December 31, 1994, for wood-waste boilers during periods of actual, anticipated or potential exceedance of the ambient air quality standard for PM_{10}. The protocol ~~shall~~ must identify the methodology and schedule for evaluating the adequacy of supply of natural gas and other alternate fuels during the winter months, the cost and technical feasibility of modifying existing wood-waste boilers, the air quality benefits and costs of fuel switching prior to or during periods of poor air quality, and relevant maintenance and operational concerns including start-up and shut-down impacts.

(3) One or more persons subject to section (1) of this rule may submit a combined study protocol to the Department, conduct a combined study and submit combined results to the Department. Such a combined study ~~shall~~ must evaluate the cost and technical feasibility of modifying existing wood-waste boilers at the plant site of each participating person. The combined study may jointly evaluate fuel supply, air quality, and maintenance and operational concerns applicable to all participating persons. A combined study ~~shall~~ must be conducted by an independent contractor hired by the participating persons and approved by the Department.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ23-1991, 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 340-030-0115

La Grande Urban Growth Area

340-240-0300

Applicability

OAR 340-240-0300 through 340-240-0360 apply in the La Grande Urban Growth Area.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ23-1991, 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 340-030-0200

340-240-0310

Compliance Schedule for Existing Sources

(1) Except as provided in sections (2) and (3) of this rule, compliance with applicable requirements of OAR 340-240-0300 through 340-240-0360 for a source that is located in the La Grande Urban Growth Area prior to November 15, 1991 ~~shall~~ must be demonstrated as expeditiously as possible, but in no case later than the following schedule:

(a) No later than May 15, 1992, the owner or operator ~~shall~~ must submit Design Criteria and a Notice of Intent to Construct for emission-control systems for Department review and approval; and if the Department disapproves the Design Criteria, the owner or operator ~~shall~~ must revise the Design Criteria to meet the Department's objections and submit the revised Design Criteria to the Department no later than one month after receiving the Department's disapproval;

(b) No later than three months after receiving the Department's approval of the Design Criteria, the owner or operator ~~shall~~ must submit to the Department a General Arrangement and copies of purchase orders for any emission-control devices;

(c) No later than eight months after receiving the Department's approval of the Design Criteria, the owner or operator ~~shall~~ must submit to the Department vendor drawings as approved for construction of any emission-control devices and specifications of any other major equipment in the emission-control system in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied;

(d) No later than nine months after receiving the Department's approval of the Design Criteria, the owner or operator ~~shall~~ must begin construction of any emission-control devices;

(e) No later than sixteen months after receiving the Department's approval of Design Criteria, the owner or operator ~~shall~~ must complete construction in accordance with the Design Criteria;

(f) No later than May 15, 1994, the owner or operator ~~shall~~ must demonstrate compliance with the applicable contingency requirements.

(2) Section (1) of this rule ~~shall~~ does not apply if the owner or operator has demonstrated by May 15, 1992 that the source is capable of being operated and is operated in continuous compliance with applicable requirements of OAR 340-240-0300 through 340-240-0360 and the Department has agreed with the demonstration in writing. The Department may grant an extension until November 15, 1992 for a source to demonstrate compliance under this section. The applicable requirements ~~shall~~ will be incorporated in the ~~Air Contaminant Discharge~~ Permit issued to the source.

(3) The Department may adjust the schedule specified in subsections (1)(a) through (e) of this rule if necessary to ensure timely compliance with subsection (1)(f) of this rule or if necessary to conform to an existing compliance schedule with an earlier compliance demonstration date.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ23-1991, 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 340-030-0205

340-240-0320

Wood-Waste Boilers

No person ~~shall~~is allowed to cause or permit the emission into the atmosphere from any wood-waste boiler that is located on a plant site where the total heat input capacity from all wood-waste boilers is greater than 35 million Btu/hr:

(1) Any air contaminant for a period or periods aggregating more than three minutes in any one hour which is equal to or greater than ten percent opacity, unless the permittee demonstrates by source test that the source can comply with the emission limit in section (2) of this rule at higher opacity but in no

case ~~shall~~are emissions equal or exceed 20 percent opacity for more than an aggregate of three minutes in any one hour allowed. Specific opacity limits ~~shall~~ will be included in the ~~Air Contaminant Discharge~~ Permit for each affected source.

(2) Particulate matter in excess of 0.05 grains per standard cubic foot, corrected to 12 percent CO_2.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ23-1991, 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 340-030-0210

340-240-0330

Wood Particle Dryers at Particleboard Plants

(1) No person ~~shall~~ is allowed to cause or permit the total emission of particulate matter from all wood particle dryers at a particleboard plant site to exceed 0.40 pounds per 1,000 square feet of board produced by the plant on a 3/4" basis of finished product equivalent.

(2) No person ~~shall~~ is allowed to cause or permit the visible emissions from the wood particle dryers at a particleboard plant to exceed ten percent opacity, unless the permittee demonstrates by source test that the particulate matter emission limit in section (1) of this rule can be achieved at higher visible emissions, but in no case ~~shall~~ are emissions equal or exceed 20 percent opacity allowed. Specific opacity limits ~~shall~~ will be included in the ~~Air Contaminant Discharge~~ Permit for each affected source.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ23-1991, 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 340-030-0330

340-240-0340

Hardboard Manufacturing Plants

No person ~~shall~~ is allowed to cause or permit the total emissions of particulate matter from all sources within a hardboard plant, other than press/cooling vents, in excess of 0.25 pounds per 1,000 square feet of hardboard produced on a 1/8" basis of finished product equivalent.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ23-1991, 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 340-030-0220

340-240-0350

Air Conveying Systems

(1) No person ~~shall~~ is allowed to cause or permit the emission of particulate matter in excess of 0.1 grains per standard cubic foot from any air conveying system emitting less than or equal to ten tons of particulate matter to the atmosphere during any 12-month period beginning on or after January 1, 1990.

(2) All air conveying systems emitting greater than ten tons of particulate matter to the atmosphere during any 12-month period beginning on or after January 1, 1990 ~~shall~~ must be equipped with a control system with a collection efficiency of at least 98.5 percent or equivalent control as approved by the Department.

(3) No person ~~shall~~ is allowed to cause or permit the emission of any air contaminant which is equal to or greater than five percent opacity from any air conveying system subject to section (2) of this rule.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.025
Hist.: DEQ23-1991, 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 340-030-0225

340-240-0360
Fugitive Emissions

The owner or operator of a large sawmill, any plywood mill or veneer manufacturing plant, particleboard plant, hardboard plant, or charcoal manufacturing plant that is located in the La Grande Urban Growth Area ~~shall~~ must comply with OAR 340-240-0180.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.025
Hist.: DEQ23-1991, 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 340-030-0230

The Lakeview Urban Growth Area

340-240-0400
Applicability

OAR 340-240-0400 through 340-240-0440 ~~shall~~ apply ~~in~~ to the Lakeview Urban Growth Area.

[**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.025
Hist.: DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0300

340-240-0410
Control of Fugitive Emissions

(1) Large sawmills, all plywood mills and veneer manu-facturing plants, particleboard and hardboard plants, charcoal manufacturing plants, stationary asphalt plants, stationary rock crushers, and sources subject to OAR 340-240-0420 ~~shall~~ must prepare and implement site-specific plans for the control of fugitive emissions.

(2) Fugitive emission control plans ~~shall~~ must identify reasonable measures to prevent particulate matter from becoming airborne. Such reasonable measures ~~shall~~ include, but not be limited to the following:

(a) Scheduled application of asphalt, oil, water, or other suitable chemicals on unpaved roads, log storage or sorting yards, materials stockpiles, and other surfaces which can created airborne dust;

(b) Full or partial enclosure of materials stockpiled in cases where application of oil, water, or chemicals are not sufficient to prevent particulate matter from becoming airborne;

(c) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;

(d) Adequate containment during sandblasting or other similar operations;

(e) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne; and

(f) Procedures for the prompt removal from paved streets of earth or other material which does or may become airborne.

[**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.025
Hist.: DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0310

340-240-0420
Requirement for Operation and Maintenance Plans

(1) Operation and Maintenance Plans ~~shall~~ must be prepared by all holders of ~~Air Contaminant Discharge~~ Permits ~~except minimal source permits and insignificant discharge permits~~other than a Regulated Source ACDP. All sources subject to regular permit requirements ~~shall~~ are ~~be~~ subject to operation and maintenance requirements.

(2) The purposes of the operation and maintenance plans are to:

(a) Reduce the number of upsets and breakdowns in particulate control equipment;

(b) Reduce the duration of upsets and downtimes; and

(c) Improve the efficiency of control equipment during normal operations.

(3) The operation and maintenance plans should consider, but not be limited to, the following:

(a) Personnel training in operation and maintenance;

(b) Preventative maintenance procedures, schedule and records;

(c) Logging of the occurrence and duration of all upsets, breakdowns and malfunctions which result in excessive emissions;

(d) Routine follow-up evaluation of upsets to identify the cause of the problem and changes needed to prevent a recurrence;

(e) Periodic source testing of pollution control units as required by ~~air contaminant discharge~~a permit~~s~~;

(f) Inspection of internal wear points of pollution control equipment during scheduled shutdowns; and

(g) Inventory of key spare parts.

[**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 468.020 & ORS 468A.025
Hist.: DEQ-10-1995, f. & cert. ef. 5-1-95; DEQ 22-1996, f. & cert. 10-22-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0320

340-240-0430
Source Testing

The person responsible for the following sources of particulate emissions ~~shall~~ must make or have made tests to determine the type, quantity, quality, and duration of emissions, and/or process parameters affecting emissions, in conformance with test methods on file with the Department at the following frequency: Wood Waste Boilers with total heat input capacity equal to or greater than 35 million Btu/hr. — Once every three years;

[**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 468.020 & ORS 468A.025
Hist.: DEQ-10-1995, f. & cert. ef. 5-1-95; DEQ 22-1996, f. & cert. 10-22-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0330

340-240-0440

Open Burning

No open burning of domestic waste ~~shall~~ is allowed to be initiated on any day or at any time when the local air stagnation advisory forecasts adverse meteorological or air quality conditions.

[**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.025

Hist.: DEQ-10-1995, f. & cert. ef. 5-1-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0340

DIVISION 268

EMISSION REDUCTION CREDITS

340-268-0010
Applicability

This division applies to ~~all sources~~any person who wishes to create or bank an emission reduction credit in the state.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ14-1999, f. & cert. ef. 10-14-99

340-268-0020
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.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ14-1999, f. & cert. ef. 10-14-99

340-268-0030
Emission Reduction Credits ~~Banking~~

~~The owner or operator of a source of air pollution~~Any person who ~~wishes to~~ reduces emissions by implementing more stringent controls than required by a permit or an applicable regulation may create an emission reduction credit. ~~bank such emission reductions. Cities, counties or other local jurisdictions may~~ Emission reduction credits must be created and banked within two years from the time of actual emission reduction. ~~participate in the emissions bank in the same manner as a private firm. Emission reduction credit banking shall be subject to the following conditions:~~

(1) Creating Emission Reduction Credits. Emission reductions can be considered credits if all of the following requirements are met:

(a) The reduction is permanent due to continuous overcontrol, curtailment or shutdown of an existing activity or device.

(b) The reduction is in terms of actual emissions reduced at the source. The amount of the creditable reduction is the difference between the contemporaneous (any consecutive 12 calendar month period during the prior 24 calendar months) pre-reduction actual (or allowable, whichever is less) emissions and the post-reduction allowable emissions from the subject activity or device.

(c) The reduction is either

(A) enforceable by the Department through permit conditions or rules adopted specifically to implement the reduction that make increases from the activity or device creating the reduction a violation of a permit condition, or

(B) the result of a physical design that makes such increases physically impossible."

(d) The reduction is surplus. Emission reductions must be in addition to any emissions used to attain or maintain NAAQS in the SIP. ~~To be eligible for banking, emission reduction credits shall be in terms of actual emission decreases resulting from permanent continuous control of existing sources. The baseline for determining emission reduction credits shall be the actual emissions of the source or the PSEL established pursuant to OAR 340 division 222.~~

(e) Sources in violation of air quality emission limitations may not create emission reduction credits from those emissions that are or were in violation of air quality emission limitations.

(2) Banking of Emission Reduction Credits.

(a) The life of emission reduction credits may be extended through the banking process as follows:

(A) Emission reductions credits may be banked for ~~a specified period not to exceed~~ ten years from the time of actual emission reduction.~~unless extended by the Commission, after which time such~~

(B) Requests for emission reduction credit banking must be submitted within the 2 year (24 calendar month) contemporaneous time period immediately following the actual emission reduction. (The actual emission reduction occurs when the airshed experiences the reduction in emissions, not when a permit is issued or otherwise changed).

~~reductions will revert to the Department for use in attainment and maintenance of air quality standards.~~

(b) Banked emission reduction credits are protected during the banked period from rule required reduction if the Department receives the emission reduction credit banking request before the Department submits a notice of a proposed rule, or plan development action, for publication in the Secretary of State's bulletin. The Commission may reduce the amount of any banked emission reduction credit that is protected under this section if the Commission determines the reduction is necessary to attain or maintain an ambient air quality standard.

(c) Emission reductions must be in the amount of ten tons per year or more to be creditable for banking, except as follows:

(A) In the Medford-Ashland AQMA, PM10 emission reductions must be at least 3 tons per year.

(B) In Lane County, LRAPA may adopt lower levels.

(d) Emission reduction credits will not expire pending the Department taking action on a timely banking request unless the 10 year period available for banking expires.

(3) ~~Emission reductions which are required pursuant to an adopted rule shall not be banked.~~

~~(4) Permanent source shutdowns or curtailments other than those used within two years for contemporaneous offsets as provided in OAR 340-224-0090(5) are not eligible for banking by the owner or operator but will be banked by the Department for use in attaining and maintaining standards. The two year limitation for contemporaneous offsets shall not be applicable to those shutdowns or curtailments which are included in an approved specific plan for use as offsets within the same source containing the shutdown or curtailment. Such plan shall be submitted to the Department and receive written approval within two years of the permanent shutdown or curtailment. A permanent source shutdown or curtailment shall be considered to have occurred when a permit is modified, revoked or expires without renewal pursuant to the criteria established in Division 14 of this Chapter or OAR 340-218-0120 through 340-218-0200.~~ Using Emission reduction Credits: Emission reduction credits may be used for:

(a) Netting actions within the source that generated the credit, through a permit modification; or

(b) Offsets pursuant to the New Source Review program (OAR 340 division 224) and the Net Air Quality Benefit requirements of OAR 340-225-0090.

~~(5) The amount of banked emission reduction credits shall be discounted without compensation to the holder for a particular source category when new regulations requiring emission reductions are adopted by the Commission. The amount of discounting of banked emission reduction credits shall be calculated on the same basis as the reductions required for existing sources which are subject to the new regulation. Banked emission reduction credits shall be subject to the same rules, procedures, and limitations as permitted emissions.~~

~~(6) Emission reductions shall be in the amount of ten tons per year or more to be creditable for banking except as follows:~~

~~(a) In the Medford-Ashland AQMA emission reductions shall be at least in the amount specified in **Table 2** of OAR 340-200-0020;~~

~~(b) In Lane County, LRAPA may adopt lower levels.~~(4) Unused Emission Reduction Credits

(a) Emission reduction credits that are not used, and the Department does not receive a request for banking within the contemporaneous time period, will become unassigned emissions for purposes of the Plant Site Emission Limit (PSEL).

(b) Emission Reduction credits that are not used prior to the expiration date of the credit will revert to the source that generated the credit and will be treated as unassigned emissions for purposes of the PSEL pursuant to OAR 340-222-0045.

(5) Emission Reduction Credit (ERC)Permit

(a) The Department tracks ERC creation and banking through the permitting process. The holder of ERCs must maintain either an ACDP, Title V permit, or an ERC Permit.

(b) The Department issues ERC Permits for anyone who is not subject to the ACDP or Title V programs that requests an ERC or an ERC to be banked.

(c) An ERC permit will only contain conditions necessary to make the emission reduction enforceable and track the credit.

(d) ~~(7)~~ Requests for emission reduction credit banking ~~shall~~ must be submitted in writing to the Department and ~~shall~~ contain the following documentation:

(A) ~~(a)~~ A detailed description of the ~~processes~~ activity or device controlled or shut down;

(B) ~~(b)~~ Emission calculations showing the types and amounts of actual emissions reduced, including pre-reduction actual emission and post-reduction allowable emission calculations;

(C) ~~(c)~~ The date or dates of ~~such~~ actual reductions;

~~(d) Identification of the probable uses to which the banked reductions are to be applied;~~

(D) ~~(e)~~ The ~~P~~procedure ~~by which~~that will render such emission reductions ~~can be rendered~~ permanent and enforceable.

(E) Emission unit flow parameters including but not limited to temperature, flow rate and stack height.

(F) Description of short and long term emission reduction variability (if any).

(e) ~~(8)~~ Requests for emission reduction credit banking ~~shall~~ must be submitted to the Department ~~prior to or~~ within ~~the~~ two years (24 months) ~~following~~ of the actual emissions reduction. The Department ~~shall~~ must approve or deny requests for emission reduction credit banking before they are effective. ~~and, in~~ In the case of approvals, The Department ~~shall~~ issues a ~~letter~~ permit to the owner or operator defining the terms of such banking. The Department ~~shall take steps to~~ insures the permanence and enforceability of the banked emission reductions by including appropriate conditions in permits and, if necessary, by recommending appropriate revisions ~~of~~ to the State Implementation Plan.

(f) ~~(9)~~ The Department ~~shall~~ provides for the allocation of ~~the banked~~ emission reduction credits in accordance with the uses specified by the holder of the emission reduction credits. The holder of ERCs must notify the Department in writing ~~When~~ when ~~emission reduction credits~~they are transferred to a new owner or site~~, the Department shall be notified in writing~~. Any use of emission reduction credits ~~shall~~ must be compatible with local comprehensive plans, statewide planning goals, and state laws and rules.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0265; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1980

340-268-0040
Baseline for Determining Credit for Offsets
[Repealed]

~~(1) The baseline for determining credit for emission offsets shall be the PSEL established pursuant to OAR 340 division 222 or, in the absence of a PSEL, the actual emission rate for the source providing the offsets.~~

~~(2) Sources in violation of air quality emission limitations may not supply offsets from those emissions which are or were in excess of permitted emission rates.~~

~~(3) Emission reductions which are required pursuant to any state or federal regulation, or permit condition shall not be used for offsets.~~

~~(4) Approval of offsets shall not exempt the proposed major sources or major modifications from BACT, LAER, NSPS and National Emission Standards for Hazardous Air Pollutants (NESHAPS) where required.~~

~~(5) Offsets, including offsets from mobile and area source categories, shall be quantifiable and enforceable before the ACDP is issued and shall be demonstrated to remain in effect throughout the life of the proposed source or modification.~~

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0255;DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1960

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)

Summary of Rule Changes

Summary of Proposed Major Concept Changes

The Air Quality Division is proposing significant changes to its permitting rules in an effort to maximize efficiencies in the program, while maintaining the existing level of environmental protection. These changes are part of the implementation phase of the Department's air permit streamlining project.

The major concepts covered by the proposed changes to the AQ permitting rules include:

Permitting:

- General Permits – increased use of permits that apply to categories of businesses that are all subject to the same requirements
- Combining and splitting sources –a standard procedure to address netting basis, New Source Review (NSR) and Plant Site Emission Limits (PSELs) for multiple sources that become one source or one source that becomes multiple sources
- Generic bubble authority – realignment of bubble authority with EPA rules and guidance
- Notice of Construction – combine and simplify construction approval requirements

Plant Site Emission Limits:

- Generic PSELs – alternative to individual limits for smaller emission sources
- Potential to Emit (PTE)– make the PSEL into a PTE limit by changing it to a rolling 12 month rather than a calendar year limit
- Short Term PSEL – eliminate the short term PSEL where there is no existing authority to deny an increase
- Unassigned Emissions – define and limit approved emissions that exceed a facility's ability to emit due to changes made that have reduced capacity

New Source Review:

- New Source Review streamlining– simplify applicability and eliminate procedures with no environmental value
- Netting Basis – define emission level that is used for comparison to proposed increases for the purpose of determining the appropriate review requirements
- Emission Reduction Credit (ERC) – clarify procedures to create and bank emission reductions due to over control or shutdown
- Offsets – standard procedure to determine the required offsets when a source triggers NSR

- Pre-construction Monitoring – establish alternatives to pre-construction ambient monitoring through modeling and post construction ambient monitoring
- Ozone precursors – improve the analysis of ambient impacts on ozone areas due to nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions increases

Public Participation:

- Public Participation – improves effectiveness of public's ability to comment on proposed permit actions and focus Department resources on changes that have environmental significance

The following summaries briefly explain each of the above listed major concepts.

Permitting

General Air Contaminant Discharge Permits:

The proposed rule changes expand the Department's ability to write permits for categories of businesses instead of individual permits. These permits, known as General Air Contaminant Discharge Permits (ACDPs), allow the permittee to operate as if it had a source specific permit. Individual businesses are 'assigned' to the General ACDP if they meet the criteria for the General ACDP. Businesses that are required to have a permit but do not fit the parameters of an existing General ACDP will still need an individual ACDP.

Expanding the use of general permits will be possible because of changes in the PSEL rules that will allow for "Generic PSELs" (see below).

For example, the Department currently has 214 permits issued for rock crushers. Of these, 143 rock crushers have individualized permits with PSELs established based on the source's expected amount of rock crushed per year for the next five years. Almost all of these permits have the exact same conditions, whether the business crushes 10,000 or 1,000,000 tons of rock per year. In fact, stricter regulations do not apply to these businesses unless they crush more than 1,180,000 tons of rock in any twelve-month period. Therefore, a General ACDP can be issued for most rock crushers with a generic PSEL set below the level that triggers new requirements.

Fees for General ACDPs will be less than fees for other types of ACDPs. General ACDPs will have three cost categories that are based on the type of the General Permit.

The proposed rule changes will not affect how the Department conducts inspections and enforcement because inspections and enforcement are not dependent on whether a business is on a general or individual permit.

Combining and splitting sources:

The proposed rule changes set forth procedures for combining facilities when they meet the definition of a single source, and for splitting one source into multiple sources when they no longer meet the definition of a single source. Two sources that become one source could combine their netting basis, but would get only one significant emission rate

(SER). One source that splits could divide its netting basis and SER however it wants, but the new sources would not get multiple SERs, unless one or more of them satisfies the New Source Review requirements.

A formal process is needed to ensure that sources are being treated consistently statewide when they combine or split their operations. The proposed rules define source as: 1) Being under common ownership or control, 2) Having a common 2 digit standard industrial classification (SIC) or supporting the major 2 digit SIC, and 3) Being on contiguous or adjacent properties. The proposed rules define "adjacent" as interdependent and nearby, consistent with EPA guidance. This will allow for simplified processing of requests to split or combine operations and also will allow a source to move to a new adjacent site without having to get a new permit if the time between operation at the old and new sites is less than six months.

Generic bubble authority:

A "bubble" is an alternative emission control concept that allows one device to exceed a specific limit if another device at the same site is over-controlled and the combined emissions will meet the limit of all devices included in the bubble. Bubbles must be specifically addressed in a permit if they are going to be used. The proposed rule revisions make the Department's bubble authority consistent with EPA's requirements. The Department will have authority to approve simple bubbles on its own. Complex bubbles will require EPA approval either through a SIP revision or a Title V permit.

Notice of Intent to Construct and Notice of Approval:

The proposed rule changes combine the two construction approval programs into one set of rules to clarify and streamline the procedural requirements. Those changes with the highest environmental and public health significance will receive the most scrutiny. Proposed changes that are of low environmental and public health significance may proceed ten days after submitting the required information. The proposed changes establish different levels of review and approval for four types of construction changes:

1. Type 1 changes have no increase in emissions from individual stationary sources and no increase in PSEL. Type 1 changes have a 10 day notice-and-go approval procedure.
2. Type 2 changes may have increased emissions from individual stationary sources less than significance level but no increase in the PSEL. Type 2 changes a have a 60 day notice and approval procedure, which is the same as current procedures.
3. Type 3 changes may increase emissions from individual stationary sources by less than the significance level and may increase the PSEL up to the significance levels. A Construction ACDP or a new or modified Standard ACDP is required for approval of Type 3 changes.
4. Type 4 changes increase emissions from individual stationary sources by more than the significance level or may increase the PSEL by more than the significance level. A new or modified Standard ACDP is required for approval of Type 4 changes.

The proposed rules exempt certain activities, such as installing a domestic heating system, from notice of construction. The proposal also clarifies the types of construction changes that need operating permits before operation can begin.

Plant Site Emissions Limit

Generic Plant Site Emission Limit:
The proposed rule revisions will create an optional Generic PSEL as an alternative to individually calculated PSELs. This Generic PSEL streamlines the permitting process by eliminating source-specific emission calculations for the purpose of setting limits in the permit. It also greatly reduces the number of permit modifications that must be processed because it eliminates the need for small increases in the PSEL.

The proposed rules set generic PSELs at a level just below the significant emission rate, which is the level where additional air quality analysis is required. Sources with emissions less than the significant emission rate will qualify for a Generic PSEL instead of a source-specific PSEL. A source may opt for a generic PSEL for one or more pollutants. A source may not retain baseline emissions for pollutants with generic PSELs. Any increase above the Generic PSEL will require a source-specific PSEL and additional air quality analysis.

Generic PSELs can be used within General Permits (see above). Generic PSELs can also be used to establish enforceable limits to keep emissions below the thresholds for major New Source Review and Title V.

Make the PSEL into a potential to emit (PTE) limit:
By establishing a rolling 12 month PSEL instead of a calendar year PSEL, the PSEL would limit a source's potential to emit. The rolling 12 month basis is needed to make a limit of a source's potential to emit practically enforceable. This will eliminate the need for other production-related emission caps to keep sources from triggering other air quality requirements, such as New Source Review and Title V. Generic, as well as source-specific PSELs, may be used to establish the PTE limit. Demonstration of compliance with the PSEL will also show compliance with the PTE limit. Permittees will have the opportunity to adjust their baseline emission rate (see netting basis below) from a calendar year to a rolling 12 month basis, if needed.

Eliminate the Short Term PSEL:
Existing rules require a short term PSEL in all regular permits. In most of the state, however, there are no restrictions or trigger levels that require additional analysis to increase the short term limit. The proposed rule revisions eliminate the short term PSEL for all pollutants in all areas of the state except where there is a short term Significant Emission Rate (SER) established in the rules. The only area that currently has a short term SER is the Medford/Ashland Air Quality Maintenance Area for PM_{10}. Other areas of the state may be added in the future if it is determined that short term PSELs are necessary to attain or maintain the ambient air quality standards. This change reduces the work load of establishing short term PSELs where there is no environmental benefit, and eliminates permit modifications to change a short term PSEL where there is no basis to deny the change. This change does not affect other existing short term limits, such as opacity or grain loading limits in the rules that are important to protect air quality.

Unassigned Emissions:
The proposed rule revisions define unassigned emissions as the difference between the netting basis (see below) and the source's current potential to emit (PTE), after taking into account banked emission reduction credits (see below). If current PTE is equal to or greater than the netting basis, then a facility has no unassigned emissions.

This proposed rule revision sets up a consistent way of establishing and managing unassigned emissions. If a facility adds new emitting equipment, unassigned emissions can be used to offset the emissions increase through a permit modification. The proposed rule also limits the total amount of unassigned emissions that can be maintained at a facility and establishes a process to reduce excess unassigned emissions over time. The owner or operator may maintain part or all of the unassigned emissions until 2007. This time period can be extended by 10 years if a facility banks a voluntary reduction of actual emissions within two years of the reduction. This allows facilities to plan for growth and streamlines the Department's process of meeting and maintaining air quality standards.

New Source Review

New Source Review streamlining:
The proposed rules transfer approval of emission increases at smaller sources (below federal emission thresholds) to the PSEL rules rather than the NSR rules if located in areas that meet air quality standards. This results in the same level of environmental protection with less administrative burden. The changes also eliminate some procedural steps that duplicate other requirements or do not add environmental value for facilities below federal emission thresholds. In addition, the changes clarify and consolidate analytical requirements and exempt environmentally beneficial pollution control facilities from NSR. This eliminates administrative burden without jeopardizing air quality.

Netting Basis:
The Department proposes to add the definition of netting basis to clarify permitting requirements relating to emission increases.

The proposed definition of netting basis is:

Baseline emission rate

MINUS	reductions required by rule or order
MINUS	unassigned emissions that have been reduced
MINUS	emission reduction credits transferred offsite
PLUS	increases approved by NSR

When a facility proposes to increase emissions, the netting basis is compared to the requested PSEL to determine if more stringent review is required.

In addition to defining the netting basis, the Department proposes that all baseline emission rates be frozen with the first permitting action after July 1, 2002. Re-establishing the baseline emission rate for any business is very resource intensive because finding adequate 1977 or 1978 records to justify the change is very difficult. The time between July 1, 2001, the effective date of the rules, and July 1, 2002 will allow facilities to make changes needed to correspond to changes in the PSEL rule (e.g., 12 month rolling vs. calendar year limit). The proposed rule allows future changes to the baseline

emission rate only when better emission factors are established, an emissions unit that is part of the current facility's operation was erroneously believed to have negligible emissions, or when a new pollutant is added to, or removed from, the list of regulated pollutants.

Emission Reduction Credits (ERC):

Proposed changes to OAR 340 Division 268 clarify what constitutes a valid ERC, how to create one and how to extend its life through banking. Only actual emission reductions will be used as ERCs. Existing source over-control, partial and total source shutdowns, and curtailments are acceptable for creating ERCs if the emission reductions are actual, permanent, surplus, and enforceable. Previous restrictions on banking shutdown credits will be removed as a result of the unassigned emissions program (see Unassigned Emissions above). These two changes must go hand-in-hand to maintain the current level of environmental protection.

Applications for banking ERCs must be made within the two-year contemporaneous time period starting when the actual emission reduction occurs. Banking extends the life of ERCs to ten years from the actual reduction. Banked ERCs would be protected from rule-required reductions during the banked period unless the Environmental Quality Commission specifically determines that they must be reduced as part of attainment or maintenance plan requirements.

All unbanked ERCs, that are not transferred offsite, would expire at the end of the contemporaneous 2 year time period and become unassigned emissions.

Banked ERCs are different from unassigned emissions because they can be transferred to another source through a NSR action for up to 10 years after the reduction occurred. Unassigned emissions can only be used at the source that created them after the 2 year contemporaneous period expires.

Requirements for offsets:

NSR rules use the term "offsets" to refer to an equal or greater reduction in emissions at one site to mitigate the increase in emissions from a second site. Offsets may come from ERCs at other sources that were created during the prior 2 years or banked within the past 10 years. The intent of offsets is to improve air quality in the area of the new or modified facility. The proposed rule revisions clarify offset requirements and consolidate them in one location in the rules.

Alternatives to preconstruction monitoring:

Major new sources and major modifications at existing sources that are subject to NSR may also be subject to preconstruction ambient air quality monitoring. The proposed rule revisions allow an alternative to preconstruction monitoring if worst case modeling shows that impacts will not cause or contribute to a violation of ambient air quality standards. The alternative also requires post-construction monitoring after the facility is built and operating.

Ambient impacts of ozone precursors:

VOC and NO_x emissions promote the formation of ozone and are regulated under NSR rules for ozone. The Department has conducted modeling to determine what size source

at what distance will cause an impact on ozone nonattainment and maintenance areas. The proposed rules include an equation relating size and distance to determine if VOC and NO_x sources within 100 kilometers of a sensitive area cause impacts on the area. This evaluation is necessary to satisfy EPA requirements that ozone impacts from precursors are being addressed sufficiently. Sources found to cause impacts on nonattainment or maintenance areas must address these impacts as required by PSEL or NSR rules.

Public Participation

Public Participation:

Proposed rule changes establish four different categories of permit actions:

1. Category I changes are not environmentally significant and do not involve choices made by the Department (e.g., facility name change). These actions will require no prior public notice, but a list of permit actions will periodically be made available for public review after the changes have been made.
2. Category II changes have the potential for low to medium environmental and public health significance (e.g., renewing a simple permit). These actions will require a 30 day public notice period, but not a public hearing.
3. Category III changes have the potential for medium to high environmental and public health significance (e.g., increasing the PSEL). These actions will require a 35 day public notice period and a hearing if requested by 10 or more people or if pre-scheduled by the Department. This is very similar to current procedures.
4. Category IV changes have the potential for high environmental and public health significance (e.g., siting a new major facility). These actions will require a public notice when the **application** is submitted and an informational meeting prior to drafting a proposed permit. Once the proposed permit is drafted, a 40-day public notice period and a public hearing will be required.

These changes are consistent with changes recently adopted for the Department's Solid Waste and Water Quality programs. The Department believes that the proposed changes will improve the effectiveness of the public's ability to participate in the appropriate public notice process.

In addition, the changes will help the Department streamline the public notice process by focusing public comment on changes that have the potential for environmental significance and permit conditions that involve choices made by the Department.

Rule-by-Rule Description of Changes

Rule number	Description of changes
DIVISION 12 – ENFORCEMENT PROCEDURES AND CIVIL PENALTIES	
340-012-0042	Added violation class and associated penalties that are not in table form, so they will be included in the Secretary of State version of the rules.
340-012-0050 & 0065	Added and changed specific items to address problems with enforcement and to correctly relate to the changes in the permitting system.
DIVISION 14 – PROCEDURES FOR ISSUANCE, DENIAL, MODIFICATION, AND REVOCATION OF AIR CONTAMINANT DISCHARGE PERMITS; GREEN PERMITS	
340-014	Deleted permit issuance procedures from this division and transferred them to divisions 209, 210 and 216
DIVISION 200 – GENERAL AIR POLLUTION PROCEDURES AND DEFINITIONS	
340-200-0020	Created new definitions for: • Adjacent facilities • Capacity • De minimis emission level • Generic PSEL • Modification • Unassigned Emissions • Netting Basis • Federal Major • Year Modified definitions for: • Actual emissions • Air Contaminant Discharge Permit (removes review report from definition) • Large Source (Definition moved to division 214) • Major Modification • Small Source (Definition moved to division 214) • Total Suspended Particulate (Definition deleted) • Significant Emission Rate (Deleted hourly rate for Medford-Ashland AQMA.
340-200-0025	Created a list of Abbreviations and Acronyms
DIVISION 202 – AMBIENT AIR QUALITY STANDARDS AND PSD INCREMENTS	
340-202-0010	Deleted definitions also contained in division 200 • CFR • Federal Land Manager • Particulate Matter • PM_{10} • Total Suspended Particulate or TSP (deleted)
340-202-0060	Deleted reference to Total Suspended Particulate and TSP. This

Rule number	Description of changes
	standard was replaced by PM_{10} but never removed from the rules.
340-202-0120	Deleted
DIVISION 204 – DESIGNATION OF AIR QUALITY AREAS	
340-204-0030	Added the Salem-Kaiser Area Transportation Study as a designated Ozone nonattainment area due to a change in the federal designation and requirements for New Source Review.
DIVISION 209 – PUBLIC PARTICIPATION	
340-209	This is a new division that contains all of the public participation procedures and requirements for issuing permits that used to be in Divisions 14 (general requirements), 216 (ACDPs), 218 (Title V permits), and 224 (New Source Review). This new division incorporates the public participation policies recently developed as a result of an agency-wide review. Public participation procedures for four categories of permit actions are established in 340-209-0030. (Divisions 210, 216 and 218 assign permit actions to public participation procedures established in division 209)
DIVISION 210 – STATIONARY SOURCE NOTIFICATION REQUIREMENTS	
340-210	Repealed old provisions for approving construction or modification activities and replaced them with revised provisions for improving the effectiveness of the program and combining the Notice of Approval requirements from the Title V permit program.
340-210-0205	Clarifies the applicability of the notice rules.
340-210-0215	Clarifies the notice requirements.
340-210-0225	Defines 4 types of construction and modification changes based on magnitude of the emission changes and the degree to which the Department has discretion in implementing the regulations.
340-210-0230	Clarifies the information required in a notice.
340-210-0240	Adds approval provisions for each type of construction and modification change.
340-210-0250	Adds provisions and links to other regulations for approval to operate construction/modification changes.
DIVISION 212 – STATIONARY SOURCE TESTING AND MONITORING	
340-212-0160	Deleted. Moved to division 214.
DIVISION 214 – STATIONARY SOURCE REPORTING REQUIREMENTS	
340-214-0010	Added definitions moved from division 200 for: • Large Source • Small Source
340-214-0114	Added "Records; Maintaining and Reporting" moved from 340-212-0160.
DIVISION 216 – AIR CONTAMINANT DISCHARGE PERMITS	
340-216-0010	Clarifies the purpose of the ACDP division
340-216-0020	Clarifies the applicability provisions, including adding a road map to the type of permits.
340-216-0030	Adds a definition of "permit modification"
340-216-0040	Clarifies the permit application requirements and incorporates the provisions from old Division 14.

Rule number	Description of changes
340-216-0050	Public Notice provisions are repealed and incorporated into Division 209.
340-216-0052	Adds provisions for a new Construction ACDP for type 3 changes defined in Division 210. This is an optional permit for ACDP sources and a mandatory permit for Title V sources undergoing construction or modification that requires public notice for type 3 changes.
340-216-0054	Adds provisions for issuing a Short Term ACDP in emergency situations. A Short Term ACDP expires in 60 days.
340-216-0056	Adds provisions for issuing a Basic ACDP to sources required to obtain a permit, but not required to obtain a Simple or Standard ACDP. A Regulated Source ACDP is a letter permit that may be issued for up to 10 years.
340-216-0060	Revises the General ACDP permit requirements to address both issuing the permits and assigning sources to the permits. Actual General ACDPs will be adopted by rule.
340-216-0064	Adds provisions for issuing Simple ACDPs that can be used for sources required to obtain permits but have emissions less than the significant emission rate for all pollutants. These permits are issued for 5 years.
340-216-0066	Adds provisions for issuing Standard ACDPs.
340-216-0070	Revises the requirements for permitting multiple sources at a single adjacent or contiguous site.
340-216-0080	Repeals the provisions for issuing synthetic minor permits because with the other changes being made to the PSEL rules, it will no longer be necessary to issue synthetic minor permits. All ACDPs will be or could be synthetic minor permits.
340-216-0082	Adds the provisions to terminate and revoke ACDPs from old Division 14.
340-216-0084	Adds provisions for Department initiated modifications from old Division 14.
340-216-0090	Revises the fee structure to be based on the type of permit issued rather than the type of source and establishes what type of permit is required for each type of source.
DIVISION 218 – OREGON TITLE V OPERATING PERMITS	
340-218-0190	Construction and Operation Modifications are deleted from this rule and moved to division 210.
340-218-0210	Deleted Public Participation procedures and moved them to division 209
DIVISION 220 – OREGON TITLE V OPERATING PERMIT FEES	
340-220-0020	Deletes outdated cross references.
340-220-0060	Adds requirement regarding fee applicability for newly regulated pollutants.
DIVISION 222 – STATIONARY SOURCE PLANT SITE EMISSION LIMITS	
340-222-0020	Clarifies applicability and establishes de minimis levels for the PSEL.

Rule number	Description of changes
340-222-0040 to 0043	Modifies procedures for establishing and increasing PSELs.
340-222-0045	Adds formal procedures for handling unassigned emissions.
340-222-0080	Adds PSEL compliance method requirements for permits.
340-222-0090	Adds formal procedure for combining and splitting sources and associated emissions.
DIVISION 224 – MAJOR NEW SOURCE REVIEW	
340-224-0030	Deleted procedural requirements for permit application and processing of a permit. Incorporated into division 216.
340-224-0050	Expanded Lowest Achievable Emission Rate language to address prior changes that become subject to New Source Review after they are legally permitted. Deleted redundant requirements for non federal major sources.
340-224-0060	Expanded Best Available Control Technology language to address prior changes that become subject to NSR after they are legally permitted. Consolidated growth allowance requirements into this rule from other areas of the rules for clarity. Deleted references to the Medford Ashland AQMA for ozone because there is no established growth allowance in this area.
340-224-0070	Expanded Best Available Control Technology language to address prior changes that become subject to NSR after they are legally permitted. Deleted Air Quality analysis, Air Quality monitoring, and Additional Impact analysis. These requirements have been incorporated into the new division 225.
340-224-0080	Deleted most exemptions from the NSR requirements. These exemptions are moved to the definition of Major Modification.
340-224-0090	Deleted requirements for Net Air Quality Benefit. These requirements have been moved to 340-225-0090.
340-224-0110	Deleted Visibility Impact. The requirements are now in division 225.
DIVISION 225 – AIR QUALITY ANALYSIS REQUIREMENTS	
340-225	New division incorporates all of the Modeling, Monitoring, Impact Analysis, and Net Air Quality Benefit requirements that are necessary to ensure air quality standards are being met. These requirements were previously addressed in division 224.
DIVISION 226 – GENERAL EMISSION STANDARDS	
340-226-0400	Updates and clarifies the requirements for Alternative Emission Controls (Bubble).
DIVISION 240 – RULES FOR AREAS WITH UNIQUE AIR QUALITY NEEDS	
340-240-0180, 0190 & 0242	Modifies the wording for consistency with the revisions to the permit types in the permitting program.
340-240-0260	Rule deleted. Requirements moved to Net Air Quality Benefit in 340-225-0090.
DIVISION 268 – EMISSION REDUCTION CREDITS	
340-268	Establishes specific procedures to generate, bank and use Emission Reduction Credits (ERC). Creates a new ERC Permit to allow the implementation of the ERC rules where other permits are not required for the source.

Rule number	Description of changes
ALL DIVISIONS	
All rules	Wording changes that clarify the meaning and correct the grammar without affecting the intent of the rule are being made as part of this rulemaking package.

Attachment B1

Legal Notice of Hearing

OREGON BULLETIN

Supplements the 2000 Oregon Administrative Rules Compilation

VOLUME 39, No. 11
November 1, 2000

For September 16, 2000 – October 13, 2000

Published by
BILL BRADBURY
Secretary of State

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:	Time:	Location:
12-5-00	3 p.m.	Salem Public Library 585 Liberty St. SE Anderson Rm. Salem
12-6-00	3 p.m.	Pendleton City Hall 501 SW Emigrant Community Rm. Pendleton
12-6-00	3 p.m.	Jackson County Auditorium 10 S Oakdale St. Medford
12-7-00	3 p.m.	Central OR Comm. College Hitchcock Auditorium 2600 NW College Way Bend
12-7-00	3 p.m.	811 SW 6th Ave. Rm. 3A Portland
12-7-00	7 p.m.	811 SW 6th Ave. Rm. 3A Portland

Hearing Officer: Department Staff
Stat. Auth.: ORS 468.020, 468A.025 & 468A.035
Stats. Implemented: ORS 468.020, 468A.025 & 468A.045
Proposed Adoptions: 340-200-0025, 340-209-0010, 340-209-0020, 340-209-0030, 340-209-0040, 340-209-0050, 340-209-0060, 340-209-0070, 340-209-0080, 340-210-0220, 340-210-0240, 340-210-0250, 340-214-0014, 340-216-0052, 340-216-0054, 340-216-0056, 340-216-0064, 340-216-0066, 340-216-0082, 340-216-0084, 340-216-0090, 340-216-0094, 340-222-0041, 340-222-0042, 340-222-0043, 340-222-0045, 340-222-0080, 340-222-0090, 340-225-0010, 340-225-0020, 340-225-0030, 340-225-0040, 340-225-0050, 340-225-0060, 340-225-0070, 340-225-0090
Proposed Amendments: 340-012-0042, 340-012-0050, 340-012-0065, 340-200-0010, 340-200-0020, 340-200-0040, 340-200-0050, 340-200-0100, 340-200-0110, 340-200-0120, 340-202-0010, 340-202-0050, 340-202-0060, 340-202-0070, 340-202-0080, 340-202-0090, 340-202-0100, 340-202-0110, 340-202-0130, 340-202-0210, 340-202-0220, 340-204-0030, 340-210-0100, 340-210-0110, 340-210-0120, 340-212-0120, 340-212-0140, 340-212-0150, 340-212-0200, 340-212-0210, 340-212-0220, 340-212-0230, 340-212-0240, 340-212-0250, 340-212-0260, 340-212-0270, 340-212-0280, 340-214-0010, 340-214-0110, 340-214-0130, 340-214-0200, 340-214-0210, 340-214-0220, 340-214-0310, 340-214-0320, 340-216-0010, 340-216-0020, 340-216-0030, 340-216-0040, 340-216-0060, 340-216-0070, 340-216-0090, 340-218-0010, 340-218-0020, 340-218-0040, 340-218-0050, 340-218-0060, 340-218-0070, 340-218-0080, 340-218-0090, 340-218-0100, 340-218-0110, 340-218-0120, 340-218-0130, 340-218-0140, 340-218-0150, 340-218-0160, 340-218-0170, 340-218-0180, 340-218-0190, 340-218-0200, 340-218-0210, 340-218-0220, 340-218-0230, 340-218-0240, 340-218-0250, 340-220-0010, 340-220-0020, 340-220-0030, 340-220-0040, 340-220-0050, 340-220-0060, 340-220-0070, 340-220-0090, 340-220-0100, 340-220-0110, 340-220-0120, 340-220-0130, 340-220-0140, 340-220-0150, 340-220-0160, 340-220-0170, 340-220-0180, 340-220-0190, 340-222-0010, 340-222-0020, 340-222-0040, 340-222-0060, 340-222-0070, 340-224-0010, 340-224-0030, 340-224-0040, 340-224-0050, 340-224-0060, 340-224-0070, 340-224-0080, 340-224-0100, 340-226-0010, 340-226-0100, 340-226-0120, 340-226-0130, 340-226-0140, 340-226-0210, 340-226-0310, 340-226-0400, 340-240-0020, 340-240-0030, 340-240-0110, 340-240-0120, 340-240-0130, 340-240-0140, 340-240-0150, 340-240-0160, 340-240-0170, 340-240-0180, 340-240-0190, 340-240-0200, 340-240-0210, 340-240-0220, 340-240-0230, 340-240-0240, 340-240-0250, 340-240-0270, 340-240-0310, 340-240-0320, 340-240-0330, 340-240-0340, 340-240-0350, 340-240-0360, 340-240-0400, 340-240-0410, 340-240-0420, 340-240-0430, 340-240-0440, 340-268-0010, 340-268-0030
Proposed Repeals: 340-014-0005, 340-014-0010, 340-014-0015, 340-014-0020, 340-014-0022, 340-014-0025, 340-014-0030, 340-014-0035, 340-014-0040, 340-014-0045, 340-014-0050, 340-202-0120, 340-209-0050, 340-216-0050, 340-216-0080, 340-216-0100, 340-222-0050, 340-224-0090, 340-224-0110, 340-240-0260, 340-268-0040
Proposed Ren. & Amends: 340-210-0200 to 340-210-0210, 340-210-0210 to 340-210-0200, 340-210-0220 to 340-210-0230, 340-212-0160 to 340-214-0114
Last Date for Comment: 12-21-00
Summary: The Department of Environmental Quality is proposing to amend Air Quality Administrative Rules. Sixteen divisions will be modified; two new divisions will also be created. This is a comprehensive rulemaking package, developed by the Air Quality Program as an outcome of permit streamlining efforts. The proposed rules are intended to reduce the amount of time required to permit industrial sources of air pollution while maintaining the same level of environmental protection, and allow the Department to focus on additional high priority work to protect air quality in Oregon. The proposed rules are not intended to change the overall stringency of the point source regulatory program but are designed to make the regulatory process simpler and more efficient.

This rulemaking proposal, if adopted, will be submitted to the U.S. 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.
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

Department of Fish and Wildlife
Chapter 635

Date:	Time:	Location:
11-17-00	8 a.m.	ODFW Commission Rm. 2501 SW 1st Ave. Portland, OR 97201

Hearing Officer:
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.450, 506.455, 506.460 & 506.465
Proposed Amendments: 635-006-0850
Last Date for Comment: 11-17-00
Summary: Amend rules to add species to the Developmental Fisheries Species List.
Auxiliary aids for persons with disabilities are available upon advance request.
Rules Coordinator: Sharon Bird
Address: 2501 SW 1st Ave,; PO Box 59, Portland, OR 97201
Telephone: (503) 872-5252 - ext. 5333

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Date:	Time:	Location:
12-15-00	8 am	ODFW Commission Rm. 2501 SW 1st Ave. Portland, OR 97201

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 496.138 & 506.119
Stats. Implemented: ORS 496.138 & 506.129
Proposed Amendments: Rules in chapter 635, divisions 004, 039
Last Date for Comment: 12-15-00
Summary: Adopt the 2001 groundfish and halibut fishery regulations consistent with actions taken by the Pacific Fishery Management Council.
Rules Coordinator: Sharon Bird
Address: 2501 SW 1st Ave.; PO Box 59, Portland, OR 97201
Telephone: (503) 872-5252 - ext. 5333

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Date:	Time:	Location:
12-15-00	8 a.m.	ODFW Commission Rm. 2501 SW 1st Ave. Portland, OR 97201

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 506.109 & 506.119
Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460 & 506.465
Proposed Amendments: 635-006-0800 – 635-006-0950
Last Date for Comment: 12-15-00

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)

Fiscal and Economic Impact Statement

Introduction

This is a comprehensive rule-making package, developed by the Air Quality Program as an outcome of permit streamlining efforts the Department has conducted. The proposed rules are intended to reduce the amount of time required to permit industrial sources of air pollution while maintaining the same level of environmental protection, and allow the Department to focus on additional high priority work to protect air quality in Oregon. The proposed rules are not intended to change the overall stringency of the point source regulatory program but are designed to make the regulatory process simpler and more efficient.

General Public

The Department's public notice procedures are being changed by these proposed rule revisions so major new sources and major modifications to existing sources may require a preliminary informational meeting before the permit is drafted. This will increase the up-front time required for the public, to prepare for and participate in a public meeting. An expected benefit from this procedure is better permits that require less time for review and comment since issues were raised and addressed before permit drafting. However, since the proposed public notice procedures increase public involvement for sources that are potentially environmentally significant, public involvement for permitting smaller facilities and changes to existing facilities that are not environmentally significant will be reduced.

An example of decreased workload is the proposal to increase General Permits, which require one public notice for a General Permit source category of approximately ten or more sources. Comments from the public on one General Permit would then have the affect of commenting on all of the individual permits that would be issued if a General Permit was not issued to sources in that category. Overall, this tiered public involvement process should result in time savings for the public, as well as, business and the Department.

Small Business

Many small businesses will be switching from either Minimal Source or Regular Air Contaminant Discharge Permits (ACDPs) to General or Simple ACDPs under the proposed rules. This switch will affect applicable fees associated with permitting. Fees and other anticipated impacts relating to the rules changes are briefly described below.

Fees: Under the proposed fee and applicability structure, most small businesses subject to permitting will qualify for either a Regulated Source Permit ($100 /yr), a General ACDP ($600 to $1400/yr) or a Simple ACDP ($2000/yr). Under the exiting rules, these same businesses are subject to fees ranging from about $350 to $6000 per year. While some small businesses will be charged more for a permit under the proposed rules, most will be charged about the same or less. Many small businesses will be moved from their current Regular or Minimal ACDPs to General ACDPs. Overall, the Department anticipates these proposed fee changes to be revenue neutral.

Other Impacts: Some of the impacts and benefits listed under Large Business may also pertain to some small businesses that have high emissions or are located in sensitive airsheds.

Large Business

Many large businesses will require Standard ACDPs. However, since the type of permit required is based on the amount of emissions and not the number of employees, some large businesses may be subject to General and Simple ACDPs as outlined for small business.

Fees: Most large businesses will continue to be subject to either the Title V permit program (Title V fees are not affected by the proposed changes) or Standard ACDPs. Standard ACDP holders will be charged $3600/year instead of the range of fees in the existing rules (approximately $1000 to $21,000/year). Other ACDP fees include Initial Permitting and Special Activity fees. Special Activity fees are currently charged for such things as permit modification and review of modeling analysis. These proposed Special Activity fees are similar in magnitude and nature as the existing rules. Overall the Department anticipates these proposed fee changes will be revenue neutral, although individual businesses may pay more or less then current fees.

Reduced Time: The proposed changes will reduce the amount of time required and the cost to maintain a permit by reducing the time it takes to issue and renew permits and the need for permit modifications. This is primarily due to the use of generic Plant Site Emission Limits (PSELs) in place of source-specific ones, and the use of general permits for many source categories. Changing the trigger level for Prevention of Significant

Deterioration (PSD) from the Significant Emission Rate (SER) to 100 or 250 tons per year will reduce the time consumed by triggering PSD when modeling indicates that no standards will be violated. An air quality analysis for increases in the PSEL above the SER will still require an air quality analysis even if PSD is not triggered. Reduced permit processing time will enable businesses to better meet market-timing needs.

Triggering Applicable Requirements: The proposed changes could cause some sources to trigger or avoid triggering various applicable requirements. For example changes to unassigned emissions could cause a few sources to trigger New Source Review sooner, as compared to the current rules. Also, the proposed process to assess impacts due to ozone precursors potentially could require sources between 30 and 100 kilometers from a nonattainment or maintenance area to evaluate their impact on the area and mitigate the impact if it is significant. Procedures for combining and splitting sources could cause some sources to trigger or avoid triggering Title V or New Source Review rules.

Monitoring and Reporting Costs: The proposed changes could increase or decrease monitoring and reporting costs. For example the rolling 12 month PSEL limit in the permits will make it necessary to report compliance for 12 numbers in annual reports in place of one number for the calendar year. However, elimination of the short term PSEL (hourly or daily) will reduce the burden of monitoring and reporting compliance with these short term limits.

Emission Reduction Credits: The proposed changes could increase the value of certain emission reduction credits. For example emission reductions from shutdowns are proposed to be used just like over control reductions to offset emission increases for sources going through New Source Review. Banking can be used to extend the life of a shutdown credit just the same as other actual emission reductions. Under the current rules, emission reductions due to shutdowns may only be used as offsets during the two years following the reduction and may not be banked.

Local Governments

Local governments that hold air quality permits may be affected by the rule revisions in the same manner as small or large businesses. Under the proposed public participation procedures, proposed major source permits will be subject to a public involvement period before the Department begins processing the permit. The Department expects the public may raise land use issues at this point. Such issues will be referred to the local planning jurisdiction for resolution, which may increase the burden on the local government entity.

State Agencies

Department of Environmental Quality - The proposed rules will streamline the permitting process and reduce personnel time, resulting in long term cost savings. The Department expects a large portion of these savings to come from the expanded use of General Permits. This proposal will allow the Department to issue one permit for many similar businesses, which will reduce the permit drafting and processing time required for individually permitted sources. The Department does not expect to realize the full effect of savings for several years i.e., after a complete five year permitting cycle.

Other Agencies -

- Lane Regional Air Pollution Authority (LRAPA) – as a local agency with its own air quality rules, LRAPA will have to adopt its own rules to take advantage of the proposed streamlining.

- EPA – The Department will request expedited review of the proposed State Implementation Plan (SIP) modifications affected by the proposed rule revisions. The EPA has been involved in this rulemaking project from the start and is committed to helping make it work. There are no expected fiscal impacts to the EPA as a result of the accelerated SIP approval process.

- Economic and Community Development Department - Some of the rule changes, for example "alternatives to preconstruction monitoring," may help promote economic development by speeding up the permitting process. Clarifying and removing redundant requirements from the rules should result in consistent interpretation and implementation, which in turn reduces workload.

The proposed rule changes will also affect other agencies that are required to obtain or maintain an air quality permit.

Assumptions

The Department expects that approximately 700 of the existing 1200 ACDP sources will become eligible and switch to General Permits upon availability in January, 2002.

The table below is an outline of the existing and proposed fee structure and was used as the basis for setting the proposed fee amounts listed in this rulemaking proposal.

Permit Type	Fee type	Existing fee	Proposed fee
Standard ACDP	Filing fee Initial permitting Application processing Annual compliance	$98 /5 yrs. $2600 to $13,000 $400 to $40,000 /5yrs $600 to $21,000	NA $10,000 to $35,000 NA $3600
Minimal ACDP		Same as Standard but annual compliance is paid every 5 years and application processing paid every 10 years	NA
General ACDP	Filing fee Initial permitting Application processing Annual compliance	$98 per 5 yrs. $0 75% of Standard Same as Standard	NA $1000 NA $600 to $1400
Short term activity	Initial permitting	NA	$250
Regulated Source	Initial permitting Annual compliance	NA	$100 $100
Construction	Initial permitting	Same as Standard	$8000
Simple	Initial permitting Annual compliance	NA	$5000 $2000

The following fee examples were used in developing the fee structure as it is proposed in this rule package. They illustrate the potential economic impact for three source categories.

Example 1: Stationary Asphaltic Concrete Paving Plant:

This type of facility would be Category 34a under the existing fee table. In a ten-year period a typical facility would pay:
10- annual compliance determination fees @ $1,182 each
2 - renewal fees @ $1,001 each
1 - modification fee @ $1,001 each
Total: $14,823

This type of facility would be assigned to a General ACDP-High Cost under the New Table One and would pay:
10- annual fees @$1,400
Total: $14,000

Example 2: Medium Sized Semi-Conductor Fab:

This type of facility would be a Category 61b under the existing fee table. In a ten-year period a typical facility and assuming it is also not currently a Synthetic Minor would pay:

10- annual compliance determination fees @ $2,243 each
2 - renewal fees @ $5,005 each
1 - modification fee @ $5,005 each
Total: $37,445

This type of facility would be assigned to a Standard ACDP under the New Table One and would pay:
10- annual fees @$3,600
1 - modification fee @$10,000
Total: $46,000

Example 3: Portable Rock Crusher:

This type of facility would be Category 42b under the existing fee table. In a ten-year period a typical facility would pay:
10- annual compliance determination fees @ $1,502 each
2 - renewal fees @ $901 each
1 - modification fee @ $901 each
Total: $17,723

This type of facility would be assigned to a General ACDP-Medium Cost under the New Table One and would pay:
10- annual fees @$1,000
Total: $10,000

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 B3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality permitting Requirements)

Land Use Evaluation Statement

1. **Explain the purpose of the proposed rules.** This is a comprehensive rule-making package developed by the Air Quality Program as a result of permit streamlining efforts the Department has conducted. The proposed rules will allow the Department to maintain the same level of environmental protection from permitted facilities with fewer resources, which will let the Department focus on high priority work to protect air quality. The proposed rules are not intended to increase or decrease the overall stringency of the point source regulatory program. This rule package also includes proposed changes to the Department's public notice and participation 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 X No____

   a. **If yes, identify existing program/rule/activity:** ACDP and Title V permit programs; the existing permitting programs, including the associated construction approval process, will address the land use issues by continuing to require a Land Use Compatibility Statement from the affected local government before issuing an air quality permit. This is the same as the current practice.

   b. **If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?**

   Yes X 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.** NA

Intergovernmental Coordinator Date 10/12/00

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)

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

The existing air quality (AQ) permitting rules are different from the federal requirements. Some portions are more stringent while others are less stringent. The Environmental Protection Agency (EPA) has determined through the State Implementation Plan (SIP) approval that the AQ permitting rules are different from, but equivalent to, the federal requirements. Since the Oregon SIP is approved by the EPA, it contains the federally enforceable requirements for the State of Oregon.

The proposed rule revisions change some of the currently approved requirements that are already different from the federal requirements. The proposed changes do not affect the stringency of the rules compared to the current program, they only clarify, remove redundant and meaningless requirements, and codify interpretations that were previously made within guidance. For examples: 1) federal rules require public notice of permit actions, but the proposed tiered public notice procedure is not required; 2) federal rules require the state to have a Major New Source Review program for evaluating new facilities and modifications to existing facilities, but the federal program does not use a fixed baseline year as is used in the Oregon program.

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

Yes, the Federal Clean Air Act, New Source Review, State Implementation Plan requirements, Emission Reduction Credit Trading Policy, construction and operating permits.

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

Both, with the most stringent controlling.

The federal program sets standards and allows flexibility on how a state can meet those standards. It does not dictate one particular system. The SIP is how the state intends to meet the requirements of the EPA.

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?

No. This rulemaking is a streamlining effort and does not incorporate new requirements.

The changes being proposed still comply with the federal standards and do not make the rules more different than they already were. In some cases, the proposed changes make the existing rules more similar to the federal requirements.

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. The proposal will improve industrial source permit processing and construction approval efficiency. Procedural requirements for regulated industry and the general public are clarified.

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

NA

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

Yes. The proposed rule revisions require gradual reduction of excess emissions above source capacity, allowing room in the airshed for economic expansion.

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

Yes. Proposed changes in the ACDP fees are based on the type of permit instead of the type of source. This ensures sources are paying for what they are getting instead of what type of business they are. Proposed changes in the method of analysis for ozone precursor impact on nonattainment and maintenance areas will level the playing field.

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

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?

Yes. The proposed changes clarify current requirements and make them more similar to the federal requirements. The federal program is a performance type program with flexibility for implementation.

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

Yes. But the proposed rules do not trigger any new technology requirements.

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. The proposed rule revisions address problems with existing permitting in an effort to streamline the permitting process.

The proposed changes provide incentives for early emission reductions through the allowance to bank shutdown emission credits. The Generic PSEL creates a more cost effective means of establishing emission limits for permits.

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

Date: October 12, 2000

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements -
Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt new rules and rule amendments to streamline Oregon's Air Quality permitting process. This comprehensive rule-making package is the outcome of permit streamlining efforts conducted over the last several years by the Air Quality Program.

The Department is proposing to modify sixteen Air Quality Administrative Rule Divisions; two new Divisions will also be created. These proposed changes are designed to clarify the existing rules and improve the efficiency of Air Quality's permitting work. The proposed rules will allow the Department to maintain the same level of environmental protection from permitted facilities with fewer resources, allowing the Department to focus on high priority work to protect air quality. The proposed rules also implement the Department's tiered public notice process, shifting more attention toward significant permitting issues. The public notice rules will bring the air quality program in line with the other programs in the Department. The proposed rules are not intended to increase or decrease the overall stringency of the point source regulatory program.

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. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

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 Summary of rulemaking changes. (Copies of the proposed rule language and amendments are available by contacting the Department as provided in this memorandum.)

Hearing Process Details

The Department will conduct five public hearings at which formal public comments will be accepted either orally or in writing. The Department also will conduct an informal workshop in each location listed below to explain key elements of the proposed rulemaking prior to accepting formal public comment. The public hearings will be held as follows:

Date: December 5, 2000
Time: Workshop: 1:00 PM
Hearing: 3:00 PM
Place: Salem Public Library – Anderson Room
585 Liberty Street, SE
Salem, Oregon

Date: December 6, 2000
Time: Workshop: 1:00 PM
Hearing: 3:00 PM
Place: Jackson County Auditorium
10 S. Oakdale Street
Medford, Oregon

Date: December 6, 2000
Time: Workshop: 1:00 PM
Hearing: 3:00 PM
Place: Pendleton City Hall
Community Room
501 SW Emigrant
Pendleton, Oregon

Date: December 7, 2000
Time: Workshop: 1:00 PM
Hearing: 3:00 PM
Place: Central Oregon Community College, Hitchcock Auditorium
2600 NW College Way
Bend, Oregon

Date: December 7, 2000
Time: Workshop: 1:00 PM
Hearing: 3:00 PM
Place: DEQ Headquarters
Third Floor, Room 3A
811 SW 6th Avenue,
Portland, Oregon

Date: December 7, 2000
Time: Workshop: 5:00 PM
Hearing: 7:00 PM
Place: DEQ Headquarters
Third Floor, Room 3A
811 SW 6th Avenue,
Portland, Oregon

Deadline for submittal of Written Comments: December 21, 2000 at 5:00 PM

Department staff will be the Presiding Officers at the hearings.

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.: Greg Aldrich, 811 SW 6th Avenue, Portland, Oregon 97204-1390.
In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. 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 the close of the public comment period, the Presiding Officers will prepare a report that summarizes the oral comments presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officers' report. The public hearings 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 EQC meeting date for consideration of this rulemaking proposal is March 8, 2001. This date may be delayed if needed to provide additional time for evaluation and response to comments received in the hearing process.

You will be notified of the time and place for final EQC action if you present oral or written comments 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 existing Air Quality Rules are the result of numerous regulatory changes over the span of thirty years. Existing permitting rules are complex and contain a number of outdated requirements that add administrative burden but do not help the Department ensure that air quality is protected. The proposed rule changes are to clarify existing rules and make them easier to work with. In addition, there are numerous implementation issues that were not addressed in the rules when originally adopted. Clarifying and updating the rules will allow the Department to regulate stationary sources of air pollution more efficiently and effectively, and focus more attention on priority work to protect air quality.

How was the rule developed?

This proposed rulemaking was developed by a Department work group plus representatives from Lane Regional Air Pollution Authority (LRAPA), and the Environmental Protection Agency (EPA). The work group's efforts stemmed from previous recommendations by Industrial Source Advisory Committees from 1994 through 1996. The work group also relied on the results of an intensive internal process assessment conducted in 1998. The work group conducted multiple, multi-day work sessions during 1999 to develop issues and proposed solutions. That effort resulted in an extensive list of recommended changes that were subsequently critiqued by Department permit writers and inspectors. The Department's final recommendations were presented to industrial source and environmental representatives throughout this year. In addition, the Department solicited feed back from stakeholders statewide, and presented the recommendations to permitted sources and interested parties in Portland, Salem, Springfield, Bend and Medford. Department permit writers and inspectors, the Oregon Department of Justice and EPA also thoroughly reviewed initial versions of the draft rules.

A pre-public notice draft of the proposed rules was presented to industry and environmental stakeholders at the Department's headquarters in Portland on September 27, 2000. This presentation outlined the changes, identified where the workgroup recommendations were located in the draft rules, and answered questions about the proposal. Drafting errors identified during this process were corrected in this rulemaking proposal.

Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at the Department's office at 811 SW 6th Avenue, Portland, Oregon. Please contact Greg Aldrich 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?

Public

The public notice rules are revised to help the public target their attention on the facilities that

may impact a local community by requiring notice of new large facilities when the permit application is received instead of waiting until after a permit is drafted. This is consistent with changes recently adopted by the other media programs at the Department and emphasizes environmental concerns.

Regulated Community

The rules affect industrial sources subject to air quality permitting. Most of the proposed changes reduce the time it will take to process permits. The regulated community will also be affected by the type of permits and construction approvals that are being proposed. There will be a decreased need for permit modifications due to the new method of setting emission limits in the permits. Approval requirements are more clearly spelled out, giving the regulated community increased certainty for various changes to their operations and air quality permits. The changes in the Emission Reduction Credit and Plant Site Emission Limit rules increase the incentive to make voluntary early reductions in emissions instead of continuing to operate inefficient equipment. In addition, excess unusable Plant Site Emission Limits will be removed from permits over time.

The rules also modify the Air Contaminant Discharge Permit (ACDP) applicability and fee structure. This will affect the amount many source will be charged for a permit. The changes in this rulemaking proposal are intended to be revenue neutral for the Department, but they will increase the amount of fees for some sources and reduce the amount for others. The Department has included an ACDP fee increase in its 2001-2003 budget request. If approved by the Legislative Assembly and Governor, the Department will propose an ACDP fee increase in a separate rulemaking action after July, 2001.

Other agencies

LRAPA was involved in the concept development of these rules and will need to either adopt the Department's rules by reference or create their own similar rules if they wish to take advantage of the streamlining changes. The Oregon Economic and Community Development Department will see clearer direction for proposed sources and opportunities to expedite the permitting process for proposed new operations.

How will the rule be implemented?

The proposed rules will continue to be implemented under the ACDP, Title V Permit and construction approval programs. The proposed changes will allow for more efficient use of these programs.

Expanded use of General Permits, enabled by the proposed rules, will create a major workload

shift that will be implemented over the next 15 months. Permit drafting teams are being assembled to create the new General Permits for approximately 19 categories of sources. Once permit drafting is complete and an internal review is conducted, the permits will be placed on public notice before they are issued. Public notice for the General ACDPs is planned for May and June, 2001. Sources opting for General ACDPs will be assigned to permits with an effective date of January 1, 2002 and a life of 10 years. The proposed rule changes will be incorporated into source-specific permits for the remaining sources upon modification or renewal following rule adoption.

Over the last year, the Department has initiated training with staff on the proposed rule changes. Once adopted, the Department will provide additional training on the implementation of the new and revised rules. External workshops will be scheduled to educate affected sources and the public as needed to improve rule implementation.

Are there time constraints?

Timing for rule adoption is critical because it will directly affect the selection of permit types and invoicing of annual permit fees. General Permits must be developed immediately upon rule adoption to ensure proper billing for the upcoming year. Invoicing for 2002 follows permit type selection and must be sent out by October 1, 2001.

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 Greg Aldrich, Oregon Department of Environmental Quality, Air Quality Division, 811 SW 6th Avenue, Portland, OR 97204 503-229-5687. In Oregon: 800-452-4011. E-mail: aldrich.greg@deq.state.or.us

Obtaining Copies of the proposed rules

The actual rules were not included in this mailing due to the volume of the material (approximately 260 pages). If you would like a complete or partial set of the proposed rules and rule amendments, you may obtain them by any of the following methods:

- Pickup or review at Department offices:
  - Headquarters, Portland – 811 SW 6th, 11th floor
  - Northwest Region, Portland – 2020 SW 4th, Suite 400
  - Western Region, Salem – 750 Front St. NE, Suite 120
  - Western Region, Medford – 201 W Main St., Suite 2-D
  - Eastern Region, Bend – 2146 NE Fourth, Suite 104

  - Eastern Region, Pendleton – 700 SE Emigrant, Suite 330
- E-mail – MS Word (doc) or Portable Document Format (pdf), (request to Greg Aldrich)
- US postal mail – Hard copy, or computer disk w/doc or pdf format (request to Greg Aldrich)
- The Department's website – The proposed rules are available via the Internet in pdf format on the Department's Air Quality web page at http://www.deq.state.or.us/aq/index.htm .

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: January 26, 2001

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements; Additional Public Comment Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)

In October 2000, the Department of Environmental Quality (Department) solicited public comment on proposed rules to streamline the Air Quality Industrial Point Source Permitting Program. Based on the review of the comments received, the Department is reopening a portion of the proposed rules for additional public comment on four specific issues, as provided below.

The Department received a number of comments on the remainder of the rulemaking package, open for public comment from October 17 to December 21, 2000, and has sufficient information to respond to those comments and address the issues raised. The remainder of the rulemaking package is not reopened by this action. The proposed rule language for this reopening is included as Attachment A.

The Department's response to all comments from both public comment periods along with revisions to the proposed rules are scheduled for presentation to the Environmental Quality Commission (EQC) at the meeting on May 3-4, 2001. The Department had intended to present the rules to the EQC at the March 8, 2001 meeting, but has delayed the presentation until May to allow time for reopening the public comment period for specific issues and thoroughly evaluating all comments received.

Public Comments Review - Proposed Rule Adjustments

The Department reviewed all comments received, and has determined that additional public comment is needed for the four following issues. A summary of comments received relating to the four items being reopened is included as Attachment B.

Issue 1 - Unassigned emissions (OAR 340-222-0045)
Overview: Unassigned emissions are defined in the proposed rules as the difference between baseline actual emissions and the amount a facility could currently emit. Some facilities have large amounts of unassigned emissions up to 22 years old. Facilities can use these emissions for expansion without installing state of the art pollution control. Large amounts of unassigned emissions increase the Department's workload when meeting federal requirements that limit the amount of air pollution allowed in sensitive airsheds. The rule proposal reduces unassigned emissions to a maximum of one significant emission rate (15 to 100 tons per year) for each pollutant. A facility would have to go to maximum

production, plus two times the significant emissions rate due to construction, before they would trigger new source review.

Unassigned emissions may only be used for internal netting actions within the same source and may not be used as external offsets. Therefore, a facility with enough unassigned emissions could build a new emitting unit on site without evaluating air quality impacts, but it could not transfer the unassigned emissions to a new owner or a new source. This is because unassigned emissions are typically from reductions that occurred several years ago that can not be used now to create offsets. To comply with federal requirements, external offsets must come from actual emission reductions that have occurred within the past two years or were banked at that time.

One portion of this rule package that is directly tied to this concept is the allowance for banking emission reductions due to shutdowns. Current rules do not allow banking of shutdown emissions for use as external offsets because this would lock-in historical emissions levels from industry. With the unassigned emissions limit, the shutdown restriction can be relaxed. The two proposed changes together maintain the same level of stringency that exists in the current rules.

Comments: A number of commentors requested the Department to eliminate this proposed concept, and maintain unassigned emissions in the permit without requiring a plan for use. Other commentors urged the Department to maintain the unassigned reduction concept. Also, the Department received comments regarding the amount of unassigned emissions that may be retained and regarding equity in the length of time unassigned emissions may be retained in a permit.

Discussion: The Department agrees with suggestions to simplify the procedures and improve equity in reducing excess unassigned emissions. The Department is not considering elimination of the unassigned emission reduction due to the interrelationship of unassigned emissions to the rest of the proposed rules, including banking of shut down credits. If the unassigned emission reduction concept were eliminated, these other provisions would have to be changed to prevent environmental backsliding. This would result in increased work load for the Department and reduce incentives to bank voluntary emission reductions.

Proposed Changes: The Department has amended the proposed rule by eliminating the requirement for a plan to use the unassigned emissions and to set a fixed date for initial expiration of the unassigned emissions. The Department requests further comments on the initial expiration date, reevaluation of unassigned emissions at permit renewal, and the quantity of unassigned emissions that are retained by the source.

Issue 2 - Definition of adjacent (OAR 340-200-0020(4))

Overview: The definition of source relies on the concept of "adjacent" along with "common ownership" and "common major standard industrial classification code". However, "adjacent" is not defined in the current rules. Because of that, determining whether two facilities are one source must be made on a case-by-case basis using complex guidance. The proposed rules include a definition that relates adjacent to the location and interrelationship of facilities. The definition of adjacent will save the Department time when determining whether two facilities constitute one or two sources. The Department's definition of adjacent is intended to be equal to the Environmental Protection Agency's guidance on this issue.

Combining facilities into one source may be more or less stringent then permitting them as separate sources depending on their specific circumstances. Combined facilities with baseline emissions may be able to increase emissions without triggering emissions control requirements. However, combined facilities without baseline could be more likely to trigger emissions control or Title V permitting requirements. These results occur whether or not the term "adjacent" is defined.

Comments: The bulk of the comments referred to the distance considered to be "nearby" when determining a single source In addition, comments suggested language to better define "interrelated". Some commentors raised concerns that facilities currently permitted separately may be drawn together as one source. Also, comments were received that stated the term "non-deminimus" is not defined and may combine facilities that operate independently as one source.

Discussion: The intent of defining "adjacent" was to streamline the process of determining what constitutes a source and promote consistent results statewide. The wide range of comments received illustrate the concept's complexity and the difficulty of relying solely on guidance in case-by-case determinations. The Department believes it is possible to clarify the concept of "interrelated" within the definition of adjacent. However, defining a fixed distance between interrelated facilities may not be workable given the wide range of scenarios that are possible. Because no other concepts in the rulemaking proposal depend on defining "adjacent", the Department can either revise the definition and maintain the workload savings, or eliminate the definition and rely on guidance.

Proposed Changes: The Department believes that clarifying the term interdependent is still needed. Further, the Department now believes that the distance requirement should be determined on a case-by-case basis using EPA and Department guidance. This change is designed to make the proposed rule more functional while maintaining some of the streamlining benefit. The revised definition relies on the term "nearby" instead of a specified area or distance. The Department requests further comments and recommendations on the changes relating to the distance ("nearby" concept). Comments

are also requested regarding the concept of source relocation and the interrelationship of the two facilities during normal operation versus start-up.

Issue 3 - Permit applicability and fee structures (OAR 340-216-0090 Table 1 and 2)
Overview: The Department is proposing to change existing Air Contaminant Discharge Permit (ACDP) source categories and source category fees. The primary goal is to shift a major portion of the existing permits from case-by-case to general permits. General permits are written and issued once for each applicable source category instead of once for each source. The proposed rules also include several types of permits that can be tailored for individual sources. Table 1 lays out the new permitting structure by listing source categories under the appropriate type of permit.

The Department is also proposing to simplify the ACDP fee structure. The shift in the fee structure is intended to be revenue-neutral for the Department. Some sources will pay less for their permits then under existing rules while others pay more but the total revenue will be the same as under the current structure. Fees will be based on the type of permit instead of the type of source. They will be charged on a uniform annual basis instead of the current system of annual compliance determination fees and 5 year renewal fees. Table 2 lays out the simplified fee structure.

Once fully implemented, the shift to general permits will reduce the Department's workload while allowing facilities the flexibility of multiple types of permitting options. General permits can be issued with less time and effort, creating savings for the Department and regulated facilities.

Comments: Several small businesses expressed concern over the cost of future permits and felt that fees should be lower for the types of permits typically used by small businesses. Also, comments noted that specific categories were missing from Table 1 and should be added.

Discussion: The Department reviewed tables 1 and 2, in light of comments received. Categories of sources that are typically small business and low polluters were evaluated to ensure they have the appropriate options within the new permitting structure. These options include the type of permit they can get based on the size of the operation and the amount of emissions they have. In the initial proposal, some facilities were required to obtain general or simple permits even though their emissions were negligible. The Department reviewed the applicability table to determine what low-end cutoffs should be included so that facilities are required to obtain appropriate types of permits.

The Department also looked at the fees proposed for each type of permit, and considered the type of businesses that are likely to be permitted with each permit type. Based on this

review, the Department agrees that adjustments are needed to reduce the fees for smaller businesses.

Proposed Changes: The Department has added low-end cutoffs for some categories so that small businesses will no longer need to have a General or Simple permit. Instead, these facilities will only need a Regulated Source permit. A regulated source permit is very inexpensive ($100/year) and helps assure hat small businesses do not inadvertently violate air quality requirements. In addition the Department has reduced the cost of General permits that are likely to be used by many small businesses. The lost revenue from this change would be made up by an increase in the fee for Standard permits that are likely to be used mainly by larger businesses. The Department requests further comments on the permit categories and the revised fee amounts.

Issue 4 – Ozone Precursor Significant Impact Distance (OAR 340-225-0020(7))

Overview: This definition is used to determine if a new major source or major modification would have a significant impact on a sensitive ozone airshed (Portland and Medford areas). If a proposed source has a significant impact, the applicant must obtain an emission offset to receive an Air Contaminant Discharge Permit. The existing definition assumes that sources within 30-kilometers (19 mile) of an ozone area have a significant impact, while sources beyond 30 kilometers have no impact. EPA has informed the Department that the existing definition is not federally acceptable because an analysis of proposed sources beyond 30 kilometers is required.

The proposed new definition would establish a significant impact gradient for progressively larger emission sources as far away as 100 kilometers (62 miles). Under the proposal, a 40 ton/year emission source would have an impact within 30 kilometers while a 173 ton/year source would have an impact within 100 kilometers. The portion of the emissions that must be offset would gradually decrease as the distance increased from an ozone area. The change would only affect pollutants that cause ozone (volatile organic compounds and nitrogen oxides).

Comments: Several commentors opposed this new definition as it would require sources to obtain emission offsets at greater distances than is now required. The felt that emission offsets would be unnecessarily required for sources that locate in an area separated by a mountain range from the Portland area. They requested documentation of the formula used in the definition, and requested that more flexibility be allowed to exempt some sources based on a demonstration that emissions would not impact the ozone area. The Department also received comments supporting the expansion of the 30 kilometer zone.

Discussion: EPA is requiring the Department to conduct an analysis of ozone impacts beyond 30 kilometers, but is flexible on the type of analysis that is done. The Department

considered using dispersion modeling as is done for other pollutants such as particulate matter. However, single source modeling is not appropriate for ozone because ozone is caused by reactions in the atmosphere of emissions from all sources. Therefor, the Department continues to believe that the size-distance gradient is the best approach. However, the Department agrees with commentors that some areas within the gradient will not normally impact an ozone area due to mountain ranges, wind patterns or other factors. Flexibility is needed in the definition to address these situations.

Proposed Change: The Department proposes to revise the definition to exempt sources that are not capable of impacting an ozone area. The Department would make this determination on a case-by-case basis using information submitted by the applicant. Based on a review of the methodology, the Department has also slightly revised the formula to improve the emissions/distance relationship. With this modification, the impact zone increases more in proportion to the level of emissions beyond 30 kilometers.

Deadline for submittal of Written Comments: February 26, 2001 at 5:00 PM

Written comments can be presented to the Department any time prior to the date above. Comments should be sent to: Department of Environmental Quality, Attn.: David Kauth, 811 SW 6th Avenue, Portland, Oregon 97204-1390.

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus, if you wish for your comments to be considered by the Department in the development of these rules, your comments must be received prior to the close of the comment period. The Department recommends that comments be submitted as early as possible to allow adequate review and evaluation.

Workshops

The Department will hold two workshops during the comment period to provide opportunity to discuss these four items further with interested parties. The workshops will be held in Portland and Medford at the locations and times listed below. No formal hearings will be conducted as part of this request for additional public comment. Written comments will be accepted on the four specific issues until 5:00 pm, February 26, 2001.

Portland Workshop
February 6, 2001, 2:00 pm
811 SW 6th Ave., conference room 3A
Portland, Oregon

Medford Workshop
February 8, 2001, 1:00 pm
RVMC Smullin Center, Studio 108
2825 East Barnett Rd.
Medford, Oregon

What Happens After the Public Comment Period Closes?

The Department will review and evaluate the rulemaking proposal in light of all information received during the initial comment period for the entire package and the reopened comment period for the four issues listed above. 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 EQC meeting date for consideration of this rulemaking proposal is May 4, 2001. This date may be delayed if needed to provide additional time for evaluation and response to comments received in the hearing process.

You will be notified of the time and place for final EQC action if you submit written comment during either 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.

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 ORS 468A.035. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

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 David Kauth, Oregon Department of Environmental Quality, Air Quality Division, 811 SW 6th Avenue, Portland, OR 97204 503-229-5655. In Oregon: 800-452-4011. E-mail: kauth.dave@deq.state.or.us

Obtaining Copies of the proposed rules

The proposed revisions to the four specific issues are included as attachment A to this public notice. If you would like a complete or partial set of the initial proposed rules and rule amendments, you may obtain them by any of the following methods:

- Pickup or review at Department offices:
  - Headquarters, Portland – 811 SW 6th, 11th floor

  - Northwest Region, Portland – 2020 SW 4th, Suite 400
  - Western Region, Salem – 750 Front St. NE, Suite 120
  - Western Region, Medford – 201 W Main St., Suite 2-D
  - Eastern Region, Bend – 2146 NE Fourth, Suite 104
  - Eastern Region, Pendleton – 700 SE Emigrant, Suite 330
- E-mail – Microsoft Word 97 (doc) or Portable Document Format (pdf), (request to David Kauth)
- US postal mail – Hard copy, or computer disk w/doc or pdf format (request to David Kauth)
- The Department's website – The proposed rules are available via the Internet in doc and pdf format on the Department's Air Quality web page at http://www.deq.state.or.us/aq/index.htm .

Attachments

Attachments to this memorandum provide details on the proposal as follows:

Attachment A	Proposed changes to rule language for the four issues addressed by the public notice reopening. (Changes indicated in redline/strike-out format)
Attachment B	Summary of comments received relating to the four items being reopened

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

To: Environmental Quality Commission

From: Scott Manzano

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: See below
Hearing Location: See below
Title of Proposal: Revisions to Point Source Air Management Rules

The rulemaking hearings on the above titled proposal were convened at the locations and times provided below. The hearings were closed after all commentors completed statements, and not earlier than one half hour after each hearing was convened. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Hearing Locations, Dates, and Times

The Department conducted six public hearings in the following locations. Prior to each hearing, the Department also conducted an informal workshop at each location to explain key elements of the proposed rulemaking prior to accepting formal public comment.

Date: December 5, 2000
Time: Workshop: 1:00 PM, Hearing: 3:00 PM
Place: Salem Public Library - Anderson Room, 585 Liberty Street, SE Salem

Date: December 6, 2000
Time: Workshop: 1:00 PM, Hearing: 3:00 PM
Place: Jackson County Auditorium, 10 S. Oakdale Street, Medford

Date: December 6, 2000
Time: Workshop: 1:00 PM, Hearing: 3:00 PM
Place: Pendleton City Hall - Community Room, 501 SW Emigrant, Pendleton

Date: December 7, 2000
Time: Workshop: 1:00 PM, Hearing: 3:00 PM
Place: Central Oregon Community College, Hitchcock Auditorium, 2600 NW College Way, Bend

Date: December 7, 2000
Time: Workshop: 1:00 PM, Hearing: 3:00 PM
Place: DEQ Headquarters - Third Floor, Room 3A, 811 SW 6th Avenue, Portland

Date: December 7, 2000
Time: Workshop: 5:00 PM, Hearing: 7:00 PM
Place: DEQ Headquarters - Third Floor, Room 3A, 811 SW 6th Avenue, Portland

Department staff acted as presiding officers at each of the hearings. Prior to receiving comments Department presiding officers briefly explained the specific rulemaking proposal and the procedures to be followed during the hearing.

Approximately thirty people attended the workshops in Portland, no one stayed for the hearings. One person attended the workshop in Salem, no one attended the hearing. Two people attended each of the hearings in Bend and Pendleton; no one provided comment. Approximately fifteen people attended the workshop in Medford. Mr. David Hill, representing Southern Oregon Timber Industry Association, was the only individual to testify in Medford. Mr. Hill read from written comments that were submitted to the Presiding Officer at the hearing. Mr. Hill's comments and the Departments response are provided in Attachment D1.

A summary of all written and oral comments received and the Department's response to each comment is provided in Attachment D1. Comments are grouped by similar subject areas. It is important to note that the Department provided opportunity to comment further on portions of the proposed rules. A summary of those comments and the Departments response is provided in Attachment D2. Included in both attachments is a list of all commentors. All comments were considered when developing the final proposed rules.

State Of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)

First Public Notice Response to Comments

Provided below is the list of interested parties that provided comment in response to the first notice of the proposed rules. The public comment period was from October 17 through December 21, 2000. The commentor identification number is shown in the comment table that follows.

ID#	Commentor	Date of Comments
1.	Peterkort Roses	11/1/00
2.	NORPAC Foods	11/13/00
3.	Summers Ranch	11/29/00
4.	PED Manufacturing	12/13/00
5.	Clean Air Committee of Bend	12/13/00
6.	Concerned Friends of the Winema	12/15/00
7.	SOTIA #1 (Southern Oregon Timber Industries Association; Oral testimony delivered at Medford Public Hearing)	12/6/00
8.	U.S. EPA Region 10	12/19/00
9.	Oregon Economic & Community DevelopmentCommission	12/13/00
10.	Northwest Environmental Defense Center	12/20/00
11.	Merix Corporation	12/15/00
12.	Oregon Environmental Council	12/20/00
13.	US Department of Agriculture	12/20/00
14.	Ogden Martin	12/18/00
15.	Boise Cascade – Timber & Wood Products Division	12/19/00
16.	Sun Studs, Inc. – Sun Veneer Division	12/21/00
17.	Willamette Industries – Executive Offices	12/20/00
18.	SOTIA #2 (Southern Oregon Timber Industries Association)	12/19/00
19.	Eastman Kodak	12/20/00
20.	Portland General Electric Company	12/21/00
21.	Port of Portland	12/21/00
22.	Weyerhaeuser	12/20/00
23.	Northwest Pulp & Paper	12/21/00
24.	SOTIA #3 (Southern Oregon Timber Industries Association)	12/21/00
25.	Oregon Economic & Community Development Department	12/21/00
26.	Jackson County – Economic and Special Development.	12/21/00
27.	Boise Cascade – Public Policy and Environment	12/21/00
28.	Coalition to Improve Air Quality	12/21/00
29.	Associated Oregon Industries	12/21/00
30.	Oregon Chapter of the Sierra Club	12/21/00

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
General comments	All	The Department should extend the comment period.	7, 9, 16, 22, 23, 24, 25, 26, 27, 29	The public participation period was extended to accept additional comments on four specific issues [1) Unassigned,; 2) adjacent; 3) ACDP applicability and fee structure; and 4) Ozone precursor impact distance]. The additional public comment period was open from January 26 to February 26, 2001.
		The Department should specifically include southern Oregon industry in the refinement of this rulemaking.	7	The Department has made specific effort to involve industrial and environmental interests throughout the state in this rulemaking package. Presentations of the proposals as well as workshops have been used throughout the state including the southern Oregon area to refine concepts and rule language. Additional workshops were held in Portland and Medford during the re-notice period for specific rules to ensure there was a thorough understanding of the proposed package. This included specific discussions and meetings with Southern Oregon industry.
		The proposed rules go well beyond permit streamlining as advertised and should be re-noticed.	7, 11, 15, 16, 17, 19, 22, 27, 29	The overall effect of this rulemaking package is permit streamlining without environmental backsliding. Some specific concepts streamline the State Implementation Planning process or allow other concepts to be implemented that result in improved efficiency.
		Some changes exceed federal stringency and should have Oregon legislative review or should be justified with a scientifically defensible statement of need.	7, 16, 17, 18, 19, 22, 27, 29	While many of the concepts within the Oregon rules are different than their federal counterparts, the overall program is equivalent to the federal program. Some specific items may be more stringent by themselves, while others are less stringent. The statutory requirement for a scientifically defensible statement of need to differ from federal rules only applies to the implementation of the Title V Operating Permit Program and not the underlying requirements that apply to permitted sources.
		The air quality impacts of the proposed changes have not been adequately assessed by the Department.	7, 15, 17	The Department believes that the changes to the rules will not reduce or increase the environmental protection afforded by the existing rules. The changes remove permitting steps that do not add environmental value and add steps to balance other changes or assure EPA approval..
		Any significant improvements to the air quality in this air shed [Rogue Valley] will not be gained from additional regulations on industrial sources.	18	The Department agrees that industrial sources are not the only source of pollution within any air shed. The intent of this rulemaking package is not to reduce industrial emissions, but to improve the permitting process so resources can be appropriately focused on all sources of air pollution.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The Department did not adequately address the financial impacts of the proposed rules. (Measure 7 "taking")	7, 17, 22, 26, 27, 29	The fiscal and economic impact statement was included in the rulemaking proposal (Attachment B2). Although the Department believes that the proposed rule revisions will not have a significant financial impact, Measure 7 impacts are not addressed by the analysis but are being reviewed separately from this rulemaking proposal by the Department of Justice.
		The Department should have prepared a staff report to better explain the proposed changes.	17	Within the staff report for the proposed rules, the Department made every effort to prepare materials that accurately presented the proposed changes and focused on the important issues.
		The Department should put more emphasis on pollution prevention.	5	Although pollution prevention is an extremely important aspect of the AQ program, it was not within the intended scope of the proposed package.
		Are these changes really necessary considering that emission inventories show that industrial sources are a relatively small fraction of all emission sources throughout the state?	16	The proposed changes are necessary to improve the permit processing efficiency precisely because industrial sources are now a relatively small part of overall emissions. The proposed changes will decrease the workload associated with the permitting process and will free-up resources that can then be focused on other sources of pollution, such as area and mobile sources, within the state. Since the ACDP program is currently only partially fee-funded, the workload savings will make it more self supporting.
		This proposal has far reaching ramifications and with few notable exceptions represents a major backsliding from existing policy.	28, 30	The Department believes that the overall package is no less environmentally friendly then the existing rules which would allow the same level of emissions. The changes that are being proposed are for streamlining the process which will improve environmental protection by allowing the Department to reassign resources to higher strategic priorities.
		This proposed rule package is one of the most complex DEQ rulemakings reviewed during the past 15 years.	28, 30	This package is one of the most complex rulemaking packages presented during the past 15 years. The Department appreciates the time and effort spent to review and comment on the proposal.
		The Department missed major opportunities to fix existing problems in an equitable manner, but instead chose a package that in total provides a disincentive for regulated sources to reduce their emissions at the expense of the public's health and welfare.	28, 30	The intent of this rulemaking was to streamline the permitting process without allowing environmental backsliding. It was not intended to increase the environmental control requirements or to reduce air pollution in any area of the state. Nevertheless, the package does improve incentives to reduce emissions through general permits, unassigned emissions, banking, trading and other provisions..
		Appreciate DEQ's efforts to streamline, simplify, clarify, and expedite the process involved in requesting and obtaining air permit changes.	17, 20, 22	The Department appreciates the support for this rulemaking package.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Most of the items seem to be reasonable and would meet the goal of streamlining the permitting process without any backsliding on air quality.	18	The Department appreciates the effort involved in reviewing the entire rulemaking proposal and the comments supporting it.
		The two month time frame for review and comment on the proposed rule changes is appreciated, but still far too short.	22, 27	This rule revision package is extremely large and complex and the Department appreciates the amount of effort required to evaluate all of the proposed revisions. Based on comments received, the Department reopened the public notice period for an additional month (1/26/01 to 2/26/01) on the 4 most controversial and difficult to understand concepts within the package (unassigned, adjacent, ACDP applicability and fee structure, and ozone precursor impact distance). All of the comments received during the initial and subsequent notice periods were considered in making a final recommendation to the EQC for rule adoption.
		Different effective dates are listed in different places in the rules. Some DEQ permit writers are trying to apply portions of the proposed regulations to sources. Department should clearly state in a separate communication both to its staff and to the regulated community, when each portion of the rules takes effect.	23	The Department intended the rules to take effect on July 1, 2001, with certain aspects not being triggered until one year after the effective date or a later date as specified. The Department does not foresee any problems with the dates, but will monitor this closely during the implementation period. Permit writers are applying the existing rules, some of which are being clarified by incorporating existing guidance into the proposed rules. The implementation plan includes training for DEQ staff to ensure the appropriate rules are being used and enforced.
		Net impact of the rule package would not streamline the program, but rather increase the workload of DEQ and the regulated community, without significant environmental benefit.	21	While it is expected that some of the implementation aspects of the proposed rules will increase workload for the short term (next 3-5 years), there will be some short term reduction in process time and greater improvements in the long term (after 5 years). For example, converting over half of ACDP sources to general permits will increase work load in the short run but substantially reduce work load in the long run. In addition, some aspects of the proposal that appear to increase permitting work will actually save work in attaining and maintaining air quality standards.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
Violations	012-050	The class one violations in OAR 340-012-0500 need to be expanded to include: 1)modifying a source which is required to have an air permit without first notifying and receiving approval from the Department; and 2) exceedances of operating limitations that limit the potential to emit and result in emissions above any major source threshold.	8	The Department agrees in part. Modifying a source without first notifying and receiving approval is a Class 1 violation pursuant to 340-12-0050 (1) (c). Although arguably exceeding an operating limitation on PTE that results in emissions above the major source threshold is already a Class 1 violation under 340-12-0050(1)(b) in that the source would be operating a major source without a Title V permit; an additional Class 1 violation should be added that states: "Operating a source in excess of any operating limitations in a permit that limit the potential to emit and result in emissions above the major source threshold for that emission."
		What class of violations applies to violations of terms and conditions of a permit regardless of level of emissions (e.g., violations of monitoring, recordkeeping, reporting requirements)?	8	Violations of air quality permits not otherwise classified are Class 2 violations pursuant to OAR 340-12-0050 (2) (aa).
		The Class Two violations need to cover exceedances of PTE limits for any major source threshold, not just the Oregon Operating Permit permitting thresholds.	8	This violation would be a Class 2 violation pursuant to OAR 340-12-0050(2)(aa).
		012-050(2)(y) is incomplete as it does not indicate what the violation is.	8	The Department agrees. The language should be changed to: "Constructing or operating a source required to have a Basic ACDP without first obtaining a permit from the Department."
		The definitions of Class I, II, and III opacity violations should line up with EPA's HPV matrix for opacity violations, which considers how the violation was found (Method 9 or COMS), the magnitude of the violations and the duration of the violation. Class I violations should result in an HPV classification, but Class II and III violations should not.	8	Although the Department sees merit in the suggestion, the Department has a few concerns with using EPA's HPV matrix to define Class 1 opacity violations. Foremost is that the Department has numerous opacity regulations that regulate more than just major sources (the only sources subject to HPV status). Incorporating the matrix into rule by defining the matrix in a few sentences does not readily lend itself to a simple and understandable rule. Finally, the existing rule incorporates at least all the potential HPV opacity violations as a Class 1.
		012-050(m) This new violation appears to allow the Department to treat an occasional recordkeeping error as a class one offense as well. This proposed change is unduly harsh. The smallest discrepancy between a source's records and its compliance certification would be punishable with a Class One fine. This is more appropriate as a Class Two violation.	22, 29	The Department disagrees. One basis of the Federal Operating Permit program is self-certification by the source through submittal of the semi-annual and annual compliance certifications. In those reports, the source certifies the accuracy of the submittal. The Department and the public depend on the accuracy of these submittals, therefore the Department believes misreporting should be a Class 1 violation. It should be noted that intentional misreporting on a compliance certification is currently a criminal violation.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
Definitions	200-0020	Any new rules that use the terms "de minimis" or "adjacent" must have specific definitions.	18	"De minimis" and "adjacent" are both being defined in the proposed rule revisions. Consistent application of these terms is one goal of the rulemaking proposal.
Definition of "Adjacent facilities"	200-0020	The proposed rules will force sources that are currently permitted independently to be permitted as one source which exceeds federal stringency and should have Oregon legislative review.	7, 22, 26, 27, 29	Adjacent is used in the federal definition of source in the same manner as in the Oregon definition and therefore the proposed rule is no more or less stringent. The definition of "adjacent" added to the proposed rules is intended for consistent determinations of source and not to combine facilities that would otherwise be considered separate sources.
		This definition clearly goes beyond federal regulatory requirements and, therefore, is not applicable to Title V sources without a justification that meets State law.	17, 22, 23, 29	The definition of source applies to Title V as well as NSR/PSD and other aspects of the air quality program. Defining adjacent is simply codifying what has been previously done on a case-by-case basis. EPA guidance, used for the definition of adjacent, includes the concepts of interrelated and nearby when determining what constitutes a source. Therefore, the definition is consistent with federal requirements.
		Combining sources will take away the currently available Significant Emission Rate (SER) increase allowed for individual facilities.	7, 15	The Significant Emission Rate (SER) is a source-specific and not necessarily facility-specific concept. A source is entitled to one SER regardless of the number of facilities within that one source.
		The proposed change is not neutral for two reasons: 1)It will allow emissions netting at geographic distances not previously contemplated and 2) it will result in new source review requirements being imposed on combined sources that, although a great distance apart, will have newly aggregated emissions in excess of new source review thresholds.	11, 25	The Department agrees that the originally proposed definition of "adjacent" encompassed too broad a geographic area and proposed a revised definition for public comment. The revised definition replaces the specified distance criteria with a case-by-case determination of "nearby". Comments received on the revised definition were considered in preparing a final recommendation for this rulemaking package to the EQC.
		With few exceptions, EPA has held that facilities further than 20 miles apart are too far apart to be considered as a single source. It is recommended that the first sentence of the definition be changed as follows: "*Adjacent facilities (or properties) means interdependent facilities that are located within 30 kilometers of each other, except for facilities that are located in other states.*"	11	The Department agrees that fixed distances are not appropriate for all cases and existing guidance should be considered. The revised definition, which was re-noticed, increases the flexibility for the determination, but retains the basic idea of what should be considered. The Department will continue to use existing guidance for making any case-by-case determinations that are required based on the applicable rules. State boundaries cannot be used within the definition of adjacent to split a source that would otherwise be considered one source.
		Adjacent should not be based on "air quality control regions" because two facilities located far apart could be considered as a single source.	8, 17, 21, 22, 25, 29	The Department agrees with this comment and has proposed a revised definition for further consideration. The revised definition was part of a re-notice package that is included as Attachments B6 and E of this report..

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The exclusion for assembly of parts or subassemblies is too broad because it could cover such things as automobile assembly plants.	8	The Department understands the concern with this exclusion and has revised the language within the definition to correct the problem.
		The exclusion for oil fields is too broad because it would allow oil wells separated by a public road or right-of-way to be separated into multiple sources.	8	The Department understands the concern with this exclusion and has revised the language within the definition to correct the problem.
		Support treating facilities that are near each other but not necessarily adjacent as a single source only in circumstances that trigger Title V. Otherwise, does not support it because of the danger that it could create hot spots.	12	The definition of source is applicable regardless of the particular program or environmental impact associated. If two facilities are one source for one air quality program they will be considered one source for all air quality programs. This approach may be more or less environmentally stringent but is consistent and fair.
		This definition may undo all of the "streamlining" attributed to the Department's other proposed changes.	17	The definition of "adjacent" is intended to reduce the amount of time required to determine if facilities are one source. It will not increase the workload associated with the other portions of this rulemaking package.
		The term "adjacent facilities" is not used at other locations in the rules.	17	The Department agrees with this comment. The Defined term was changed in the re-notice to "adjacent".
		The Department should make the demonstration of combined effects part of the definition instead of a broad geographical area.	17	The Department revised the definition of "adjacent" and placed it back out on public notice. The geographical distance was removed in favor of a case-by-case determination of "nearby".
		How will the Department deal with transient business arrangements where costs, contract terms, environmental permit conditions, and personal agreements may dictate business relationships between "interdependent" sources?	17	The intent of this definition of "adjacent" is to facilitate the determination of source. A sources is generally defined based on normal operation and not the transient effects of a shift in economics. However, under existing guidance or the proposed rule, it is possible for a lasting change in interdependence or business arrangements to result in a change in a source determination.
		What is a non-de minimis portion?	17	Non-de minimis has been deleted from this definition
		Can two sources become linked (or unlinked) through the presence of a third party?	17	The presence of a third facility does not link two facilities that are by themselves separate sources. The third facility may be part of one of the other two sources, but not both.
		Combining sources reduces the available SER and potentially would trigger NSR. How does the Department support its findings in the "Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements" that the new rules do not incorporate any new requirements?	17	The definition in the rules is not intended to combine facilities in to one source that would not have been combined under existing guidance. The definition does not draw facilities or operations together that are legitimately separate sources based on interrelationship and location.
		Would the definition be selectively applied?	17	Since adjacent is part of the definition of source and a source is a source regardless of where it is located, the definition should be applied consistently.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The Department should discuss the economic considerations of acquiring and operating adjacent facilities. If the new rules do not enhance the ability of industry in the Rogue Valley to expand, they should at a minimum not reduce the ability of existing operations to survive in a competitive environment.	18	Placing the definition of "adjacent" in the rules does not affect the applicability of any requirements. Under current rules and EPA guidance, facilities are combined when they are determined to be one source.
		The need to clearly define "adjacent" for permitting processes is a good idea. However, the proposed definition of "nearby and functionally related" appears to increase the confusion rather than clarify the term.	18	The Department agrees that the definition of adjacent has caused some confusion in the definition of source. Adjacent has been redefined to reduce confusion based on comments received during the first public notice period. The definition was re-noticed to receive additional comments, which were considered in the final rule package presented to the EQC for adoption.
		Don't believe it is appropriate for DEQ to codify what EPA has left in guidance and case-by-case determinations	22, 23, 29	DEQ is trying to streamline the permitting process. The more certainty that is in the rules, the less discussion and explanation are needed on a case-by-case basis, and in turn the faster permitting actions can be accomplished.
		Facilities may become one or two sources based on their choice whether or not to send materials back and forth from year to year. This could cause a facility to trigger NSR simply because the other facility stopped sending material and therefore could no longer share baseline	22, 29	The Department revised the definition of "adjacent" to address some of the concerns raised and requested further comment to further diminish the potential problems with the definition of "source". Facilities that are one source should be considered one source regardless of the regulatory impacts related to combining them. The determination of source is based on normal operation and not year to year fluctuations in process.
		Multiple Facilities will be forced to permit as a single Title V source because they may start processing parts or materials generated from another plant.	22, 29	This is not a change from the existing rules, it is simply a codification of current practice.
		Request that rule be revised so that the new definition could not be applied to existing sources. Clarify the need for the new definition.	27	The definition of source applies to new and existing facilities, but it is not the intent of the Department to systematically revisit determinations that were made in the past unless there is a change at the subject facilities.
		The Department should at most define the term "adjacent facilities" using the broad language employed by EPA and the courts, namely "two or more sources that meet the common-sense definition of a single plant".	22, 23	The Department attempted to provide a more specific definition that would require less interpretation. A revised definition was re-noticed to allow opportunity for further comment. The revised definition removed the geographical location standards and replaced them with a case-by-case determination of "nearby"

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
Definition of "Categorically Insignificant Activities"	200-0020	The existing rule provides for a practical cutoff of the units to be counted. The proposed rule would require the counting of every small combustion unit, each more insignificant than the last. There is no proposed lower limit on unit size, so presumably, a Bunsen burner would need to be enumerated. The increase in stringency (and workload) of this rule change has no environmental benefits and the proposed change should be eliminated.	17	The proposed rules have been revised to eliminate the aggregation of small combustion units when determining the applicability of the "categorically insignificant" definition.
		The required inventory and ongoing data collection effort to track insignificant activities will not produce a proportional environmental benefit.	19	The proposed rules have been revised to eliminate the aggregation of small combustion units when determining the applicability of the "categorically insignificant" definition.
		According to EPA's White Paper for Streamlined Development of Part 70 (Title V) Permit Applications, the qualification of an activity for insignificant status is not contingent on the aggregation of its emissions with other similar minor activities.	19	The proposed rules have been revised to eliminate the aggregation of small combustion units when determining the applicability of the "categorically insignificant" definition.
		The proposed change in the rules (200-0020(18(c) & (d)) is a dramatic reduction in the scope of these categorically insignificant activities and expands the Title V program applicability to equipment that is not required to be addressed under the federal program Pursuant to DEQ's statutory mandate under ORS 468A.310 this change would require a formal finding by the commission that there is a scientifically defensible need for additional actions to protect the public health or environment. Encourage DEQ to withdraw the proposed revisions.	22, 27, 29	The proposed rules have been revised to eliminate the aggregation of small combustion units when determining the applicability of the "categorically insignificant" definition.
		The word "reasonable" should be added before the word "control" in 200-0020(18)(uu).	22, 29	The Department agrees with this comment and has made the corresponding change to the proposed rule.
		Proposed revision is not an effective use of resources and it conflicts with the Department's intent of streamlining. May violate the stringency provisions of ORS 446A.310	22, 23	The proposed rules have been revised to eliminate the aggregation of small combustion units when determining the applicability of the "categorically insignificant" definition
		Strongly urges DEQ to delete this revision from the rulemaking package.	21, 22, 23	The proposed rules have been revised to eliminate the aggregation of small combustion units when determining the applicability of the "categorically insignificant" definition
Definition of "Capacity"	200-0020	The proposed definition conflicts with federal use of the term. DEQ should delete this term and retain the current, not proposed, definition of "Potential-to-emit".	14	Capacity and Potential-to-emit (PTE) are two different concepts within the DEQ rules. Capacity does not take into account limitations such as the PSEL unlike PTE. Use of the term capacity helps clarify implementation of the program.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		DEQ should carefully review the need for the use of the term "capacity" and either not use the term or ensure that the term is used consistent with the federal use of the term.	22, 29	The Department has made the determination that the term "capacity" is needed to clarify the rules. Use of the terms "capacity and "PTE" as defined in the proposed rules will result in program implementation consistent with federal requirements.
Definition of "Continuous Monitoring Systems"	200-0020	The definition should include references to applicable state and federal standards to provide clarity to the definition and subsequently avoid any confusion between the terms "Continuous Monitoring Systems" and "Continuous Emission Monitoring System".	14	The term "continuous monitoring system" is a broad term defined to include all types of continuous monitoring that would be performed at a source. The term is linked to the Department's Continuous Monitoring Manual, which in turn refers to federal requirements for specific types of continuous monitoring systems (e.g., continuous emissions monitoring systems (CEMS), continuous opacity monitoring systems (COMS), and continuous parameter monitoring systems (CPMS). The definition did omit COMS, so that is being added.
Definition of "De minimis emission level"	200-0020	DEQ should consider a higher de minimis level for CO.	8	The Department did consider a higher de minimis level for CO. However, the Generic PSEL for CO is set at 99 tons per year to allow maximum flexibility at a source. If the de minimis level is increased, the Generic PSEL would need to be decreased proportionately in order to continue to avoid triggering NSR or Title V.
		The de minimis levels defined for some pollutants (e.g., dioxins and furans) are extremely low, which may make it difficult to reliably predict their emissions at those low levels. DEQ should reconsider the de minimis levels established by this definition.	19	The de minimis level for dioxins and furans is extremely low because the SER for these pollutants is extremely low also. The de minimis only applies to dioxins and furans from municipal waste combustors and does not prevent a source from obtaining a modified permit to increase emissions above the de minimis levels if needed.
		Strongly support inclusion of "de minimis emissions levels", but confused and concerned about the inclusion for HAPs. Request DEQ to clearly state its intent in including de minimis emissions levels for HAPs and allow further comment on the clarification.	22, 29	PSELs may be established for HAPs at the request of a permittee for the purpose of determining emission fees or limiting PTE. The inclusion of de minimis emissions levels for HAPs is to allow the use of the generic PSEL to limit potential to emit below major source levels, but allow very minor changes to be made without having to modify the permit. Without the de minimis level, any increase in HAPs above the PSEL would need a permit modification.
		The note below the table in 200-0020(31) serves to define an additional term "de minimis increase" and would be best addressed in a separate definition section. Otherwise, sources would not be able to locate and identify the definition and its potentially non-intuitive approach of aggregating previous changes.	22, 29	The proposed rule note has been revised to clarify that the de minimis level applies to all increases that are not included in the PSEL. The note does not define another term, only clarifies the applicability of the definition of "de minimis emission level".
		Supports idea of de minimis emission level.	21, 22, 23	The Department appreciates the support on this issue.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Dioxins an furans would trigger the requirement for a PSEL under 222-0020(3) even though these pollutants are only regulated for "municipal waste combustor organics". Should specify source of these emissions in de minimis definition as is defined for SER. Similar clarification is needed for "combustor metals", "combustor acid gases" and "landfill gases". [Same comment for Generic PSEL]	21, 22, 23	The Department agrees with this comment and has made these clarifications to the proposed rules.
		Clearly state what the intended purpose is for the HAP de minimis rates.	22, 23	The de minimis rates for HAP emissions are to allow small increases, relative to the PSEL, in emissions without requiring further review. Without this level, any increase would be subject to review and permit modification. Note: The HAP PSEL is only used at the request of a source as a PTE limit or to establish an appropriate level for Title V fees.
Definition of "Emission Factor"	200-0020	The proposed language could be construed to require a source to have an emission factor. It is recommended that the last line be amended by adding "Where an emission factor is required, ..." to the beginning of the sentence.	14	The proposed rule has been revised as suggested.
Definition of "Federal Major Source"	200-0020	The entry for municipal incinerators should be changed from 250 tons of refuse per day to 50 tons of refuse per day.	8	The Department agrees and this correction has been made.
		Strongly objects to the use of the term "federal major source" because it infers federally regulated when in fact the Oregon NSR program is fully federally delegated. Concerned that this will cause additional confusion. Different term should be used such as "enhanced review major source" or "fully regulated major source".	22, 29	"Federal major" is simply a term used to identify a category of sources with specific levels of emissions where additional requirements apply. It does not imply federal jurisdiction or that the Oregon NSR program is not fully SIP approved.
Definition of "Generic PSEL"	200-0020	The generic PSEL emissions rates should include a decimal (e.g., 99.0 tpy) to better ensure that sources will stay non-major by complying with the generic PSELs.	8	The Department does not agree that the requested change is needed to ensure sources maintain non-major status. Standard rounding practice will ensure sources comply with the appropriate requirements.
		The generic PSEL should include a decimal (e.g., 99.9 tpy) to allow sources to avoid NSR with less than 1 tpy below the SER. The would preserve the current policy.	22, 29	The Department disagrees with this comment. Allowing a source to get within 1/10 of one percent of the trigger level when emission factors used to calculate this number are normally not that accurate would be inappropriate. Also, based on standard rounding for significant figures 99.9 = 100 and therefore may trigger NSR. The accepted rounding convention is .5 rounds up, .4 rounds down.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
Definition of "Immediately"	200-0020	The definition cannot always be satisfied as written; especially for pollutant standards with time weight averages greater than 1 hour (e.g., 4-hour block average standards). It is recommended that the wording be changed as follows: "Immediately means as soon as possible but in no case more than one hour after the source knew or should have known of an excess emission period."	14	The definition is being changed as recommended.
Definition of "Major Modification"	200-0020	Paragraph (b) needs to retain the term "actual emissions" and not "potential to emit".	8, 27	The Department agrees and has inserted "actual emissions" where "potential to emit" was in the proposed rules.
		The new language in (c) and (d) is fundamentally inconsistent with federal and state regulations and is technically inappropriate because it deprives a facility to regulatory rights that were inherent when it was permitted. There is no apparent justification behind the selection of one ton for triggering NSR, which would mean that every time a source wanted to increase the PSEL, the source would trigger NSR.	14	The language in (c) is added to cover sources that were installed after the baseline period and were not subject to NSR (or PSD). There are only a few sources in Oregon that fall into this category, but without this exemption, these sources could be considered subject to NSR retroactively or as a result of any minor change to the facility even though the source was properly permitted in accordance with the rules in place at the time. The one ton threshold for triggering NSR is used because it is more than the de minimis level for PM, PM_{10}, SO_2, NO_x, CO, and VOC, but low enough that these sources do not have an advantage over new sources that would be subject to NSR at or above the SER. It is not reasonable to subject the existing sources to NSR, but at the same time it is not fair to new sources and unhealthy for air quality to allow the existing sources to make further emission increases without being subject to NSR. The provisions in (c) do not apply to any source that did go through NSR. Once a source goes through NSR, emission increases would have to be greater than the SER before NSR is triggered again.
		The one ton trigger seems to be negated by the language in (d). At least, (c) and (d) are conflicting.	14, 16	The provisions in (d) were added to be consistent with federal regulations, but there does appear to be a conflict between (d)(A) and (c)(A), so the phrase "Except as provided in (c)," was added to the beginning of (d)(A).
		Tracking of physical changes could be difficult	16	The Department agrees that tracking some changes since baseline year could be difficult, but the Oregon program relies on tracking all changes that occur that may increase emissions from baseline levels. If all changes and associated increases cannot be tracked, credit cannot be allowed for decreases in emissions either.
		Paragraph (c)(B) should also include modifications to existing stationary source or sources.	8	The Department agrees and has made the appropriate revisions to this language.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Paragraph (d)(C) must be revised to state "Routine maintenance, repair, and replacement."	8	These changes have been made for regulation clarity.
		The requirement to have "like-for-like replacement of components" is an unnecessary and unfair limitation on sources. It could deprive a source of the ability to use newer technology or component upgrades that may reduce emissions, potential malfunctions or process upsets, and/or operating costs for the source. It is recommended that (d)(C) be modified to "*Routine, maintenance and repair, and replacement of components unless they increase emissions above the significant emission rate.*"	14	The Department disagrees with this comment. There is nothing in this rule that would prohibit a source from reducing emissions relative to baseline. If there is a SER increase in emissions over baseline due to a physical change, that increase is subject to NSR. Any physical change including routine maintenance and repair that increases emissions by less than the SER over baseline are allowed without meeting the requirements of NSR.
		The term "operation" is not defined.	16, 26	The Department does not feel that it is necessary to define the term "operation" because it has a generally understood meaning and that same meaning is being used within the rules. If confusion over the term is encountered during the implementation of these rules, a definition may be added as part of a future rulemaking.
		The calculation used to evaluate a modification to determine if it is major may only include an assessment of emissions increases. As a result, the definition may have eliminated a source's ability to demonstrate that net emission increases are not significant, which would lead to the needless triggering of major NSR requirements and decrease operational flexibility.	19, 22, 29	There are two parts to the determination of "major modification". First, there must be a net increase in emission equal to or greater than the SER over baseline. Second, increases due to physical changes and changes in method of operation also must account for a significant increase. This is thoroughly covered by the referenced rule and does not need to be modified.
		Strongly supports inclusion of language clarifying certain activities that are not considered modifications. Believe the addition of a clear exemption for pollution control projects is a good step to be taken by the Department to avoid disincentives to install additional controls. However, should leave the initial burden of determining if a pollution control project is beneficial on the sources while allowing DEQ the ability to rule to the contrary where appropriate.	22, 27, 29	The Department agrees that the burden of proof relating to an environmentally beneficial pollution control project is up to the source that proposes the project. However, it is important that the Department approve such proposals to ensure they are being consistently evaluated based on the environmental needs of the air shed. The rules have not been changed based on this comment.
		Concerned that DEQ is codifying a concept that is used in policy to address sources that were legally permitted after the baseline year but before the pollutant of concern became a PSD pollutant.	22, 29	The Department wants to have a consistent approach for addressing this type of source. The existing rules were not designed to address this particular type of source and therefore need to be modified as proposed.
		Request that the trigger for NSR be strictly tied to increases in the PSEL as a result of physical change or change in method of operation and not simply any increase in the PSEL as a result of changed emissions factors.	22, 29	The Department agrees that this increase in emissions is related to an actual increase in emissions and not a paperwork increase in the PSEL to correct an emission factor. The proposed rules allow for correction to an emission factor, so no change in the proposal is needed.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Including emissions from insignificant sources in consideration of major modification does not seem appropriate. The very definition of an activity as insignificant implies they do not contribute a significant amount to the plant's overall emissions. It is also difficult to accurately track the use of small and largely portable sources.	27	The Department disagrees with this comment. Under current DEQ and EPA rules, insignificant activities are required to comply with all applicable requirements. They are not exempt from the definition of regulated air pollutant. NSR considers accumulation of increases in regulated air pollutant emissions since baseline. Limits are often set within one ton or less of the SER to avoid NSR. If insignificant activities are not included in this number the source may be emitting in excess of the SER over baseline without considering the impacts as required by NSR.
		DEQ should provide explicit guidance in the rules as to what is considered "routine", as there is considerable confusion over these terms in the federal PSD program.	27	Guidance may be appropriate as a clarification of the rules, but does not become part of the rules. As part of the implementation plan, guidance will be required for various aspects of rule changes. This may be one place it will be an appropriate tool to add clarity.
		DEQ should provide some guidance as to what projects DEQ would consider environmentally beneficial, e.g., a reference to EPA's pollution control project guidance policy.	27	The Department plans to develop guidance on environmentally beneficial pollution control projects. This will either be done as part of the implementation plan or when the first request for use of this proposed exemption is received. EPA guidance will always be one of the sources the Department uses in determinations.
		DEQ should exempt pollution control projects that are environmentally beneficial from other requirements, such as the AQ analysis requirements.	27	The evaluation of AQ impacts is part of the evaluation to determine if a project is environmentally beneficial. If a source adversely impacts an area it is not environmentally beneficial, but to determine if a source impacts an area AQ analysis is required.
		Routine maintenance needs to be defined more clearly to allow for preventative maintenance and like-for-like replacement with non-identical units	27	Routine maintenance is the activity that an individual undertakes to keep his or her investment running for its originally anticipated life. The definition for major modification already includes allowance to use other than identical units when that is needed to maintain operation. However, if non-identical units are replacing old units to increase capacity they can not take advantage of the like-for-like or routine maintenance exemptions. The Department will develop guidance on this issue if needed during the implementation period.
		Appears to be a conflict in section 200-0020(66)(c)(A) and 200-0020(66)(d)(A) regarding the use of the term "production increase". The term needs to be clarified.	26	The term "production increase" means the increase in the level of production over some averaging time. The Department does not agree that there is a conflict in the use of this term. However, the Department has corrected an inconsistency between (c)(A) and (d)(A) (see above).
		Tracking of physical changes since baseline could be difficult if a source has not had a construction approval over many years. Suggest that tracking of changes be limited to five years prior to the proposed change that would result in a SER increase.	26	The Oregon NSR program is tied to a fixed baseline period. Because of the way it is structured, decreases in emissions since the baseline period may be used to net new emissions. Since it allows all decreases to be counted, it is necessary to also count all increases and thus the physical changes that are associated.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
Definition of "Modification"	200-0020	This definition must be clarified to ensure that it is not used in determining a "major modification" because the units and exclusions are different.	8	The Department agrees with this comment. Modification is not used to define "major modification" within the proposed rule revisions. The definition has been revised as suggested.
		The proposed definition is not consistent with EPA's definition in 40 CFR 60.2 because it is based on a review of emissions as an hourly value. The phrase "...on an hourly basis..." should be deleted.	14	The definition is consistent with 40 CFR §60.2 because §60.14(b) further defines modifications and §60.14(a) specifies that the emission rate shall be expressed as kg/hr (lb/hr).
		The language (c) concerning increasing the expected life of the stationary source should not be included because it could deprive a facility of the PSD increment that was established for the facility. In addition, the language links the determination of facility life to maintenance decisions that could ultimately deprive the facility of using any improvements in technology.	14	This term is not used for determining PSD applicability; it is used for minor source construction approvals (OAR 340-210-0215). In any case, this provision does not deprive a facility of its PSD increment or ability to make improvements at the facility provided the emissions do not increase as a result of the changes. If there is an increase in emissions, then the source needs to get prior approval of the change in accordance with OAR 340-210-0205 through 340-210-0250. The exemption for like-for-like replacements only comes into play if the change would cause an increase in emissions, and the exemption is not allowed if the change also extends the life of the source.
		To avert potential future confusion and potential regulatory liability, the DEQ should clarify that like-for-like replacements using upgraded components when that is all that is available will continue to be exempt even if the change increases the expected life of the source.	19	Language is already included in the proposed rules to exempt routine maintenance and like-for-like replacement with different components if they are needed to maintain operation. Meaning, if identical components are not available, the source may use the upgraded replacement. (340-200-0020(69)(c))
		Supports addition of this definition but encourages DEQ to address the apparent disconnect between the definition of modification and the way the NOC requirements work in 210-0215.	22, 29	The Department did not find a problem with the definition of "modification" relating to the NOC requirements in 210-0215. The term is being consistently used.
		Concerned by extensive language in 200-0020(69)(c). Suggest limit to stating "routine maintenance and like-for-like replacement of components".	22, 29	Like-for-like replacements are not eligible to be considered modifications, unless the like-for-like replacement extends the life of the source.
Definition of "Monitoring"	200-0020	The only federal regulations that have a definition for monitoring is Part 64, the Compliance Assurance Monitoring rules. DEQ should also limit this definition to the CAM rules.	14	The term "monitoring" is used throughout the Department's regulations, so it is important to provide a definition.
		The definition seems to disallow the use of performance tests for monitoring which is contrary to US Court of Appeals decision regarding periodic monitoring. It is recommended that routine performance tests or compliance method testing be added to the list of monitoring options.	14	The language in the proposed rule is the same as the federal language. The intent is that performance tests conducted on a one time basis, whether required by rule or not, are not considered adequate monitoring. However, the definition does not preclude the use of routine periodic performance tests as monitoring.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Appears there may be some typographical errors in the third sentence of this definition. Believe DEQ intended the word "if" being added into the third sentence to instead be a semicolon.	22, 29	The Department agrees that there was a typographical error and made changes to ensure the appropriate wording is being used.
Definition of "Netting Basis"	200-0020	Support eliminating recalculation of the baseline emission rate.	12, 22, 29	The Department appreciates the support on this portion of the rule revisions.
		The term "significant emissions" in paragraph (a)(B) should be either defined or replaced with a different term so as not to be confused with the term "significant emissions rate".	8	The Department agrees that this term may be confusing and proposes to use the term "non-de minimis" in its place. This is a good term to use because "de minimis" is defined in the proposed rules.
		Paragraph (d) should be expanded to include "emission units that are subject to the rule, order or permit."	8	The Department agrees with this comment. The language has been expanded to include the commentors language.
		Concern that freezing baseline will create a significant burden to sources and permit writers over the next 5 to 7 years with minimal ultimate return in the form of reduced permit time. This change could disproportionately impact small businesses and could result in significant criticism of the Department in future years.	22, 29	The Department disagrees with this comment. Currently permit writers review baseline emissions compared to projected emissions and recalculate as needed to include better information. The proposed freezing of baseline may trigger a more rigorous evaluation of baseline for some sources then is currently done, but not beyond what is allowed in current rules. Small businesses are the ones that will be least affected by this change because they are the ones that have little or no baseline emissions and will more likely be utilizing general and simple permits for which baseline and netting basis do not apply.
		Cautious endorsement of 200-0020(71)(a)(C) which allows for establishment of an initial netting basis for post-1978 sources where a new pollutant is regulated after November 15, 1990. Concerned that this could have substantial impacts upon certain classes of sources and encourage DEQ to engage in a more focused dialogue on this point prior to issuance of this portion of the rule.	22, 29	The current permitting program relies on 1977/78 as the baseline period. Since this is over 20 years ago, it is getting difficult to obtain documentation of activities during that period. Using a more current date as baseline for pollutants that are newly established makes sense from an accuracy standpoint and a fairness standpoint also. It doesn't make sense to review emissions of pollutants based on things that happened before they were considered pollutants. Significant review of this issue was involved with the development of the proposed language and the Department does not believe it is necessary to delay this concept for further dialogue.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Concerned about elimination of netting basis for any pollutant for which a facility has elected to take a generic PSEL. This change could have significant impacts upon small businesses. Request Department's commitment to ensure comprehensive education of sources prior to their acceptance of a generic PSEL where the source has any netting basis.	22, 29	The Department understands the impact that eliminating netting basis for small businesses potentially could have and is committed to ensuring that sources are aware of what happens to their baseline/netting basis if they opt for one of these simplified permits. DEQ permit writers will discuss options with sources before they make a decision about the appropriate permit type. Sources will be given the option of maintaining their netting basis through the use of standard permits.
		Support new language in (71)(c) allowing sources to relocate and retain netting basis from the old site. Suggest that rule be revised to state that *"if a source relocates to a site within the same air shed ..."*. Time allowed for relocation is insufficient based on the concept that contemporaneous period is two years. Strongly suggest that the Department revise the time allowed for relocation to be two years.	22, 29	The Department appreciates the support on this issue. In order for the concept of relocation to occur, the two sites must be considered adjacent and the two facilities must meet the definition of "source". In other words, the two facilities would have been considered one source if they were both operated at the same time. "Air shed" may be too broad of a geographical distance for the definition of "adjacent". The allowance of a six month window is to allow some flexibility in the requirement to operate both sites at the same time, not to allow shutdown facilities to be resurrected at a new site sometime in the future.
		If a facility decides to install additional particulate controls due to intermittent compliance of a source with an applicable opacity standard, will the decrease in PM be considered a rule required reduction subject to a reduction in the netting basis?	27	The decrease in PM in the netting basis would only be applicable in this case if a direct relationship between opacity and particulate emission is established or if the rule stated a particulate limit that was lower than the source was achieving.
		Definition will freeze the baseline rate after July 1, 2002. This would prohibit sources from requesting baseline emission credits even for units for which it could be demonstrated that they were operating during the 77/78 baseline period. This change would be especially burdensome to exiting sources within the Medford-Ashland AQMA. This revision is unnecessary, negatively affects industry and has not been justified as improving air quality.	26, 27	The baseline period was over 20 years ago. It will not get any easier to evaluate conditions that existed during that time period. By freezing baseline those emission calculations are fixed and no longer need to be revisited, thus saving significant permitting time. Sources have the opportunity to evaluate the actual baseline emissions one more time before they are frozen so any discrepancies can be worked out. In the future baseline will only be recalculated if it is shown that a better emission factor should have been used.
		Concerned about inconsistent basis that DEQ is establishing for determining the netting basis for newly regulated pollutants. Should stick with 1978. Suggest deleting 200-0020(71)(a)(C).	22, 23	Pollutants that have standards established based on today's emissions should not be compared to emissions from 20+ years ago. This provision allows the comparisons to be done on a consistent time frame using real numbers.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Confused how new regulated pollutants (e.g.: PM2.5) would be handled in the context of pre- or post 1978 operation.	22	Pollutants that begin to be regulated after 1990 will have a netting basis (baseline) based on what the source was doing immediately before the pollutant became regulated (OAR 340-200-0020(71)(a)(C)). This is easier to calculate and will address the concerns that are appropriate for the pollutant when it is regulated. Using a date 20+ years ago would make it difficult if not impossible to accurately estimate emissions and it would not address the current concern of the pollutant. In addition, using a baseline date from before the pollutant was regulated could retroactively subject a source to NSR violations for changes made in compliance with rules at the time.
		DEQ should not freeze the baseline emission rate because significant emission sources that operated during the baseline period could no longer ask for baseline emission credits for those sources even if it could be clearly documented that they existed.	16	Freezing of the baseline emission rate is a streamlining effort to avoid the recalculation of emissions from 20+ years ago. Sources will have an opportunity to include any of the emissions that were missed in previous calculations by submitting documentation of their existence along with the first application for renewal after the effective date of these rules.
		Freezing baseline as proposed is appropriate provided that 1)the rules allow for modifications to the baseline based on new emission factors; and 2)the rules allow modification to the baseline emission estimates if either the DEQ or the EPA implement changes (either by rule or by policy) that affect how point sources account for plant site emissions.	18	The Department agrees; this is the intent of the proposed rule changes
Definition of "Significant Emission Rate"	200-0020, Table 1	The term TSP should be deleted from this Table.	8, 27	The Department agrees; this change will be made to Table 1.
	200-0020, Table 2	The entries for Mercury, Beryllium, Asbestos, and Vinyl Chloride should be deleted from this Table.	8	The Department agrees; pollutants will be deleted as suggested.
	200-020(124)	Under the current rules, the Department reserves the right to be able to set a significant emission rate for a non-listed pollutant, but the default SER does not equal zero. This is a potentially significant change and encourage the Department to withdraw the proposed language.	22, 29	The Department disagrees with this comment. The need for a case-by-case SER no longer exists because all criteria and NSPS pollutants have been added to the table and HAPs have been exempted from NSR. The Department will add SERs for additional pollutants to the rule when they become regulated pollutants.
		Elsewhere in the rule package DEQ proposes to remove total suspended particulate as a regulated air pollutant in the state of Oregon. However, table 2 retains the significant rate for particulate matter. We believe that the total suspended particulate significant emission rate should be removed from the rule.	22, 29	TSP is not equivalent to PM. The deletion of TSP as a regulated pollutant does not affect the applicability of NSR to PM emissions. PM will not be removed from the significant emission rate table because it continues to be a regulated pollutant by both DEQ and EPA.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
Definition of "Actual Emissions"	200-0020	-0020(3)(a)(C) Insert "in the baseline" where "in the specified time period" has been deleted.	22, 29	(3)(a) refers specifically to the baseline period so the suggested language would be redundant and unnecessary.
		-0020(3)(c) delete from definitions because this is covered in the fee rules for Title V permits.	22, 29	The Title V fee rules include methods to measure or calculate emissions for fee purposes, but do not define "actual emissions."
Definition of "year"	200-0020	Support the proposed definition provided it will not impact pre-established emission calculation techniques that are based in part on historical calendar year data.	19	The intent of this definition is not to require sources to review past determinations but to provide a consistent approach for the future. This change does not affect the determination of baseline period where other than calendar years 1977 or 1978 were used.
Definition of "ACDP"	200-0020(9)	Support the removal of the review report from the definition ACDP.	22, 29	The Department appreciates the support on this proposed change.
Definition of "Applicable Requirements"	200-0020(11)	200-0020(11)(f) should include an exemption for PSD conditions that have been revoked by EPA (similar to language in 200-0020(11)(e) relating to DEQ)	22, 29	The Department agrees with this comment and has made the appropriate revisions to the proposed rule language.
Definition of "Potential to Emit"	200-0020(91)	Definition appears inconsistent with other portions of the rules. PSEL rules specifically state that the PSEL is a limit on PTE, however, the term potential to emit is defined in this section as the lessor of the source's capacity or the maximum allowable emissions taking into consideration physical or operational limitations. Strongly suggest that DEQ revise this definition to specifically state that the PSEL is a limit on potential to emit.	22, 29	The Department does not agree that the referenced rules are inconsistent. As revised in the proposed rules, the PSEL is an operational limitation and can therefore limit potential to emit. If the PSEL limits what a source could otherwise emit, it is taken into account for a source's PTE. However, if the netting basis is above the PTE and the source does not request a lower limit, the capacity or maximum allowable emissions will establish the PSEL.
Definition of "Significant Air Quality Impact"	200-0020(123)	Opposed to broad revision of the definition. As written, sources as far away as Albany, Salem and The Dalles could potentially have to obtain offsets in the Portland maintenance area. Seriously question the basis for such a radical change in the rules. Unaware of any significant problem that this rule change is intended to address and question how it can be included in good faith in a rulemaking package intended to streamline the permitting process. Encourage the Department to withdraw this proposed rule revision.	22, 29	The change was proposed because EPA objected to the existing definition during Title V permitting, causing delays in the issuance of Title V permits. The Department has revised the language relating to this issue and placed it back on public notice for further comment. The Department has considered all comments received during the public notice periods in finalizing the proposal and presenting the rulemaking package to the EQC for adoption.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Changed to effectively increase the distance upon which a source is said to have a significant effect on an ozone non-attainment or maintenance area by more than 300%. Substantial change in stringency of the rules and will dramatically increase the number of facilities impacted by the designation of the Portland metropolitan area. This change is unnecessary and will limit the permitting flexibility of facilities and unnecessarily restrict economic development including the potential siting of needed co-generation facilities.	27	The change from 30 km to evaluate larger sources outside this range is necessary to address concerns raised by EPA during the Title V permitting process. The Department needs to evaluate the impact from larger sources at greater distances to ensure they don't impact sensitive areas. The equation was modified and additional language was presented for additional public comment. Final proposed rule language reflects the evaluation of all comments received on this issue.
		Table 1 for TSP and PM10 should be increased to federal level of 1.0 ug/m3 (annual) and 5.0 ug/m3 (24-hour).	26	The Department does not intend to relax the stringency of the existing rules by adopting looser standards in this rulemaking package. These changes would be outside the scope of this rulemaking but may be considered during a future rule revision.
Exceptions to Air Quality Rules	200-0030	A definition of "agricultural operations" should be added to 200-0020 in order to clarify this exemption.	8	This term is defined in statute. However, this suggestion may be considered with future rule changes if needed for clarity.
Ambient Air Quality Standards	202-0050	Believe there are several typographical errors in section (2)	22, 29	The Department reviewed and clarified the language in this section.
	202-0110	DEQ has retained the particle fallout rule as part of the ambient air quality standards section of the rules. This rule is a nuisance rule and with the elimination of total suspended particulate as a regulated pollutant we suggest that the rule be removed. If retained, recommend that it be relocated into the nuisance rule section.	22, 29	The Department particle fallout rule is an important and efficient standard that needs to be retained. While the suggestion to move the rule is worth considering, moving this rule to a division that is currently not open is outside the scope of this rulemaking package. This rule may be moved with a future rule change.
Visible Emission and Nuisance Requirements	208-0110	A provision should be added to this rule that the standards do not apply if the regulated source is subject to a more stringent limit either by another rule or as a permit condition.	14	Division 208 was not open for comment by this rulemaking package. Comments relating to divisions that are not open cannot be considered for changes in this package. The Department is aware of the need to harmonize visible emission standards throughout the rules, and intends to address this in a future rulemaking.
Public Participation	209	DEQ should change the public notice procedures so that the notices include information about the applicant and contextual information about other sources in the area, as well as the logic of the Department's evaluation of this information, so that interested persons do not need to request additional information.	6	The requested information is required under proposed rule OAR 340-209-0040. It is the intention of the Department to provide notice of permit actions to all interested persons and include sufficient information in the notice or instructions for obtaining additional information so that interested persons may effectively participate in the permitting process. The Department intends to make ongoing improvements in the contextual information provided with public notices.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The public notices for permit actions should include an e-mail address.	6	The Department agrees and will include alternative response mechanisms when appropriate.
	209-0030	Support the tiered public participation process.	12, 25	The Department appreciates the support on this issue.
		The criteria for a category III or IV public notice appears to be subjective. It is recommended that the category IV public notice be based on a quantitative standard such as when a source is subject to a Consent Order, Notice of Violation, or investigation of violations of its permit.	14	Category IV public notices are primarily for permit actions that involve emission increases above the SER and involve an assessment of the air quality impacts. In some cases, a permit action may be moved up from a category III public notice to a category IV public notice if there is sufficient public interest, the source has a history of non-compliance and enforcement, or the source has a potential for significant harm to the public. More objective criteria for moving up a level are not possible because the Department must have the ability to be responsive to changing public and environmental concerns.
		The Department proposes to allow for public comment during an informational meeting and consider information it receives in preparing the draft permit, but the Department does not intend to create a record of the meeting. By foregoing the creation of a record at the proposed informational hearing, the basis for conditions that may appear in the final permit would not be identified, would not be fully explained, and certainly would be difficult to defend. If the DEQ wants to be more inclusive and seeks greater debate and a better permit, it should spend the resources to create the public record.	17, 25	The Department does not provide an official record of the informal information exchanges that are currently held before the public hearings, including discussions with applicants and the public. The proposed rules are no change from current practices, but provide an opportunity for the public to obtain information and provide input earlier in the process. If information obtained from the informational meeting is used to establish permit conditions, then it will be documented in the permit review report.
		Federal requirements under Part 70 (Title V permits) for public notice periods are limited to 30 days even for significant permit modifications. The extension of the public comment period under Division 209 to 35 and 40 days for category III and IV actions, respectively, has the potential to delay permit approval processes beyond the period required by the federal program. Any increase in permit application processing time, however marginal, can impact the regulated community negatively by increasing the time to respond to market demands. It is recommended that the public notice period for all permit actions be limited to 30 days.	19	The time frames for category III and IV actions were established to be consistent with time frames for other DEQ programs. The Department believes that the net effect of the changes to public involvement will be to speed permit approvals despite slightly longer public notice times. This is because the type of public notice will be better targeted to the type of permit action, and the additional notice and involvement on the front end will reduce the time needed to respond to comments on the back end. Nevertheless, the Department has revised the rule so that Title V permit actions will be processed using a category III public notice instead of a category IV public notice. However, major modifications at Title V sources will be subject to NSR and will be processed as category IV public notices as these are ACDP permit actions and not Title V permit actions.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Concerned with the disconnect with the Category III requirements between the number of days provided for submittal of written comments and the number of days allowed for persons to request a public hearing. The two time periods are not the same and could result in an outraged and confused public. We fail to see a reason to have the deadline for requesting a hearing be different from the deadline to submit comments and are concerned that this discrepancy will confuse the public.	22, 29	The Department agrees and has revised the rule so the same amount of time will be allowed for requesting a hearing as is allowed for submitting comments (OAR 340-209-0030(3)).
		The decision to shift a source to a higher category should be made upon submittal of the application so that sources are not concerned about having the time tables and applicable requirements shift on them in the middle of the permit process. Suggest that the Department add language specifying that within 10 days of application submittal the source will be informed as to whether the Department plans to upgrade the public hearing requirements. Criteria stated in the rule for when an action should be upgraded are too vague and unrelated to the need for increased public participation. The following criteria for increasing the level of public participation should be used: a) Documented written interest in the facility; b) the nature, extent and toxicity of the emissions. The source's compliance history is not relevant to whether there should be increased public involvement.	22, 29	The Department will strive to notify applicants of the public notice category within 15 days of receipt if the preliminary review shows a reasonably complete application, or when any additional requested information is received. The intent is to make the determination of appropriate notice category upon receipt of a complete application, however circumstances may change in relation to a proposed source which increases the public interest and therefore the corresponding notice category. See response above regarding the criteria for moving up a to a higher public involvement category.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The Department is required to hold a public informational meeting once a PSD application is deemed complete but the PSD process can take years to negotiate. As a result, sources often approach the Department and commence the PSD process for projects that are on the drawing board but that have not cleared all the internal and external funding hurtles. The public announcement of a project so early in the process can have significant negative ramifications for the project. If a public hearing is required immediately once an application is deemed complete, then sources will have to postpone submitting applications until all capital investment issues are settled. This results in inefficiencies for the Department and the source. Suggest that the Department allow itself more flexibility to allow a source to have an informational meeting prior to the Department deeming the application complete and having that meeting count for the Category IV meeting. This provides incentives for sources to have community forums early in the process.	22, 29	The Department believes that holding the informational meeting before an application is deemed complete would be a disservice to the public and, in most cases, to applicants. There is no requirement for applicants to have capital investment matters settled before the informational meeting can be held. Furthermore, there is no restriction to prevent applicants from submitting a partially complete application to the Department while capital investment issues are settled.
		DEQ is proposing to extend its deadline for scheduling requested public hearings for Category III permit actions. The permitting process is already burdensome to facilities with time sensitive projects.	27	The proposed time frames are consistent with time frames already adopted for the Department's other programs. In cases where the Department or applicant expect that a public hearing will be requested, the time frame can be shortened by scheduling the hearing from the beginning on the public notice period.
		Category IV appears to require an application hearing prior to the public comment period and also requires a public hearing on the draft permit regardless of the level of interest expressed during the comment period. This would be a requirement for existing facility modifications in addition to those now provided for new facilities. Unclear as to the intent of such a requirement and believe that it will further delay permitting processes that are already difficult to negotiate. This will cause further timing concerns and uncertainty in the scheduling of projects for the facility.	27	The Department believes that the net effect of the informational hearing for Category IV actions will be to reduce the time needed to issue permits. The informational hearings will allow the Department to address public concerns during permit drafting and reduce the number of issues to be addressed after the public comment period
	209-0040	The title of section (2) should state "General Oregon Title V Operating Permit", not just Oregon Title V Operating Permit.	8	The Department agrees and has added this language to OAR 340-209-0040(2).
	209-0060	The public notice for issuing a General Oregon Title V Operating Permit must also be given to EPA.	8	The Department agrees and has revised OAR 340-209-0060(3) to refer to sections (1) and (2).

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
	209-0070	Category IV public informational meeting. Support the concept, but there are not limits in the rule on what can be considered. The insertion of the general public into the formative stages of permit issues will not help the process and will not get the public any more or better information. Providing the public an opportunity to request information may have benefits. Need to make purpose of the meeting clear in the rules: not a negotiation session or even a prelude to negotiation. The Department must agree that it can share information and the sources can share information, but input received from the public will not be accepted or used by the Department until later in the process (after a proposed permit has been drafted, and the public can comment on specific proposals). At that time, the public's comments can be used by the Department. There is far too much opportunity for the public to create a perception of an "issue" when none really exists. Meaningful discussion and information exchange can only occur when a specific permit has been drafted and provisions are proposed. The preliminary meeting should not be an opportunity for the public to make demands or direct the process.	22, 29	The meeting is just for providing information about the application and identifying areas of concern from the public. It is not meant to be a meeting where the public can provide comments about the permit, because there will not be a draft permit at the time of the meeting. However, the public could provide information that could be considered during the permitting process. If the information is considered, it will be included in the permit record (review report).
		An alternative to the Department holding the informational meeting is to allow a source sponsored meeting, with the Department in attendance, to satisfy the requirement even if the meeting is held in the pre-application stage.	22, 29	This meeting will be sponsored by the Department, but the applicant will be asked to attend to provide information about the proposed project. This issue was specifically addressed by an advisory committee that recommended that the Department sponsor the meeting. Both industry and public members of the committee felt that the meeting would be more credible if sponsored by the Department
	209-0080	It is suggested that the time limit "within 60 days" replace the term "as expeditiously as possible " in (1).	16, 26	The Department needs the flexibility to respond to comments whether they be submitted by the applicant, the public, or EPA. There is no way to tell how long it would take to respond to the comments, but the Department should act as expeditiously as possible. Instead of creating inflexible timelines in the rules, the Department has established permitting timeliness targets and will be reporting on permit timeliness regularly.
		It is suggested that the time limit "but no later than 15 days, after close of the public comment period" be added to "as expeditiously as possible" in (1).	22, 29	See response immediately above.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Suggest that 209-0080(4) state that "notification will include the specific changes made to the permit, and the reasons for the changes"	22, 29	The Department agrees and has added this language.
		It is important that DEQ be held responsible for responding within a specific time frame. Companies must have the ability to budget time to obtain permits. Without a regulatory time frame for DEQ to respond the permitting process can be extended indefinitely by the agency.	27	See response above.
Stationary Source Notification Requirements	210-0205	The provision in (1)(c) should also apply to sources that use air pollution control equipment to avoid MACT applicability.	8	The Department agrees and has added this language.
		The wording in (2)(e) is awkward.	8	The wording has been revised for clarity.
		Supports revisions and clarifications that are being made to the NOC requirements. However, lettering appears to be defective in 210-0205(1).	21, 22, 23, 29	The Department appreciates the support. The rule numbering has been corrected.
	210-0215	The phrase "that will cause an increase, on an hourly basis at full production, in any regulated pollutant emissions" needs to be deleted from section (1).	8	The Department agree; the language has been removed.
		210-0215(2) should read "No person is allowed to modify an existing stationary source without first notifying the Department in writing."	22, 29	The Department only needs to be notified if the modification will increase emissions.
	210-0225	Sub-section (b) of each of the Type I, II, and III changes should have the phrase "any stationary source" replaced by "all stationary sources" so that all of the emission increases that directly result from a particular change are included.	8	The suggested change is covered by the existing phrase "or combination of stationary sources".
		The language should be clarified.	22, 23, 29	The Department believes the existing language is clear. Alternative language could be considered but none was suggested.
		Concerned that pollution control projects will be subject to handling as a type 3 change and would require the source to obtain a new ACDP. Suggest moving this type of project to type 2.	22, 23, 29	It is true that some pollution control projects would be considered type 3 changes (e.g., adding a thermal oxidizer to reduce VOC emissions could increase NO_x and CO emissions by a significant amount). In these cases, the Department does not believe that pollution control projects should be treated any differently than new or modified process equipment. Pollution control equipment that results in increases of other pollutants by less than a significant amount will be treated as type 2

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Requiring construction ACDPs for type 3 changes at Title V sources directly contradicts the express language of ORS 468A.055 which outlines the procedures for pre-construction approval. Blurs distinction between construction approval and authorization to operate.	22, 23	For these types of changes, the current Title V regulations require a Notice of Approval that includes public notice [see OAR 340-218-0190(3)(c)(B)]. The NOA/public notice procedure is merely being replaced by a Construction ACDP/public notice procedure that is identical in procedure and time frame. The difference is that a construction ACDP may be written as an operating permit that can later be incorporated into a Title V permit by an administrative amendment rather than by a significant permit modification. The Department does not agree that it contradicts the statute because ORS 468A.045 requires a permit before constructing or modifying a source. The Department also does not agree that the construction ACDP blurs the distinction between construction approval and authorizing to operate. In fact, this change separates construction approvals from the Title V operating permit program, which has been a confusing overlap in programs.
		Type 4 changes that address hazardous air pollutants are unnecessary and exceed the requirements of the federal program. Strongly suggest DEQ withdraw the proposed 4(b) and 4(c) portions of the rule for further discussion.	22, 23, 29	The Department agrees that the type of construction approval should be tied to the type of construction action and not necessarily to the amount of HAP increase. The rule has been changed to remove the reference to HAP increase.
		Type 1 NOC criteria suggest that sources must file notices for changes that should not be considered modifications.	22, 23	Type 1 changes are those that do increase emissions but the increase is less than the de minimis levels. Any physical change or change in the method of operation that increases emissions in any amount is considered a modification.
		Encourages the Department to reconsider its approach on the NOC rules and develop a simplified, clearer NOC program that is consistent with the statutory requirements. This portion of the rules should be pulled for the larger rulemaking package, revised and put out from additional review.	22, 23	The Department proposed the rule changes to address existing problems with the construction approval program. The main goals were to exempt insignificant changes, provide a fast track approval for minor changes, retain existing procedures for moderate changes, and clarify requirements for significant changes that require permit actions. The proposed rules do not add any more requirements than already exist, but they do provide faster paths for minor and insignificant changes.
	210-0030	Section (4) needs to continue with the phrase "for the approved changes" so that it is clear that the notice requirements are only waived for those specific changes that are approved.	8	The Department agrees and has added the language as requested for clarity.
	210-0040	The second sentence in section (3) needs to begin "Unless otherwise specified in the Construction ACDP or approval, …".	8	The Department agrees and has added the language as requested for clarity.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
	210-0240	Type 2 changes have a 60 day default approval. 60 days is an inordinately long period for review by the Department while the source waits for approval to execute its planning and execution of a project. Propose shortening the review period to not more than 30 days.	27	The 60 day default approval is the same as the current regulations. See OAR 340-210-0220(4) and 340-218-0190(3)(c)(A) and 340-218-0190(3)(d)(B). The Department has added a new 10 day default review for less environmentally significant type 1 changes. The Department will make an effort to review requests as expeditiously as possible, but the proposed times are needed to ensure that applications can be reviewed without disrupting other work.
	210-0250	Section (4) should be expanded to include the following sentence: "All ACDP terms and conditions remain in effect until the ACDP is modified."	8	The recommended language has been added to paragraph (3)(b) and a numbering error in the rule has been corrected.
Testing and Monitoring	212	Request DEQ to add reference to January 1992 date of Source Sampling Manual consistently throughout this division.	27	The date has been added to the proposed rule as suggested.
Reporting Requirements	214-0010	Appears to be a typographical error in section (1).	22, 29	The typographical error has been corrected.
		Definitions of "large source" and "small source" should be deleted unless they are used within this division. Commentor unable to find reference to these terms.	27	These terms are used in OAR 340-214-0330 and 340-214-0340.
	214-0114	It appears that the proposed rules would no longer require reports unless requested by the Department. The DEQ has been relied upon for obtaining records so that they are accessible to those that are interested in assisting the DEQ in monitoring the compliance of sources.	10	The Department is removing the blanket reporting requirement because reports are not necessary for many types of emitting equipment that do not have the potential to violate permit conditions. This also provides discretion for requiring more frequent reporting when deemed necessary. The reporting frequency will be specified in the permit. All permits are subject to public review at least once, so the public may comment on the proposed reporting requirements or lack thereof.
		The requirement in (3) to submit reports within 30 days after the end of the reporting period is inconsistent with other rules and existing permits. It should be revised by adding the phrase "... unless otherwise authorized by the permit." to the end of the sentence.	14, 22, 29	The recommended language has been added.
ACDP requirements	216	There is no definition of Regulated Source, Simple, or Standard ACDPs in Division 200.	10	The names of the permits are not specifically defined but the types of permits are explained in OAR 340-216-0025.
	216-0020	Since Table 1 is first used in this rule rather than 216-0090, it should be re-codified to 340-216-0020, Table 1.	8	The new Table 1 is a replacement for the existing Table 1 in 216-0090 so will be retained in this rule.
		Supports the revisions allowing the owner of a portable source to obtain a single permit that will cover operation in both Lane County and the rest of he state.	22, 29	The Department appreciates the support on this issue. For clarification, this is an allowance for LRAPA and DEQ to develop joint permits for portable sources, and depends on both agencies being able to agree on permit terms.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
	216-0052	(1)(b) needs to be expanded to clarify that all of the application submittal, permit content, and permit issuance requirements of Division 218 must be met for the Construction ACDP before it can later be incorporated into the Oregon Title V Operating Permit by an administrative amendment.	8	The language was added as requested for clarity.
		For Construction ACDPs for NSR actions, the public notice and FLM notification requirements must be met. Similarly, (5)(b) must indicate that the public notice procedures of Division 209 for Category III permit actions must be met in addition to those for Division 218.	8	A construction ACDP will not be used for NSR/PSD. OAR 340-216-0052(5)(b) has been re-written for clarification.
		Since a construction ACDP may have a permit duration of up to 5 years (and often the as-constructed source is different than was originally envisioned) the rule needs to include provisions regarding modifications that are the same as those proposed for Standard ACDPs in 216-0066(4)(b).	8	The Department agrees and has added the modification provisions in OAR 216-0052(5)(c).
		Supports allowance of a construction permit to expedite construction schedules.	21	The Department appreciates the support on this issue.
	216-0060	If (2)(c)(B) refers to the general permit and not the source, then the sentence should be reworded by moving the term "General ACDP" to the end of the sentence.	10	This is a good suggestion and the change has been made to the proposed rule.
		In section (4), would ongoing or serious compliance problems be grounds for rescinding a general permit? If so, would a source be required to obtain a Simple or Standard ACDP and what provisions would there be for monitoring?	10	Sources with ongoing and serious compliance problems do not qualify for General ACDPs so they would be required to obtain either Simple or Standard permits. Most likely they would obtain a Simple ACDP because emissions would be less than the Generic PSEL level. The Simple or Standard ACDP would have provisions for compliance including monitoring, recordkeeping, reporting, requirements and a compliance schedule if necessary.
	216-0066	The DEQ wants to give up a significant benefit of the PSEL program by requiring air quality and visibility impacts for non-NSR changes. Furthermore, DEQ wants to eliminate flexibility and force more frequent NSR review by eliminating the currently unassigned PSEL. DEQ has made no adequate justification for these increased requirements.	17, 22, 29	The current regulations already require an assessment of air quality impacts (see OAR 340-222-0040(1)(a)(B)). See below under Division 222 for a response to comments on visibility (222-0041) and unassigned emissions (222-0045).
	216-0082	The wording of the last sentence in (3)(a) is awkward. It is recommended to be rewritten as follows: "The permit will continue in effect until the 60 days expires or until a final order is issued (if an appeal is filed), whichever is later."	10	This is a good suggestion and the change will be made to the proposed rule.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
	216-0084	This rule states that a modification to an ACDP becomes effective upon mailing. If this involves a modification of plant operation or procedures, it would seem that this timing is impossible to comply with.	10	The Department would not initiate a permit modification for changes at a facility. That type of modification would have to be initiated by the permittee. Department initiated modifications are usually used to incorporate new requirements or compliance schedules that have been adopted by rule but not yet incorporated in permits.
	216-0094	The wording of section (1) is awkward. It is recommended to be rewritten as follows: "Permittees which are temporarily suspending activities for which an ACDP is required may apply for a fee reduction due to the temporary closure. However, the anticipated period of closure must exceed six months and must not be due to regular maintenance or seasonal activities."	10	This is a good suggestion and the change has been made to the proposed rule.
		Supports the ability of facilities that are shut down for a period exceeding six months to be able to obtain reduction in fees paid. However, the 30 day notice of restarting a temporary shutdown source is excessive. It is not clear why a facility that is resuming operation after a temporary closure must submit the full annual fee as opposed to a portion of the annual fee or simply be billed for the full annual fee as the next billing cycle comes around.	22, 29	The notification prior to restarting operations is necessary to ensure the Department's records reflect operations that are currently active. However, the fee payment schedule has been revised to require payment of a prorated fee based on the portion of the year remaining when the operation is restarted.
ACDP source categories	216/Table 1	DEQ should add gray iron and steel foundries, malleable iron foundries, and steel foundries (old no. 45) to Part B of Table 1 so that they will qualify for a General ACDP.	4	The Department agrees and has added this source category back into the table.
		Not clear why "natural gas boilers of 10 or more MMBTU but less than 30 MMBTU/hr heat input constructed after November 19, 1999" must obtain a regulated source ACDP and propane is not included.	22, 29	Propane has been included along with Natural Gas in Table 1 to clarify that the rule applies to both. This source category is included in the rule because these are sources that are subject to New Source Performance Standards(NSPS).
		Suggest including de minimis thresholds in the table for sources between 10,000 and 25,000 board feet. These sources should not be required to get a Regulated Source permit. This is applicable to saw mills or planing mills, and wood furniture operations.	22, 29	The Department has added a low end cut-off for this source category that is consistent with the other sources subject to Basic ACDPs. (Note: The permit type has been changed from "Regulated Source ACDP" to "Basic ACDP")
ACDP Fees	216/Table2	The proposed changes will have an adverse economic impact on small businesses in the state of Oregon.	1, 2, 3, 16	The Department has revised the fee structure to help reduce the economic impacts on small businesses and re-noticed this table for further comment. The changes should alleviate some of the economic impact on these sources.
		Standard permit fees could increase from $600/yr to $3,600/yr.	1	The fee structure is related to the amount of work expected for the given type of permit. Small businesses are likely to get a Basic, General, or Simple permit rather than a Standard permit.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Standard permit fees will be $3,600/yr instead of a range of $1,000/yr to $21,000/yr, which is good for large businesses but may be more expensive for small businesses.	2	Small businesses have options other than a Standard permit. They are likely candidates for Basic, General and Simple permits that have lower fees associated.
		The proposed rules should result in greater internal (DEQ) efficiency and less costly processing of permits, but DEQ still indicates that the fees will be increased soon.	2	The fees in this rule package are revenue neutral for the Department, meaning that the total revenue from all fees is expected to be approximately equal to the revenue generated by the current fee table. The Department has included a fee increase in the Governor's requested budget for the 2001-2003 biennium due to a shortfall in General Fund and inflationary cost increases. If approved by the Legislature, the fee increase will be proposed in a separate rulemaking. This funding is needed just to maintain the existing staff in the ACDP program. The Department expects the workload to remain high during the 2001-2003 biennium to transition over 1,100 sources from the current to the proposed ACDP permit types. The Department does expect resource savings from the rule changes in future biennia when the changes are fully implemented.
		DEQ should consider reducing the permit fees for small farm owned rock crushers.	3	The Department revised the fees for General and Standard permits to correct inequity and re-noticed the change to allow additional comments.
		Supports simplification of fee schedule.	22, 29	The Department appreciates the support on this issue.
		Some of the permitting fees are unnecessarily high. For example a "non-PSD/NSR simple technical permit modification" is defined to include simple actions such as correcting an emission factor or changing a source test date and would cost $5,000. The cost to a Title V source for processing a similar change would be either $282 or $1,129.	22, 29	The need for this type of modification will be reduced by other proposed changes within this rule package. The fees associated with permit modifications are included in the revenue neutral evaluation and help cover total ACDP programs costs including permitting, inspections, technical assistance, enforcement, rule and policy development, and data management. Decreasing these fees would cause others to increase.
		Object to adding $100 per month for compliance order monitoring. Sources subject to compliance orders pay penalties based on the Department's enforcement regulations and penalty matrix. It is not appropriate to add on an additional fee that serves to further penalize the source. Question legality of collecting money in the enforcement context and view that money as fee generated income. Urge DEQ to remove this fee from Table 2.	22, 29	The $100 per month fee is to help cover the cost associated with monitoring the compliance schedule, and is not a part of the penalty for noncompliance. This additional effort is not needed for a source that does not have a compliance schedule in their permit. Enforcement actions collect penalties for avoided costs and to discourage noncompliance, but do not address additional costs to the Department because of a source's noncompliance.
		The proposed increase in ACDP fees may be considered excessive to many small business and industry within the state.	26, 27	The Department revised the fees for General and Standard permits to correct this inequity and re-noticed the change to allow additional comments.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Need to better document the relationship of labor hours and cost to the proposed fee schedule and its impact on all classes of permit holders.	26	A workload analysis was conducted to determine the level of staffing necessary to run the ACDP program. The Department distributed this analysis during informational meetings throughout the state and accepted public comment on the analysis from October 17 to December 21, 2000. This analysis was then used to determine appropriate fees for the various types of permits and permit actions. As noted previously, permitting is only one of the costs associated with running the permitting program. Other costs include inspections, technical assistance, enforcement, rule and policy development and data management. Note also that permit fees do not cover the full cost of the ACDP program, which is subsidized by General Funds and Federal Funds.
		Need to explain how the Class One through Class Three annual fees are to be applied to Annual Fees for General ACDPs.	26	Class One through Class Three will be assigned to General permits based on the expected amount of work associated with the specific source category. Each individual General permit will specify which fee category is associated with it. The specified fee category will be subject to public comment during the adoption of each General permit.
Oregon Title V Operating Permit requirements	218-0190	(2)(b)(B) needs to be clarified to indicate that the public notice procedures of Division 209 for Category III permit actions must be met in addition to those of Division 218.	8	The requested language has been added for clarity.
	218-0220	Concerned about the language in 218-220(3)(b) to authorize the Department to make the decision that contested Title V conditions not be stayed during the appeal process. Currently that authority lies with the EQC. Suggest not revising this language.	22, 29	The change is consistent with the statute. See ORS 468A.040(2). The change improves efficiency and flexibility by allowing the Department to determine if a condition may not be stayed and reserving EQC action for deciding the contested case.
Oregon Title V Operating Permit fees	220-0060(5)	Objects to the rule revisions that add newly regulated pollutants to the group of pollutants for which assessable emission fees are paid. This may cause double counting (PM10 and PM2.5) and changes the basis for determining the $/ton fee need to maintain the TV program. Suggest deleting 220-0060(5). If this fee is needed the process should go through a separate assessment and comment period.	23, 29	OAR 340-220-0060(4)addresses the issue of double counting emissions. Emission fees are based on a single count of all applicable emissions. If emissions are included within another category (PM10 and PM2.5 or HAP and criteria) they are only counted once. When newly regulated pollutants are added to the federal list, the Department needs to also include them. This increases workload, and fees need to be adjusted proportionately to ensure the program remains self-sufficient.
		Concerned that under 220-0060(1) and (5) DEQ may intend to begin assessing fees on "newly regulated pollutants" possibly meaning HAPs. Request that DEQ confirm if it does intend to assess fees for HAPs.	27	The rules already require fees to be paid on HAP emissions. See 220-0060(1).

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
	220-0160	Suggests allowing the use of material balance for determining SO2 emissions from non-fuel feed (similar to that used to determine SO2 emissions from fuels).	22, 29	The suggested change is outside the scope of this rulemaking. Future rulemaking could be used to modify OAR 340-220-0150 to cover other pollutants besides VOC if found to be appropriate.
	220-0090 though 0170	Suggest DEQ consider making it easier for facilities to pay fees based on actual emissions. The requirement for using CEM data or frequent stack testing places a significant cost burden on facilities if they desire to pay fees based on their actual emissions. This burden for data validation is excessive in Oregon when compared with other states.	27	The Department disagrees with this comment. If an owner or operator wants to pay fees based on actual emissions he or she needs to be able to demonstrate what emissions are actually emitted. Because the fee creates an incentive to underestimate emissions, this requires a high level of emission evaluation and analysis to verify.
PSEL policy	222-0010	Not necessary or appropriate to add visibility analysis requirements for non-NSR sources.	22, 29	The reference to visibility in OAR 340-222-0010 is part of a broad policy statement about the application of the PSEL program. See the response to comments about OAR 340-222-0041 regarding visibility analysis for non-NSR sources.
PSEL applicability	222-0020	Implies that Generic PSELs can only be used for ACDPs and not for Title V sources. This should be clarified.	22, 29	The Department agrees and has modified the rule language to allow Generic PSELs in Title V permits.
Generic PSEL	222-0040	Baseline should be maintained when a source gets a Generic PSEL.	22, 29	Baseline is a source specific concept whereas the Generic PSEL is not. Maintaining a baseline for a source with a Generic PSEL would change the Generic PSEL into a source specific requirement, which in turn would prevent the Department from utilizing General Permits..
Source specific PSEL	222-0041	Concerned about the use of the term "capacity". Need to ensure this is the correct term instead of "PTE"	22, 29	The Department agrees with this comment and has changed the "capacity" to "potential to emit" in the proposed rule.
		Concerned how the source specific PSEL requirements apply to sources that exceed the SER but are not federal major sources. Rule appears to state that non-federal major sources that exceed a SER due to a physical change go to division 224.	22, 29	Only sources that are subject to NSR or PSD are directed to division 224. The remainder are directed to division 225 if additional analysis is required to allow the increase.
		222-0041(3)(b)(C) could be read to require that sources that do not trigger NSR and that are located within an attainment or unclassifiable area must conduct pre-construction monitoring.	22, 29	Preconstruction monitoring was not intended to be required for sources not subject to NSR. The rule reference has been clarified.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Object to 222-0041(b)(D) that requires federal major sources that are not subject to NSR to demonstrate compliance with AQRVs. This concept is inconsistent with the way the rules have always been applied for utilization of existing capacity.	22, 29	Increases above the SER from utilizing existing capacity currently require an air quality assessment (see OAR 340-222-0043(1)(a)(B)). The Department is proposing to add the AQRV analysis to this assessment for federal major sources to streamline the planning process to protect visibility and other AQRVs in Class 1 areas. Emissions from production increases can cause the same impact on AQRVs as emissions from construction. The omission of this part of the air quality assessment for significant PSEL increases at federal major sources is an inconsistency and inefficiency for the Department's visibility protection program.
		Request for clarification of reasoning for requiring AQ (including class I) impact analysis for PSEL increases.	27	Air Quality impacts are related to increases in emissions in general and not just increases related to construction. See above for a discussion of AQRV analysis.
		Rolling 12 month PSEL will increase the reporting burden on sources.	27	The reporting frequency is not being changed. Sources must report annually in accordance with the applicable permit conditions. However, the annual report will include reporting on the PSEL for twelve 12-month periods.
		Most sources will not be able to take advantage of a rolling 12 month baseline because monthly records are not available for the baseline period.	27	The Department has included this option for cases in which differences are significant and monthly records are available. However, for most sources, there would be little or no difference in the baseline actual emissions using a rolling or fixed 12 month period since each 12-month period contains all seasons.
		Not clear on the point of whether a facility will have to actually perform the rolling twelve-month total calculations at the end of each month or only for the annual report.	22	Because the PSEL will be a limit on PTE, permittees must be able to calculate the PSEL for the proceeding 12-month period upon request. If not otherwise requested, the calculations need only be submitted to the Department as part of the annual report. Title V sources will also have to report on compliance with the PSEL rule as part of the semi-annual compliance certification. Even if not required, the Department encourages all permittees to calculate the PSEL monthly and thereby avoid unintended and continuing violations. Records for all compliance calculations must be maintained.
Short term PSEL	222-0042	Elimination of the short term PSEL is a good change. In conjunction with the use of the rolling average, compliance demonstrations will be more straightforward.	22, 29	The Department appreciates the support on these issues.
		Should eliminate the short term PSEL in the Medford area also. Need for Short Term PSEL requirement is questionable since there have been no exceedances of the 24-hour PM10 standard since 1991 at any measurement site.	26, 27	This is a SIP planning issue and can not be determined within this rulemaking. If it is appropriate to eliminate the short term PSEL for Medford, it can be done as part of the attainment and maintenance planning process but not by this rulemaking package.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
General requirements for PSELs	222-0043	The requirement that all sources (including natural minor sources) have a rolling 12 month PSEL is excessive. This is not a simplification of the air program. There will be an increase in data collection and the activity to demonstrate compliance.	22, 29	The rolling 12-month limit is being applied consistently statewide to help streamline the program. Selective implementation would complicate the program, making it more time consuming to implement. This is at least partially offset by the elimination of the short term PSEL in most of the state. Since the Department is dropping the "review report" from the definition of "permit" the rolling limit is needed for practical enforceability.
		Acetone should be excluded from regulation under a source's PSEL, and the definition of VOC in Division 200 should be revised to be consistent with the corresponding federal definition.	19	Acetone is already excluded from the definition of VOC in the existing rules.
Unassigned emissions	222-0045	Holders of all types of ACDPs should be able to maintain unassigned baseline emissions. DEQ should provide technical documentation of the air quality benefit that will result from not allowing unassigned in other than standard permits.	26	Unassigned emissions is a source specific concept that is not applicable to permits (General and Simple) that use Generic PSELs. Sources may opt for a Standard permit and maintain unassigned emissions.
		Support the removal of unassigned emissions reductions.	12	Thank you for your support on this issue.
		Reducing unassigned PSELs is not a permit streamlining issue. Reducing unassigned PSEL would most likely make permitting more difficult because facilities would be forced into PSD earlier. Strongly recommend that reducing the unassigned PSEL be eliminated from the proposed permit streamlining process.	18	Reducing unassigned is a streamlining issue from a planning point of view. Having these unused emissions off the books facilitates attainment, maintenance and prevention planning. In the past, the Department has had to offer expedited permit processing as an incentive for "donations" of unassigned emissions needed to attain and maintain air quality standards. Expedited permit processing is inefficient for the permitting program and inequitable because it results in delays in other permitting work
		Reducing unassigned emissions in the Medford-Ashland AQMA means that those emissions are given up for good because they can't be reacquired by the facility through the NSR/PSD program as they could by facilities in other areas of the state.	15, 26	Because Medford-Ashland is the only area in the state that will have its attainment and maintenance plans based on dispersion modeling, the Department has revised the rule language to allow sources within the Medford-Ashland AQMA to maintain all of their unassigned emissions. In lieu of unassigned emission reduction, the Netting basis will be established at the level shown to be acceptable for the air shed through modeling.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Confiscation of unassigned PSEL is a confiscation of significant rights, reduction in flexibility, and unnecessary. Reduction of unassigned emissions is not a workload simplification or streamlining.	22,29	Reduction of the unassigned emissions does not affect a permittee's operational flexibility nor the ability to operate a facility at maximum capacity. The Clean Air Act does not create a right to baseline emissions and, in fact, the default federal program would reset the baseline to current actual emissions every five years. The unassigned emissions reduction program will leave a significant buffer for future expansion, and the net effect of this rulemaking will be to greatly increase flexibility for applicants to make changes without permit modifications. In addition, the unassigned emission reduction program allows the Department to relax the current restriction on banking shutdown credits, which increases the value of those reductions and provides greater flexibility in how the reductions may be used. As explained above, the unassigned emissions reduction program is needed to streamline the planning process
		Request that all references to freezing baseline and reducing unassigned emissions be removed from the proposed rules because these changes will have an adverse affect on the wood products industry.	16	The Department does not agree that these concepts, as a part of this overall rulemaking package, will have an adverse affect on the wood products industry. These concepts are at the heart of the proposed streamlining project and will not be eliminated from the proposed rules.
		Reducing unassigned emissions unfairly penalizes existing companies that voluntarily reduced emissions to be used later for expanding operations that will now be subject to NSR.	16, 26	Reducing unassigned emissions places existing sources on closer to a level playing field with new sources. It does not put them at a disadvantage, and in fact will leave them with a growth buffer that is twice as large as that available for new sources. Much of the unassigned emissions throughout the state have come from over control or shutdowns that happened many years ago, and the return on these investments has long since been realized. Further, the reduction in unassigned emissions is not scheduled to occur until 2007, providing ample time for permittees to complete netting actions. Even banking of those emissions at the time would not have extended their life beyond present day.
		If PTE emissions are used in the calculation of unassigned emissions, it is quite possible most, if not all, unassigned baseline PSEL emissions will be eliminated under this rule.	16, 26	Unassigned is defined as the difference between netting basis (baseline actual) and current potential to emit. If current PTE is equal to or greater than netting basis, unassigned will equal zero. Thus, using PTE minimizes the amount of unassigned that could be subject to reduction.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Development of "plans" for use of unassigned, evaluation and monitoring of plans will require substantial work. The requirement provides an incentive for "more-work" planning. If a plan is going to be required, a source should be able to plan to use unassigned emissions for a longer period of time and plan requirements should be spelled out. Suggest dropping the plan requirement.	22, 29	The Department agrees with this comment and has modified the rule language to eliminate the requirement for a plan. The revised language was re-noticed to accept additional comments. All comments were considered in making a final recommendation to the EQC.
		Request assurance from EQC that any reduction in unassigned emissions from over-control will not be taken away and given to other polluters of air quality, e.g., motor vehicles. The safest place for these unassigned emissions is in the source permits where the Department has a say in their use.	18	The SIP planning process does not involve transferring emissions from unassigned emissions to motor vehicles or other source categories. The process does require the Department to assure that emissions from all source categories will not cause a violation of air quality standards. The Department commits to continuing to work with Medford stakeholders to establish a workable maintenance plan that ensures compliance with air quality standards while maintaining appropriate flexibility for permitted sources.
		The elimination of unassigned emissions in excess of the SER is unfair and inconsistent with the use of emission reductions for the purpose of netting in federal NSR programs, which allows for a 5 year contemporaneous period. This proposed rule may cause a facility to lose access to unassigned emissions that may be needed to address upcoming and unforeseen changes. The rule should be revised to be consistent with the federal contemporaneous period without the requirement for an advanced plan.	19	Netting in the federal program only allows using reductions in actual emissions if they occurred within the past 5 years. Most unassigned emissions are due to reductions that occurred more than 5 years ago. Under the federal program, none of these unassigned emissions would be available to net out of NSR. In order to make the Oregon program consistent with the federal program DEQ would need to eliminate the fixed baseline concept altogether and rely strictly on a contemporaneous actual to future potential test for NSR applicability. The requirement for a plan for use of unassigned has been dropped from the proposed rules.
		Concerned how PSEL has allowed sources to bank emissions that result from over-control beyond minimum requirements by adding pollution control devices that are not required by law. This is further compounded by allowing these emissions to be used for resale or for future use as unassigned PSEL.	28, 30	Banking and trading emission reductions from over-control is the nature of the Oregon and federal New Source Review programs. These concepts provide incentives for voluntary early reduction and allow growth in areas that do not have air shed capacity for added emissions. The unassigned emission reduction program limits the amount of these emissions that can be used for internal netting. These emission reductions are only available for external use as offsets if they are contemporaneous or are banked.
		The problem is when a source shuts down in whole or in part. Although these emissions are supposed to be retired, often they are not and wind up as emission credits that can potentially be used to increase emissions later.	28, 30	Under the existing rules, emission reductions from the shutdown of a source may be used for internal growth but may not be banked for external use. The proposed rules allow shutdown credits to be banked and used externally, but also limit the amount of unassigned emissions that may be retained by the source. Over time, this will result in the retirement of shutdown credits that are not used as offsets during the banking period.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Requirement of a permit modification to shift unassigned emission to assigned PSEL is not appropriate. Type 1 NOC should be sufficient to move unassigned emissions to assigned PSEL.	22, 29	Since unassigned emissions are not emissions that a source can use under its current configuration, a permit modification is appropriate when shifting from unassigned to assigned. The type of permit modification will depend on the actual changes being made to the permit. Simply moving unassigned to assigned could be processed as a minor permit modification in some cases. However, if new applicable requirements or monitoring are triggered by the use of unassigned emissions for new capacity, a significant modification or new type of permit could be required.
		As proposed, sources will begin to lose unassigned emissions starting within the next two to three years (upon renewal or permit modification). The rules should be revised to allow sufficient time for use of these unassigned emissions	22, 23, 29	The rule language was revised to correct this problem and level the playing field by establishing a uniform date (2007) for the unassigned emission reduction . The proposed revision was re-noticed to accept additional comments. All comments were considered before the rulemaking package is presented to the EQC for adoption.
		DEQ could address many sources' concerns by removing the reference in section (3)(a) to modifications and revise that section as follows: "*Unassigned emissions will be reduced to not more than the SER plus 25% of the unassigned in excess of potential to emit upon the first permit renewal unless the permittee submits a plan with the permit application to use some or all of the unassigned emissions in excess of the amount before the end of a the first full permit cycle after the date this provision takes effect*"	22, 23, 29	The Department does not support this approach because it would allow large amounts of excess unassigned emissions to be retained. Because some permittees have many hundreds of tons of unassigned emissions, allowing sources to retain a SER plus 25% would not resolve the inefficiency in the SIP planning process. Limiting the reduction to just the first permit renewal would allow the problem of excess unassigned emissions to build up again over time.
		If the unassigned emission forfeiture rule is retained, it should contain language that allows for corrections to be made to reflect new information. Concern is that sources will be forced to forfeit baseline under the proposed rules based upon current understanding of PTE only to find later that they underestimated that potential.	22, 23, 29	The Department agrees that allowance for corrections is appropriate. Since the netting basis can be modified based on better emission factor data for baseline, it is appropriate to allow this same sort of correction within the unassigned emission program. Under the rules as proposed, the netting basis, PTE and amount of unassigned emissions will be recalculated periodically upon permit renewal. However, this does not mean that advancements and efficiencies obtained in later years can be used to increase a previously determined PTE for a previous time period.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Concerned about provisions in the draft rules addressing how unassigned emissions may be banked and how emissions that are banked may be used for netting.	22, 29	Unassigned emissions cannot be banked, but may be used for internal netting. Only actual contemporaneous emission reductions may be banked. Banked emissions are simply actual reductions at a source that the owner wants to preserve for a longer period of time. The proposed rule provides incentives to bank actual reductions instead of letting them become unassigned emissions. Banked emissions may be used during the banking period for internal netting or transferred externally as offsets. At the end of the banking period, any unused emission reductions would be returned to unassigned emissions, subject to the limit on the total amount of unassigned emissions.
		222-0045(4)(b) and (c) state that unassigned emissions may not be banked or transferred to another source and that once emissions are removed from the netting basis as a result of banking, that they will not be available for netting in any future permit actions. We believe that these statements go too far. Unassigned emissions should be eligible for banking if those emissions meet the two-year contemporaneous standard. Emissions that are removed from the netting basis because they have been banked should still be available for netting in the future so long as the credits have not expired.	22, 29	As with the existing rules, only actual contemporaneous emission reductions (Emission Reduction Credits or ERC) can be banked and used as external offsets. OAR 340-0045(4)(b) does not prevent contemporaneous ERC from being banked, and banked reductions are not included in the calculation of unassigned emissions. Unassigned emissions may be used for internal netting, and are not subject to the restriction on netting in OAR 340-0045(4)(c) unless they exceed the maximum level established under OAR 340-0045(3). Banked emissions are not removed from the netting basis unless they are transferred off site as offsets. When banked emissions expire, they become unassigned emissions and subject to the limit on total unassigned emissions.
		Proposed rule substantially changes the unique nature of the existing Oregon PSD program by essentially removing the baseline concept and moving the program more towards the federal PSD program. In reducing unassigned baseline emissions, DEQ proposes to wipe the baseline slate clean for existing sources, thereby putting them into the same category as post-baseline sources with respect to future PSD permitting. This is unnecessary and makes the Oregon program significantly more stringent.	27	Reducing unassigned emissions does not remove the baseline concept from the Oregon air quality rules. The fixed baseline will continue to be used. The proposed program limits emissions to 1 SER above the amount that a source could currently use based on the facility design. This change helps to streamline the SIP planning process while maintaining the essential elements that make the Oregon PSD program unique.
		Removing unassigned creates a disincentive to reduce emissions. Facilities that do not voluntarily reduce emissions will keep their baseline as assigned PSEL. Those facilities can then later voluntarily reduce emissions by replacing baseline emission units while also avoiding PSD review. Do not believe this is what DEQ intended to result when drafting the proposed rules.	27	The Department believes that the proposed program is a reasonable balance between maintaining incentives to make voluntary early reductions and locking in 1978 levels forever. Ten years for banking plus 5 years unassigned plus 1 SER retained is a reasonable balance. It is unlikely that permittees will make voluntary reductions that do not achieve a return on investment in that much time.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		As an alternative, suggest allowing facilities to bank any unassigned baseline emissions but not place any expiration date on those credits. This approach would still realize DEQ's goal of allowing new sources to locate in the air shed and air quality improvements by allowing other facilities or environmental activist groups to purchase the banked credits while preserving the flexibility that baseline sources currently have in the existing rules.	27	Allowing unassigned emissions to be banked would be a major environmental backsliding from current rules and would not be allowed under federal rules. Current rules only allow the banking of emission reductions that are contemporaneous. Banking unassigned emissions would allow them to be used externally to offset new sources, whereas they can only be used in internal netting actions under current rules. Unassigned emissions are not appropriate for use as offsets because they are not contemporaneous emission reductions and therefore would not be considered actual emission reductions as required by federal rules.
		Object to proposed language that requires sources to forfeit unassigned PSEL. Unassigned emissions forfeiture program is inappropriate and discourages voluntary emission reductions.	22, 23	The Department believes that the proposed program is a reasonable balance between maintaining incentives to make voluntary early reductions and locking in 1978 levels forever. See responses above for further explanation.
		Object to the idea of having to submit a plan for approval. Requirement for a plan should be eliminated.	22, 23	The proposed rule language has been revised to delete the requirement for submittal of a plan.
		A portion of the forfeited unassigned PSEL should be set aside by the DEQ as an industrial growth allowance.	22, 23	Growth allowances are part of the maintenance planning process and outside the scope of this rulemaking package. However, the Department is committed to facilitating industrial growth that is consistent with air quality needs, and the unassigned emission reduction program will make it more feasible to include industrial growth allowances in future maintenance plans.
PSELs for HAPs	222-0060	222-060(1)(a) contains a typographical error in that it states that you can only have PSELs for combined HAPs not individual HAPs.	22, 29	This section of the rule refers to a HAP PSEL for fee purposes. Since fees are based on total HAPs, a combined HAP PSEL is appropriate. The Department does not intend to double count emissions for fee purposes. If emissions can be shown to be counted as HAP and criteria pollutant, they will be excluded from the fee calculation for one or the other.
		It is unclear why there is a prohibition on naming individual HAPs and why if you are taking the HAP PSEL for fee-paying purposes you must have a rolling 12-month PSEL. Further, do not see why a HAP source which prefers to have a HAP PSEL of less than the generic PSEL level should have to take the full generic level.	22, 29	The HAP PSEL is an optional limit to avoid major source status or to pay fees based on permitted emissions. The 12-month rolling limit is required to establish a PTE limit and to make the PSEL practically enforceable. A permittee with emission less than the Generic PSEL has the option of paying fees on actual emissions if he or she chooses to do so. Setting the HAP PSEL at the generic level streamlines the process and facilitates the fee collection and PTE limit requirements.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
PSEL compliance	222-0080	The compliance rule needs to include provisions that require the source to undertake monitoring of emissions and/or operations sufficient to produce the records necessary for demonstrating compliance. This provision must ensure that the source monitors those parameters that are used in the compliance determination method and that the averaging period and frequency of such monitoring are as short as possible and consistent with that used in the compliance method.	8	The Department agrees with this comment and has added appropriate language into this rule. The revised rule requires monitoring sufficient to collect data needed to demonstrate compliance with the PSEL.
		Stack performance test methods should be added as an acceptable method for determining compliance with the PSEL.	14	Stack tests are used to verify emission factors but by themselves are not a useful tool for demonstrating compliance with an annual limit. A permit can be structured to update emission factors with new source test data as it becomes available and reviewed by the Department.
		Request clarification as to the applicability of the PSEL rules and the requirement for maintaining documents and performing compliance calculations for 12-month rolling PSEL.	22, 29	The owner/operator must maintain records sufficient to demonstrate compliance with the 12-month rolling PSEL and must be able to use this information to demonstrate compliance within 30 days of any point during the year. The annual report requires a demonstration for each of the consecutive 12 month periods ending during the subject year. Actual calculations throughout the year, although a good idea to ensure a violation is not allowed to continue, are not being mandated.
		Use of accounting months in lieu of calendar months should be allowed. This would increase the quality of the data without any decrease in protection of the environment.	22, 23	The Department agrees with this comment and has made appropriate changes to the rule to allow use of accounting months in lieu of calendar months. Permits will need to be written to allow this type of recordkeeping before it is utilized.
Combining sources	222-0090	Combining sites creates a new permit requirement and captures new facilities into the program. This will make day-to-day operations difficult.	22, 29	Facilities are only combined if they meet the definition of source. This proposed rule clarifies how the process associated with combining sources affects the PSEL, netting basis and SER, but it does not create a new requirement to combine sources.
		Use of the term "new source review" in 222-0090 may not be consistent with the application of the term intended within division 224.	22, 29	The Department believes that the use of the term "new source review" in OAR 340 222-0090 is consistent with division 224.
		Clarification is needed on the effect of this rule on the sale of property to a new entity that intends to build a new source.	22, 29	Combining and splitting sources applies to the pollutant emitting devices. Sale of property to a new owner to build a new source is not subject to this rule. The new source would be subject to applicable requirements for a new source depending on size and location.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Request clarification in the rules about what occurs should a source sell part of its property, splits the baseline/SER, and then repurchases the split off facility.	22, 29	This situation would be handled the same way any combining of facilities would be handled. The Department would combine the netting basis from both facilities. Since they each only have part of one SER, that would be combined also.
		If two sources share one SER when they combine, when a source that splits into two sources should get two SERs.	27	The intent of this rule is to not allow environmental backsliding. Giving the split sources multiple SERs when they previously only had one could have a significant environmental impact. Giving one source multiple SERs would be contrary to federal NSR rules.
Major New Source Review	224	In 224-0050, 224-0060, and 224-0070, the application of BACT and LAER to prior insignificant source changes is overly stringent. At present, the federal NSR program requires BACT and LAER only for the final modification that resulted in a significant net emissions increase. BACT and LAER should only apply to those changes that have tipped the balance and have resulted in a significant net emissions increase determination.	19, 22, 23	The current Oregon program requires BACT or LAER for all changes that contribute to the SER increase over baseline (1977/78). The Oregon NSR program is approved as equivalent to the federal program because DEQ counts all increases as well as decreases since baseline year. The proposed rule revisions do not change the applicability of control technology, they only clarify the existing rules without allowing environmental backsliding.
		Request clarification on what requires control technology when NSR is triggered.	27	Control technology is required for physical changes and changes in operation that have occurred since the baseline period and contribute to a SER increase over the baseline emission rate. Individual projects that are less than 10% of the SER may be exempt from the control technology evaluation if they meet the specific limitations. This is spelled out in the rule (340-224-0050(1), 0060(1) and 0070(1).
		Request clarification of division 224 to non-federal major sources.	22, 29	The nonattainment and maintenance area rules apply to non-federal major sources. This is part of Oregon's minor new source review program as well as a part of the attainment and maintenance plans for air quality maintenance areas.
NSR streamlining	224-	Package has variety of benefits including pollution control project exemption and elimination of company-wide compliance. Broad definition of physical change will be very expensive and time consuming.	22, 29	The exemption for environmentally beneficial pollution control projects is an attempt to expedite the installation of better controls where it makes sense and will improve air quality. The changes in the area of "physical change" are clarifications and not increased stringency from existing rules.
	224-0010	Typographical error in 224-0010 where it refers to "an air contaminant discharge permit ACDP."	22, 29	The "( )" have been added around ACDP.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Appears to require that a source obtain an ACDP whenever there is construction of a new major source or when a major modification takes place. In the past, DEQ has bypassed the ACDP step for some sources subject to Title V permitting and issued a single permit that addressed both NSR and Title V. Concerned that the proposed language potentially will foreclose the possibility combining the action into the Title V permit. Suggest that language be expanded to allow the more efficient single permit process where the permit writer deems it appropriate.	22, 29	The proposed rules do not change the streamlining features referenced in the comment. An ACDP is required for construction approval because Title V is an operating permit program only. However, if the construction ACDP includes Title V requirements (e.g., monitoring, recordkeeping, and reporting) and the external review procedures are followed, the construction ACDP may be rolled into the title V permit by an Administrative Amendment. Also, if the source was previously not subject to Title V or the modification does not violate an existing Title V permit, it may operate under the provisions of the ACDP for one year before a Title V application is required.
	224-0030	Oregon PSD and NSR rules could be affected by the proposed changes to federal PSD and NSR programs. The DEQ should be cautious in advancing the proposed changes until EPA has a more clearly established rule in place.	18	The Department is aware of proposed changes to the federal NSR/PSD program and has taken this into account. At this point, the federal NSR Reform effort is stalled. If the federal rules change in a way that affects the Oregon rules, then the Oregon rules will be modified accordingly.
		In section (2), the provisions from the current rule (2)(c) must be retained to meet the requirements of 40 CFR §§51.165(a)(5)(i) and 51.166(r)(1).	8	The proposed rules have been revised to retain this provision.
		Since extending the 18-month period is a modification to the construction ACDP that requires a re-analysis of the BACT determination, the provision in (2)(a) needs to indicate that this action requires public notice in accordance with Division 209 for Category II permit actions.	8	The requirement is clarified in section (3)(b) of this rule. Category II public participation will be required for extension of the construction permit.
		We could not find any provision in the various major NSR rules that meets the requirement of 40 CFR 51.166(p)(1) that the ODEQ "transmit to the Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the Administrator of every action related to the consideration of such permit." As we have discussed recently, ODEQ may wish to require in its rules that sources submit copies of applications, supplemental information, etc. directly to EPA at the same time they submit them to ODEQ.	8	The specific requirement to "transmit to the Administrator a copy of each permit application..." is not included in the rules, but the Department does send copies of these documents to EPA and is currently working with EPA and the federal land manager to create a formal process to ensure all applicable documentation is transmitted as necessary. This requires a revision to the Department's operating procedures and the EPA/ODEQ interagency agreement on NSR/PSD; it does not require a change to the rule language.
		The section describing the kind of information that an operator/owner of a major source needs to be put into an ACDP applications has been deleted from the rule, but it is very important. Where in the rules is this required?	10	The NSR application requirements have been moved to OAR 340-216-0066, which are the rules for Standard ACDPs. Since all NSR actions are processed as new or modified Standard ACDPs, it makes more sense to put the NSR application requirements with the Standard ACDP application requirements.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The modeling should include the cumulative impacts of all currently emitted chemicals and accidental releases and the impact the new amount of chemicals will have.	10	It is not currently possible to conduct a cumulative impact evaluation for all chemicals emitted by a source. There is, however, a requirement to evaluate competing source impacts if the proposed facility will have a significant impact on air quality.
		Does the process allow construction before all necessary operating permits are obtained?	10	For new sources, construction is allowed once a Standard ACDP is issued and the source can be operated for one year before submitting an Oregon Title V Operating permit, if one is required. For existing sources, construction is again only allowed after a Standard ACDP is issued, but the source may not be operated if the source is required to have an Oregon Title V Operating Permit and the Title V permit would prohibit such construction or change in operation. In such case, the permittee would be required to obtain a Title V permit revision before commencing operation. See OAR 340-218-0190(2)(d).
		Do the deletions is section (3) for application processing take away the public participation opportunities?	10	The requirements for public participation have been moved to Division 209, which is dedicated to public participation procedures for all types of permit actions.
		Public hearings should be automatic for a major new source.	10	The proposed rule requires automatic hearings for major new sources. A Standard ACDP is required for major new source review. As specified in proposed rule OAR 340-216-0066(4)(a)(B), this permit action would require a Category IV public notice in accordance with division 209. As stated above all of the public participation requirements have been moved to division 209. Two hearings are required for Category IV permit actions. The first is an informational hearing that is provided once a complete application is received by the Department. The second hearing is for accepting comment on the draft permit. See OAR 340-209-0030(3)(d).
		Category IV procedures for public notice are excessive for non-federal major sources subject to division 224 requirements.	22, 29	Category IV public notice procedures are intended to address concerns with potentially significant operations. Proposed sources that will be subject to division 224 are considered to be potentially significant because they all involve significant emission rate increases from construction, whether at a federal major source or not..
	224-0050	The end of (1)(a) needs to be changed to "that increases the actual emissions of the pollutant in question above the netting basis for the emissions unit."	8	This change has been made.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		For (1)(c), it is unacceptable to make cost issues more important than requiring the highest quality and most effective pollution control equipment. Feasibility should only mean how fast the newest, most effective control equipment can be installed.	10	For the application of LAER, cost is not considered in the evaluation, so feasibility is only related to technical issues.
		The purpose of (1)(d) is unclear and it appears to be contrary to the requirements of the federal Clean Air Act and EPA regulations. Furthermore, it appears to contradict paragraph (1)(a).	8	This section is intended to take very small changes previously approved by the Department out of the control technology requirement. These small changes are likely to have no control requirements even under LAER and the difference between controlled and uncontrolled emissions is environmentally insignificant. This is an exemption from the control technology analysis requirement, not a contradiction to it. The Department believes it is consistent with federal requirements due to the conditions in paragraphs (A) through (C).
		The DEQ should not remove the source compliance requirements because it provides an incentive for the parent company to make sure all its facilities are fully in compliance. The DEQ should deny a company in violation of its existing permits any additional permits until that company is in compliance at all facilities.	12	This requirement is redundant with the enforcement rules and does not necessarily ensure compliance of the new facility. Trying to address an enforcement issue at one source through permitting at another source is inefficient for permitting and is unnecessary for enforcement.
		Is section (2) emission credit trading? If so, lower net numbers should be required every year.	10	Section (2) is Offsets and Net Air Quality Benefit. Offsets do relate to emission reduction credit trading in division 268. The specific offset requirements are contained in 340-225-0090. The purpose of offsets is to ensure that the new source does not cause a negative impact on air quality. The emission reduction used for the offset must be maintained indefinitely by the reducing source.
		This section should include some language from the 1994 executive order on environmental justice, and should require an environmental justice siting and permitting analysis before any permit is issued anywhere in the state.	10	This suggestion is outside the scope of this rulemaking package but may be included in future rule revisions as the Department continues to address environmental justice issues.
		In section (4), proposed major sources and major modifications located within the Salem ozone nonattainment area cannot be exempted from the requirements of paragraph (3) of this rule.	8	The cross reference correction has been made to the rules. "(3)" has been deleted.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The inclusion of retrofit LAER for all changes since baseline is not justified or appropriate. LAER should only apply to the change that causes the increase above the SER and retrofit LAER should only apply to changes that were made within the general time frame of the project that triggers NSR. Concerned why retrofitting is being imposed through this rulemaking when it is intended to be streamlining	21, 22, 23, 29	The existing rules require LAER for all physical changes since baseline, including the retrofit of required controls. This is simply a clarification that retrofit LAER - instead of new source LAER - applies to formerly approved changes.
		Economic feasibility should be included in the retrofit LAER analysis.	22, 23, 29	LAER, by definition, does not include cost. It is the best control that is technically feasible without regard to cost.
		For retrofit BACT and LAER, the requirement that the prior change was installed in compliance with NSR should include the language *"... compliance with NSR requirements in effect at the time the change was made."*.	27	The Department agrees that this was the intent of this rule revision so the clarification has been added to retrofit BACT and LAER provisions of the rules.
		Confused by the limitation that technical feasibility can only be considered where "no limit will be relaxed if it was previously relied on to avoid NSR.". The PSEL has been relied on to avoid NSR.	22, 29	The consideration within this rule is for "retrofit" technology as opposed to "new source" technology. If a limit is being relaxed that was previously relied on to avoid NSR, the prior change must be evaluated as though it had not been installed yet. However, if a limit is not being relaxed, the evaluation is one of retrofitting existing equipment, not installing new equipment.
		The requirement for projects to have been installed with DEQ approval should be removed from the retrofit LAER exemption criteria. Many simple modifications that were performed in past years were completed either without filing an appropriate NC or filing a late NC. These should be handled through the enforcement process and not prohibit a source from being able to utilize the exemption from retrofit LAER.	21, 22, 29	The intent of the exemption is to allow small changes that were approved in the past to avoid the new source control technology that would otherwise be required. Projects that were not properly approved at the time of installation were not legally installed and therefore should not be allowed to take advantage of the proposed exemption.
		Endorse the return of the exemptions from offsets for the Salem area. Strongly endorse the idea of DEQ accelerating this portion of the rule proposal and returning the Salem offset exemption to the Oregon regulations as soon as possible	22, 29	The Department appreciates the support on this issue and will make the effective date of this rule upon filing with the Secretary of State.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Appropriate to exempt other sources situated downwind of the Portland maintenance area from having to obtain offsets based on presumed impacts. Extend the ozone precursor offset exemption to include all sources located downwind of Portland as well as any other sources that can document that unique meteorological or topographical features make it unlikely that the source will impact the Portland maintenance area.	22, 29	It may be appropriate to exempt other downwind sources from the offset requirements relating to the Portland area. The rules have been modified to allow these sources to demonstrate that they do not impact the area, but it is outside the scope of this rulemaking to exempt specific geographical areas. Future rule revisions may include other exemptions and criteria for impact as more sophisticated analysis methods become available.
		Since major new sources and major modifications within nonattainment and maintenance areas are already required to obtain offsets, visibility and AQRV analysis should not be required. The additional analysis would not have a significant benefit to the environment, and would be a significant financial burden to sources. [Delete 224-0050(3)(c) and 0060(3)]	21	The requirement to obtain offsets addresses the impact on the nonattainment area. Since this area is normally considerably closer than the Class I areas, it is unlikely that the offsets have the same reduction in impact on the Class I areas that they have on the nonattainment areas. If a source can demonstrate that the offset reduces impacts on Class I areas as much as the proposed source increases them, it should be easy to show no net impact on AQRVs.
	224-0060	The end of (1)(a)(B) needs to be changed to "that increases the actual emissions of the pollutant in question above the netting basis for the emissions unit."	8	This correction has been made.
		The purpose of (1)(d) is unclear and it appears to be contrary to the requirements of the federal Clean Air Act and EPA regulations. Furthermore, it appears to contradict paragraph (1)(a).	8	This section is intended to take the very small changes, that were previously approved by the Department, out of the BACT requirement. These small changes are likely to have no control requirements even under BACT and the difference between controlled and uncontrolled emissions is environmentally insignificant. This is an exemption from the BACT analysis requirement, not a contradiction to it. The Department believes it is consistent with federal requirements due to the conditions in paragraphs (A) through (C).
		Section (2) is only OK if there is a real reduction in net emissions.	10	Offsets and Net Air Quality Benefit requirements are contained in 340-225-0090. Specific requirements and limitations are listed there.
		What is the rationale for deleting the net air quality benefit section? Is it covered somewhere else?	10	This rule has been moved to OAR 340-225-0090 where it fits better with other requirements.
		Section (3) must also indicate that Federal Major Sources need to meet the air quality monitoring requirements of 225-0050.	8	This requirement has been added to the proposed rules.
		In section (4), is LAER more or less stringent than BACT or MACT?	10	LAER is at least as stringent as BACT and may be more stringent. Cost is not considered in establishing LAER whereas it is considered in establishing BACT. MACT is for HAPs and not necessarily related to LAER at all.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		In section (4), what does "growth allowance allocation" actually mean in terms of how new emissions or increases in emissions are dealt with under this section?	10	Growth allowances are established in maintenance plans for specific areas. The plan will state what is available and how it can be used. A growth allowance is created in a maintenance plan by reducing emissions more than required to meet air quality standards, and acts like a community bank of offsets. As long as a growth allowance lasts, it can be used in lieu of individual offsets.
		Same comments made in relation to the nonattainment area NSR regulations apply generally to the maintenance area NSR proposed regulations. Suggest also adding exemptions contained in 224-0060(2)(c) to 224-0050 (If a source can model out and document that it will not cause or contribute to a significant air quality impact, it should be exempted from CO offset requirements.	22, 29	Areas that are in nonattainment have no growth allowance because they are already at or above the standard. When a maintenance plan is developed, it may include a growth allowance if there is enough room between the predicted emissions impact and the standard. These provisions cannot be added to the rules as a streamlining package; they need to go through the SIP planning process for thorough evaluation for specific areas.
	224-0070	There is no section (6) of this rule as referred to in the opening paragraph.	8, 22, 29	The reference to section (6) has been deleted from this rule.
		By limiting this rule to just federal major sources, there is no longer any requirement in Division 224 that applies to Oregon major sources located in attainment or unclassifiable areas - specifically any requirement that such sources not cause or contribute to violations of ambient standards.	8	Non-federal major sources are still subject to the PSEL rules in division 222. These rules do not allow sources to cause or contribute to violations of ambient standards. The same impact analysis is required through the PSEL rules that was previously required by the NSR rules for sources between the SER and federal major source levels.
		The end of (1)(a)(B) needs to be changed to "that increases the actual emissions of the pollutant in question above the netting basis for the emissions unit."	8	This change has been made to the proposed rules.
		The purpose of (1)(d) is unclear and it appears to be contrary to the requirements of the federal Clean Air Act and EPA regulations. Furthermore, it appears to contradict paragraph (1)(a).	8	This section is intended to take very small changes previously approved by the Department out of the BACT requirement. These small changes are likely to have no control requirements even under BACT and the difference between controlled and uncontrolled emissions is environmentally insignificant. This is an exemption from the BACT analysis requirement, not a contradiction to it. The Department believes it is consistent with federal requirements due to the conditions in paragraphs (A) through (C).
		Why are old sections (2)(a), (b), (c) and (d) deleted, especially (a)(C) which talks about proximity to already overburdened areas.?	10	This was moved to the new modeling division 225.
		Why have you deleted the parts of (4)(a) which look like an analysis of cumulative impacts?	10	This was moved to the new modeling division 225.
		Why is section (3)(a)(C) that specified limits of specific toxins and HAPs deleted?	10	This was moved to the new modeling division 225.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Do not delete old sections (6) and (7) for additional impact analysis and Class I areas because they provide an assessment of whether the emissions are having an off site impact.	10	This was moved to the new modeling division 225.
		Retroactive BACT should only be applied to changes/modifications that were performed in the recent past (maximum 5 years). [same comment as for retroactive LAER above]	21, 22, 23, 29	Retroactive BACT is an existing requirement in the current rules. Since the Oregon program uses a fixed baseline instead of the floating 5 year window found in federal regulations, all increases need to be addressed since baseline. To limit the retroactive control requirement to five years, it would be necessary to eliminate the baseline concept in the Oregon rules and use the federal 5 year window (for both increases and decreases) instead.
		Confused over the requirement that previous limits that were used to avoid NSR cannot be removed without going through NSR for the removal. How does the PSEL play into this when it was used as the limit avoiding NSR?	22, 23	If the PSEL was used to avoid NSR, then the PSEL may not be relaxed without going through NSR. The BACT analysis would then need to be new source BACT and not retrofit technology.
		Department should withdraw the proposed language requiring retroactive BACT/LAER, or state that the retroactive BACT/LAER extends only to those projects that occurred within the contemporaneous period.	21, 22, 23	If NSR/PSD is triggered, the current rules require BACT or LAER on all increases that occurred since the baseline period. The proposed rules simply clarify that retrofit technology may be used instead of new source technology.
	224-0090	Why are sections of the rule deleted?	10	This rule was moved to 340-225-0090.
	224-0100	Are secondary emissions counted in the facility's overall emissions or against their permits? If not, why not?	10	Secondary emissions are not included in a source's permit because the source has no control over these emissions. However, a source is required to model secondary emissions to determine the full impact of the increase on air quality.
	224-0110	Why is this section repealed?	10	The provisions in this rule were moved to division 225.
NSR versus PSEL	224	NSR for Physical changes and PSEL for other increases is far more stringent than the federal approach and must be made no more stringent than the federal standard.	22, 29	The Department disagrees with this comment. This is a clarification of what the current rules already do. Also, the Oregon program has been determined to be equivalent to the federal program.
Air Quality Analysis Requirements	225	Many of the proposed rules in this Division go beyond mandated federal requirements.	16	This division spells out what is required to insure air quality standards are maintained. The specific limitations that are not part of federal regulations have been removed from the rules and will be maintained in guidance.
		The FLAG report is soon to be released and DEQ should incorporate the provisions of that report.	13	The Department agrees with this comment. Several references to FLAG have been incorporated into the proposed rules.
		Provisions for visibility analysis for PSEL increases involving production related emission increases was to be included in the rule revision but the provision could not be located.	13	Proposed rule OAR 340-222-0041(3)(b)(D) requires federal major sources with significant production-related emission increases to conduct the AQRV analyses in OAR 340-225-0070. A contradicting applicability statement in the original proposal of division 225 has been removed.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The term "Background Visual Extinction" should be changed to "Background Light Extinction (BLE)".	13	The suggested terminology has been adopted.
		Since the Gorge is not a Class I area, the BLE used for the Gorge should be the average of the best 20 percent of days as opposed to the more stringent 5 percent that is requested for Class I areas.	13	All references to modeling requirements for the Gorge are now listed as being voluntary. In addition, all requirements to meet specific visibility thresholds for BLE have been removed. Instead, references to FLAG are encouraged.
		The DEQ should adopt the average of the best 5 percent days BLE for Class I areas as recommended by the FLAG report.	13	All requirements to meet specific visibility thresholds for BLE have been removed from the proposed rules. Instead, references to FLAG are encouraged. The federal land managers will still make recommendations to the Department regarding visibility thresholds.
		Inclusion of new concepts and continuing use/reference to quasi-standards makes the proposed rulemaking much more than a consolidation of traditional technical demonstration requirements for major NSR.	26	References to the specific standards that are not codified in federal regulation will be removed from the rulemaking package and maintained in guidance.
		This new OAR division could put an essentially unending and unnecessary amount of technical responsibilities and burden of proof on any new or modified major sources of air pollution. It could place a de-facto moratorium on any major new or modified source development and cause an applicant to do the work the DEQ should have the responsibility for developing.	26	These proposed revisions incorporate current rules and policies for preparation and review of air quality analyses. Actually, some of the proposed revisions are designed to streamline requirements for applicants. One example is that the need to perform preconstruction monitoring is no longer automatically required. Instead, the proposal allows many sources to conduct monitoring after construction.
	225-0010	Should reference appropriate published guidelines (such as IWAGM publications) in the event the "average of the best 20% of visual extinction measurements" criteria changes with regard to this parameter.	26	The published guidelines for existing visibility in the FLAG report are now referenced in the proposal, but the actual standards will be maintained in guidance and not codified in the final proposed rule.
		Definition of "baseline concentration" continues to lose meaning with time. Changes since baseline make any "modeled baseline concentration" exercise for PM10 and SO2 difficult, if not impossible, to construct. Paragraphs (b) and (c) of the proposed rule are more workable due to enhanced monitoring and recordkeeping by both the state and sources.	26	Actually, impacts above the baseline concentration have traditionally been modeled for all PSD applications received by the Department. This may be shown by modeling the change in emissions (since baseline) with the same meteorology that is used for modeling the proposed new emissions. The actual concentration during the baseline year is not as important as the increase above the baseline. This is what is compared to the PSD increments. Monitored concentrations are only important in areas that approach or exceed the NAAQS.
		Suggest striking the word "modeled" in front of "baseline concentration" in paragraph (3) and replacing it with the phrase " Source Impact Areas appropriate" and dropping the remainder of the sentence after "224"	26	See above response.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Strike words "are within the Range of Influence" in paragraph (4) and replace them with the phrase "significantly impact the Source Impact Area".	26	The Department believes the language as proposed is appropriate for the intent of the rule.
		(7) The definition of "Ozone Precursor Significant Impact Distance" has no documented technical support in the hearing record. EPA's most recent thinking has suggested a limit of 30 km from the ozone nonattainment or maintenance area boundary. The definition as proposed has no accounting for atmospheric chemistry mechanisms, the relative reactivity of individual VOC species/compound classes, a source's pollutant release characteristics, or ozone season daily emission rate and climatology characteristics. Definition could place Oregon at competitive disadvantage for ultimate source location with certain neighboring states with less stringent interpretations.	26	This rule was proposed specifically because EPA informed the Department that the 30 km distance is no longer acceptable. The relationship of increased impacts as being proportional to emission strength and inversely proportional to distance is also used by other agencies for primary pollutants. It assumes that precursors having similar concentrations in the nonattainment/maintenance area will produce similar ozone concentrations. It also provides a simple screen that eliminates the need for further analysis for many sources. However, the proposed rule does allow for larger sources to include other analyses that could include the factors specified in this comment.
		(8) Difficult to imagine a major new or modified source having significant ambient concentration impacts beyond 50 km. Each potential candidate source for a modeling exercise must be looked at for the overlap of its significant impact area on the affected source's significant impact area on a case-by-case basis in PSD class II and III areas. Paragraph (b) definition cannot be advanced without a tighter definition of the DEQ's discretion in determining the "modeling domain".	26	Large emission sources have the potential to have significant impacts well beyond 50 km. This is recognized by EPA and implemented by a number of states other than Oregon. The definition of the PSD Class I modeling domain cannot be tightened at this time as these domains cross state lines and agreements need to be made with other states regarding domain size.
	225-0020	Competing PSD Increment Consuming Source Impacts - the term "emissions" in section (3) must be changed to "actual emissions" for clarity. Also, the phrase "have been permitted according to OAR 340 divisions 222 and 224 and" needs to be deleted since all increment consuming emissions increases must be counted, not just those that are permitted.	8	The Department agrees with these comments and has made the corresponding corrections to the rule.
		It is recommended that the wording in section (3) be changed to the following: "Within the range of influence of the source in question, all PSD increment consuming sources must be modeled to determine the total impact above baseline."	13	The proposed rule has been revised to refer to all sources instead of only permitted point sources.
		Competing NAAQS Sources - the term "emissions" in section (4) must be changed to "allowable emissions" for clarity.	8	The proposed rule has been changed as requested.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The definition of competing NAAQS Sources in (4) is awkward because it states that emission sources are "impacts". This could lead to rule misinterpretations in the future.	20	The proposed rule has been revised to clarify this point.
		In section (6), insert the word "total" before mass in the second line.	13	The proposed rule has been changed as requested.
		In section (7), the discussion and prescription concerning upwind distance for consideration of ozone precursors is not realistic. This issue is very complicated and DEQ should refer to the FLAG report for a host of recommendations dealing with ozone issues.	13	This section addresses impacts on ozone nonattainment areas and maintenance areas rather than impacts on PSD Class I areas. Should such areas be found in Oregon Class I areas (as they have been in Washington), then special provisions will be needed for those Class I areas.
		The ozone precursor significant impact distance definition in (7) has no documented technical support in the hearing record. The definition as proposed has no accounting for atmospheric chemistry mechanisms.	16, 22, 29	The ozone precursor significant impact distance has been determined based on modeling and the simple concept that larger sources have a greater impact range. The definition does not account for atmospheric chemistry mechanisms because this is well outside the scope of streamlining the process. However, an option has been added to allow owners/operators of sources within the impact distance to demonstrate that they have no impact. This demonstration may take into account atmospheric chemistry and other factors.
		Support elimination of the 30 km line related to ozone.	12	The Department appreciates the support on this issue.
		Since Oregon currently has no emissions banking system and maintenance areas like the PMA have no available offsets, the new "ozone precursor significant impact distance" formula essentially will eliminate the siting of all new major NO_x and VOC emitting industries on Oregon's west side.	20	Oregon does allow for emissions banking and new offsets may be generated from existing sources. This rule has been revised to allow owners/operators of sources to demonstrate that they do not impact maintenance or nonattainment areas based on an analysis of major topographic features, dispersion modeling, meteorological conditions, or other factors.
		The ozone air quality modeling and the impacts from NO_x and VOC sources on nonattainment and maintenance areas are very complex issues, but the proposed rules are an extreme in the other direction by proposing this simplified formula which will affect so many Oregon industries out to 100 kilometers from nonattainment and maintenance areas.	20	The Department has revised the proposal to address this concern. The proposed rules allow for a demonstration, that a source generally could not impact the area, in order to avoid the offset requirements.
		At a minimum, language should be added to the "ozone precursor significant impact distance" definition, or elsewhere in Division 225, that a proposed new source has the option to perform analyses which can offer evidence to DEQ staff that this source will have insignificant impact on the nearby maintenance or nonattainment area.	20	The proposed rule has been revised to allow this type of analysis.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Significant impact levels (SILs) should be developed by DEQ staff for VOC emissions. SILs already exist for NO_x and can be used to determine the potential impact from proposed sources on a nonattainment or maintenance area.	20	The NO2 SIL was designed to protect the NO2 NAAQS alone and was not meant to address its role as an ozone precursor.
		The "ozone precursor significant impact distance" formula as proposed is not reasonable for considering sources in all directions, especially if the proposed source is on the other side of the Cascade mountains.	20, 22, 29	This rule has been revised to allow owners and operators of sources to demonstrate that they do not impact maintenance or nonattainment areas based on an analysis of major topographic features, dispersion modeling, meteorological conditions, or other factors.
		It may be better for DEQ to adopt a policy, such as used by WA DOE, and consider the impacts of new sources on a case-by-case basis.	20	The proposed rule has been revised to allow a case-by-case analysis. However, the formula is still needed as it provides a simple screen that can allow faster permitting of certain sources.
		The definition of "Range of Influence" in (8) references PSD Class III areas, however, none exist. It is recommended that reference to Class III areas be removed in this definition and 340-225-0050.	20	Although, there are currently no PSD Class III areas in the USA, these references are being retained for completeness.
		It is unclear how DEQ derived the "Range of Influence" definition, other than this is a policy that has evolved by trial and error. The formula has no regulatory basis. DEQ should not take this policy guideline and make it final rule.	20, 22, 29	The relationship of increased impacts as proportional to emission strength and inversely proportional to distance is used by a number of state and local agencies as a simple screen for evaluating sources to include in modeling.
		The "Range of Influence" formula is confusing as written.	20	The formula has been clarified.
		The "Source Impact Area" definition in (9) adds more conservatism into the competing source modeling process by ignoring the specific modeling results for areas surrounding the source. The specific topographic features and wind flow patterns need to be included with the short-term results to define the actual SIA. It is suggested that this definition not be made into a rule.	20	This definition has been revised to allow owners/operators of sources to demonstrate that they do not impact maintenance or nonattainment areas based on an analysis of major topographic features, dispersion modeling, meteorological conditions, or other factors.
		The need for cumulative effect analysis in both the PSD increment tracking and air quality related value impact is not adequately recognized or addressed in the rule. A separate process between DEQ, WA DOE, EPA Region 10 and the FLM has commenced that will address this and other PSD related issues. This rulemaking should be slowed to accommodate the results of that process or an addendum to the rules should be prepared to accommodate the outcome of that process.	13	When completed, the Department will incorporate the results of the interagency process on cumulative effect analysis in policy or rule, as appropriate.
		The requirement to accomplish analyses adequate to identify secondary aerosol formation for visibility and regional haze impacts is not addressed in Division 225.	13	The proposed OAR 340-225-0040 and OAR 340-225-0070 (4)(b) address specific techniques that include methods for evaluation of secondary aerosol formation from primary gaseous emissions.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		In section (10), the word "total" should be inserted before "mass" in the second line.	13	The proposed rule has been changed as requested.
		The Department should not be working to expand the presumptive impact zone beyond 30 km, but should be working to define those sources closer than 30km that should not be presumed to impact the area. (225-0020(7))	22, 29	By also applying the size and distance relationships within the 30 km zone, the proposed rule exempts smaller sources from the requirement for offsets. These sources currently are required to obtain 1:1 offsets. Further, all sources within 30 kilometers will have lower offset requirements as compared to the current rules based on size and distance from the ozone area.
		It is unclear whether the "emissions increase" that must be evaluated within the equation is the emissions increase from the most recent modification or the cumulative emission increase over time from the source. (225-0020(7))	22, 29	The proposed rule has been clarified to indicate that these are emission increases since the baseline year or since the date of the last PSD approval.
	225-0030	Annual emissions should be removed from the table for CO and lead because the standards are not annual standards.	20	Although, there are no annual standards for either CO or lead, annual emissions are required because of permitting needs relative to both Oregon's and EPA's Significant Emission Rates. These are only expressed in terms of tons/year.
		Paragraph (1)(f) is unduly burdensome on an applicant in its present form. Unless the significant impact area of a source or modification is substantially contained within a historical nonattainment aord maintenance area, such a task may be next to impossible given historical data quality and archiving by the Department. The Department and other state, county or city entities are better equipped and coordinated to interact, quantify and assess cumulative area source growth environmental impact questions.	16	Most of the requirements in this rule are based on corresponding federal rule (40 CFR 51.166(n)) . See below for further explanation.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Concerned with the statement in 225-0030(1) "to give the option of adding specific needs for modeling". Indicates that the proposed regulation goes beyond what is required by EPA to maintain delegation of the program. Request an assessment of where in the federal rules these requirements derive and an estimate of the additional employees and costs that will be associated with implementing these requirements.	22, 29	The extraneous phrase in the title of this rule has been deleted and this section has been renumbered to (4). It only has been renumbered. This rule meets the federal requirements outlined in 40 CFR 51.166 (n)3. The proposed rule uses a slightly different date than the Federal rule as the PSD baseline in Oregon is January 1, 1978. The Federal rule is as follows: (3) The plan shall provide that upon request of the State, the owner or operator shall also provide information on: ... (ii) The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.
		Concerned by the specific requirement proposed in 225-0030(1)(f) which requires "analysis of the air quality and/or visibility impacts, and the nature and extent of all commercial, residential, industrial, and other source emission growth, which has occurred since January 1, 1978, in the area the source or modification would effect". No similar requirement exists in the current regulations. This could potentially be a significant burden to sources and is not sufficiently defined as to the level of effort expected. This requirement should be omitted for the final rule.	22, 29	See above response.
		Paragraph (f) is unduly burdensome on an applicant in its present form. Unless the significant impact area of a source or modification is substantially contained within a nonattainment or maintenance area, such a task may be next to impossible. An applicants "analysis" responsibilities must stop after the competing source identification/simulation step along with secondary emissions it is directly responsible for. The DEQ and other state, county and/or city entities are better equipped and coordinated to interact, quantify and assess cumulative area source growth environmental impact questions.	26	See above response.
	225-0040	Although the exact reference for models has been used in previous rules, it is suggested that it may be wiser to cite this reference in general terms since this reference will continue to be revised in the future.	20	This rule refers to specific dates of federal rules and guidance. Oregon agencies cannot make general references to allow for future updates of federal rules without additional rulemaking.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
	225-0050	Post construction ambient monitoring is not mandatory under federal NSR programs. This discretionary requirement should only apply where it is clear that the monitoring results will be representative of the impact of the subject modification's emissions.	19	Additional post construction monitoring is not mandated in the proposed rule. Instead, the proposed rule provides an opportunity for some proposed sources to perform post construction monitoring in lieu of preconstruction monitoring where it is appropriate. This may reduce construction delays.
		Table 1 in section (1)(a) continues to contain significant impact levels (SIL) for particulate matter (PM_{10}) that are one fifth of the analogous federal and every other states' prescribed levels. The Department should furnish a scientifically defensible technical analysis as to why the existing SILs needs to be maintained.	16	This part of the rule has not been modified; it only has been renumbered. When this part of the rule was written ca. 1980, the Department found that 24-hour particulate reductions to provide air quality improvements of 5 ug/m3 were very difficult to obtain in particulate nonattainment areas. It did not make sense to allow a new source to have impacts this large in nonattainment areas after tough strategies were implemented to obtain these emissions reductions.
		As part of the hearing record, the DEQ should furnish a technical analysis as to why the existing significance levels need to be maintained. The current SILs make it nearly impossible to site a new source or major modification in an existing PM10 nonattainment or maintenance area.	26	See above response.
		Additional Impact Modeling – section (2) must include modeling for local visibility impacts per 40 CFR 51.166(o).	8	The word visibility has been added to the proposed rule.
		Air Quality Monitoring – in (3)(a)(A), the term "nonmethane hydrocarbons" should be changed to "volatile organic compounds".	8	The proposed rule has been changed as requested.
		In (3)(a)(C), delete the entries for TSP, Mercury, Beryllium, and Vinyl Chloride in order to be consistent with the changes to Table 2 in OAR 340-200-0020.	8	The deletions were made as requested.
		Items (vii), (viii), (x), (xii) and (xiii) in paragraph 3(a)(C) must be removed from the "significant monitoring concentration" list. EPA removed these pollutants from PSD/NSR as documented in a 1991 policy memo (see Seitz, March 11, 1991, re: NSR Program Transitional Guidance). Until and unless DEQ adopts a comprehensive HAPs program, these pollutants' history is tied to only named source categories of Section 112 of the federal CAA.	26	See above response. Note that items xii. and xiii were not deleted as they were not removed by EPA. These items are listed pursuant to Section 111, not Section 112, of the Clean Air Act.
		In section (3), it is recommended that reference to Class III be removed since none exist and Class I should be inserted in its place so that monitoring needs for Class I areas can be addressed. Oregon rules in this instance do not currently meet the Federal requirements.	13	Although, there are currently no PSD Class III areas in the USA, these references are being retained for completeness.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		225-0050(a) and (b) require "additional impact modeling". This includes analysis of impairment to soils and vegetation and impacts resulting from general commercial, residential, industrial, and other growth associated with the major source or modification. Under existing regulations, this requirement may be exempted when ambient impacts are below the significant ambient impact level. This exemption does not appear to exist in the proposed regulations.	22, 29	The triggers for additional impact modeling are in divisions 222 and 224, and are not changed from the current rules.
		A new requirement for deposition modeling of metals is added to the rules, although it is unclear how these results would be used. Objects to the addition of requirement to the regulations without a clear explanation of what is required, how it will be used and what the reason is for adding it to the rules. Requirements should not exceed what is clearly required by the federal program.	22, 29	This is a clarification of current policy on how the Department implements 40CFR 51.166(o). It is designed to prevent accumulation of heavy metals in soils and possible future site clean-up activities.
		The exemption from AQ monitoring for sources or modifications that result in insignificant ambient impacts does not appear to be included in this rule. The exemption should be retained and made clear.	22, 29	This exemption has been moved. The exemption is now in OAR 240-225-0050 (3)(a)(C).
		Support option for post construction monitoring in lieu of pre-construction monitoring	25	The Department appreciates the support for this item.
	225-0060	For 0060(1)(a) and 0070(3)(a), there currently is no regulatory basis for modeling to 200 kilometers. The 200 kilometer distance should not be made into rule.	20	The proposed rule has been revised to eliminate the specific reference to 200 km..
		Modeling - in (1)(b), it is not clear why the new Significant Impact Levels for PSD Class I Areas are being used for demonstrating compliance with ambient standards in Class I areas. The significant impact levels in Table 1, OAR 340-200-0020 are still relevant for NAAQS in Class I areas.	8	The proposed rule has been clarified to indicate that these values are only being considered for evaluating increment impacts.
		Table 1 of section (1)(b) is premature. The levels were proposed by EPA four years ago (see 61 FR142, pp. 38292) and have never been finalized. PSD Class I SILs should be set at 1 $\mu g/m^3$, 24 hour average impact, for the pollutants indicated in Table 1 until such time that more restrictive levels are promulgated by EPA.	16, 26	This portion of the rule has a delayed implementation date to allow time for this policy to be reevaluated. Some tool is necessary to identify sources that may need to do cumulative source modeling. These levels provide that tool. The 1 ug/m3, 24 hour average SILs cannot be used for evaluating increment in PSD Class I areas as they are too high. For example, the SO2 PSD Class I 24-hour increment is 5 ug/m3 (vs. 91 ug/m3 in PSD Class II areas). Setting a SIL at 20% of the increment is not reasonable.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Note that the provision in (1)(d) is only approvable in a State like Oregon where the PSD minor source baseline date has been triggered Statewide by rule.	8	There is no mention of the minor source baseline date in (1)(d). The appropriate minor source baseline date would still be used regardless of where the competing source is located. The reference to monitoring data is only used to see if the NAAQS is an issue. For the NAAQS, the minor source baseline date is not an issue.
		The modeling situation in (1)(d) is unusual; is it really necessary to create a rule for something that is so rare? It is suggested that DEQ consider eliminating this from the final rule.	20, 26	Although this is rare, air quality standards need to be met everywhere. As an example, there have been measured exceedances of the ozone standard in Mt. Rainier National Park.
		The significance levels in Table I are not sufficiently protective because too many sources (virtually all) escape the requirement to do a cumulative increment analysis. It is recommended that these significance levels be lowered across the board to 1/100 of the PSD increment.	13	Some type of guidance is needed to determine what sources can be exempt from competing source modeling. These values are recommended by EPA. The Department feels that they are sufficiently conservative for this need. Note that sources exempted from competing source modeling for increments and standards are not exempt from possible competing source modeling for AQRVs. Also note that the Department is recommending that implementation of this part of the rule be delayed.
		Regarding evaluation of PSD Class I areas within 200km, the exemption for major sources or modifications that have "insignificant impact everywhere" appears to be missing from the proposed rule.	22, 29	The Department is not aware of such an exemption in the current rules.
		Supports the simplified demonstration of compliance with Class I increments in 225-0060(1)	22, 29	The Department appreciates the support on this issue.
		Proposed rules require sources to collect visibility monitoring data in Class I areas. The current federal and DEQ PSD regulations do not require visibility monitoring data to be collected by sources. This is an increase in stringency.	21	This requirement currently exists in OAR 340-224-0110 (4).
	225-0070	The rules should be revised to provide direction for doing visibility and air quality analyses in the Columbia River Gorge.	13	The proposed rule now provides for this guidance. Visibility analysis for the Gorge is proposed to continue to be voluntary.
		The requirement to address ozone issues and AQRV issues, as spelled out in the FLAG report, should be considered applicable to 340-225-0070.	13	The recommendation in the FLAG report section on ozone issues does not lend itself well for adoption in these rules. However, OAR 340-0070(9) has been modified to allow consideration of other recommendations in the FLAG report.
		Section (1) must be revised to change the phrase "the remainder of this division" to "340-225-0070" or "this section" since 340-225-0090 must apply to Oregon major sources.	8	The Department agrees with this comment and has made the appropriate change to this rule.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The term "permitted" in (3)(a) needs to be deleted, as all increases since January 1, 1984 need to be addressed, not just permitted increases.	8	OAR 340-225-0070(3)(a) has been modified to be applicable to nonpermitted as well as permitted sources.
		Add the word "significant" after the phrase "whether or not" in paragraph (3)(c). Rephrase the last sentence to say "If the department determines that adverse impairment would result, the proposed source will not be issued a permit with its existing design".	26	The Department agrees with this comment and has made the corresponding changes to the rule language.
		(4)(b) "CALPUFF" should not be specified as the model to use. The requirement should remain more generalized.	26	This reference has been removed from the proposed rule.
		In section (6), the word "total" should be inserted before "Nitrogen" in the third line.	13	The Department agrees with this comment. The word "total" has been added and is clarified to refer to both nitrogen and sulfur deposition.
		The provision in (7)(a) for sources to submit existing visibility conditions is obsolete because it can now be satisfied by the recently expanded IMPROVE visibility/regional haze monitoring network.	13	This section of the proposed rule has been dropped and is now replaced with a reference to use existing IMPROVE data as published in the FLAG report.
		Need a definition for "adjacent to a Class I area" in (7)(a). Also note, the department is asking for something very difficult in Oregon since all but one of Class I areas are wildernesses. Clearing and siting any semi-permanent, new, man-made equipment/structures in a federal wilderness area is a significant task.	26	The visibility monitoring requirement has been dropped (see above response).
		Additional impact analysis - it is not clear whether section (8) applies only for Class I areas or everywhere, per 40 CFR 51.166(o). If it is only for Class I areas, then it doesn't meet EPA requirements. If it is for everywhere, then it is partially redundant with 340-225-0050(2). Also, there is no OAR 340-224-0070(6)(a).	8	The proposed rule has been clarified to refer to both PSD Class I areas and Class II areas. The reference "subject to OAR 340-224-0070(6)(a)" is now referenced as "(where required by divisions 222 or 224)."
		Section (9) doesn't satisfy the requirements of 40 CFR 51.166(p) for impacts on AQRVs other than visibility. The Oregon PSD rules need to include adequate authority to deny a permit for adverse impacts on any AQRV in the same manner as has been provided for visibility impacts.	8	The authority for AQRVs has been changed to be consistent with the authority for visibility protection. The revised OAR 340-225-0070 (9) now parallels with language in OAR 340-225-0070(3)(c).

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Some of the changes relating to AQRV demonstrations appear to go beyond what is required by EPA and incorporate FLM preferences into the rules. 225-0070(4)(b) requires that when Class I receptors located between 50 and 200km are being evaluated for visibility impacts, a regional haze analysis is required. This is a significant new requirement which is not adequately defined. 225-0070(6) requires deposition modeling for at least nitrogen and sulfur in Class I areas where visibility modeling is required (this requirement does not currently exist in Oregon regulations and is not discussed in the 1990 NSR workshop manual). The proposed regulations do not specify how the results will be evaluated.	22, 23, 29	EPA defers to the recommendations of the Federal Land Managers on AQRV demonstrations. FLMs have issued national guidance in the FLAG report on criteria that they are using. The proposed rules refer to FLAG for guidance on modeling criteria. Specific references to 200 km have been removed.
		Proposed requirements go beyond what is required by EPA. Request that DEQ clearly address the basis for adding this new requirement, as well as an explanation of why this needs to be added at this time. How does this add to the modeling staff workload and how does it affect the next budget? Until these issues have been addressed and the public has had the opportunity to respond, we do not believe this portion of the proposed rules should be finalized.	22, 23, 29	Specific criteria have been removed, and the Department will continue reviewing AQRV impacts largely as has been done for the past two years. The Department is also developing methods that can expedite the permitting process for sources that are required to conduct AQRV analyses. This will save time for both the applicant and the Department.
		Proposed section requires Columbia River Gorge Natural Scenic Area to be treated in the same manner as Class I areas. Confused as to why DEQ is requiring facilities to treat the Gorge this way. This is another area where the proposed rules are more stringent than necessary.	21, 27	The Department agrees with this comment. The proposed rule has been modified to treat the Columbia Gorge National Scenic Area in a voluntary manner.
		Cumulative visibility analysis for emission changes since January 1, 1984 is more rigorous than analysis requested by FLM in recent PSD applications. Also more stringent than the method suggested by FLAG phase 1 report. Individual source analysis should be first requirement and cumulative analysis should only be required if a source does not pass individually.	27	The 1984 date in the Oregon rules comes from the date of the first visibility SIP adopted by the state under the 1979 federal Visibility Rules. In the Clean Air Act, states need to remedy any existing visibility impairment and prevent any future impairment. Existing and Future in that context are from the baseline date for the Oregon Program (1984). The basis for the date is the baseline of the visibility SIP and to remedy any existing impairment that existed at that time. This becomes the starting time relative to existing and future impairment.
		A 200 km range is not appropriate for all PSD modifications.	27	The 200 km distance is now dropped and is replaced with more generalized language.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		225-0070(2) Should include a worst-case time line for FLM interactions from initial notification to a definitive final permit approval action.	26	A worst-case response time can not be developed because this timeline is also dependent on the response time of the applicant to correct errors or omissions in the air quality analysis that may be found during the review.
	225-0090	Many portions of section (1) through (3) have been re-written by DEQ staff and the new test is confusing. It is recommended that DEQ retain the current test in defining the Net Air Quality Benefit.	20	Some clarifications have been made to these sections
		The provisions in (1)(a) for offsets within a nonattainment area do not comply with the requirements of Section 173 of the Act and 40 CFR 51.165. First, emission offsets for new or modified sources in a nonattainment area must come from sources located within the same nonattainment area. Second, the emission reductions must be at least one-for-one and sufficient to demonstrate reasonable further progress. Finally, the emission offsets must provide for a net air quality benefit, which cannot be met simply by showing that the impact is less than the significant air quality impact levels. There must be an actual improvement in air quality as demonstrated by the modeling analysis. The rules need to require that there be a reduction in modeled levels at a majority of modeling receptors and impacts below the significant air quality impact levels at all other receptors. Finally, delete the reference to "particulate matter."	8	The proposed rule has been modified to address these concerns.
		The existing Oregon SILs for PM_{10} effectively precludes any major new or modification activity in all designated PM_{10} nonattainment and maintenance areas. The only way such major activity could occur would be by placing the new source or modification at the same location as an existing source while retiring its emissions in addition to finding more nearby PM_{10} emissions.	16, 26	The reference to significant air quality impact has been removed from this section.
		In (1)(b), note that offsets for ozone nonattainment and maintenance areas can come from upwind nonattainment areas if emissions from those areas impact the area in which the new or modified source is locating and the classification of the upwind area is equal to or more serious than the area in question.	8	This proposed rule has been modified to address this concern.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Section (1)(c), the offset formula, should be deleted for the same reasons presented earlier for discarding the definition of ozone precursor significant impact distance. Proposed rule goes beyond federal mandates.	16, 26	Changes to 340-225-0020(7) now allow some sources to be exempted from the offset requirement by demonstrating that they have no impact on the nonattainment or maintenance area. Also, this rule is now recommended to have a delayed implementation date.
		The offset formula is a derivation of the formula defined in 225-0020(7) for the "ozone precursor significant impact distance" but there is no direct reference to it or its variables. The offset formula is too conservative by using a value of 1.3 instead of 1.33. The offset formula does not include the 1.1 to 1 ratio referenced in 340-225-0090(1)(b). Based on these comments, it is recommended that the test in 340-225-0090(1)(c) be changed as follows: "Outside, but within 100 kilometers of an ozone nonattainment or maintenance area, owners or operators of proposed major sources or major modifications that emit VOC or nitrogen oxides must provide offsets for both VOC and nitrogen oxides within the nonattainment or maintenance area in the following amounts, based on the "ozone precursor significant impact distance" formula: required offset = {PSEL increase over the netting basis – {(1.33 * d) + 40]} * 1.1 tons/year; where, "d" is the distance the source is from the nonattainment or maintenance area in kilometers. VOC and NO_x emissions from sources more than 100 kilometers from the area are deemed to not impact the area."	20	The 1.1 to 1 ratio is not necessary outside of the maintenance or nonattainment area and is not included. The offset formula has been revised to be consistent with the intermediate significant figures used in OAR 340-225-0020(7) by using (40/30) instead of 1.33. At the same time, the formula has been revised to eliminate the discontinuity at the maintenance/nonattainment area boundary as was needed in OAR 340-225-0020(7).
		Section(3) needs to be clear that any emission reduction must be federally enforceable at the time of issuance of the NSR permit.	8	The proposed rule has been changed as requested.
		The dramatic expansion of the rules could potentially require sources as far south as Albany to obtain VOC or NOx offsets within the Portland maintenance area. Question why the Department believes it is sound and appropriate to require an Albany or Mt. Angel source to obtain offsets?	22, 29	The proposed rule has been revised to exempt sources that demonstrate that the have no impact on a nonattainment or maintenance area. The Department intends to evaluate the feasibility of exempting specific geographic areas from the offset requirement. If feasible, this will be proposed in a future rulemaking before the effective date of this provision.
		Paragraph (4) is listed but does not specify an offset level for modifications involving NOx in the Medford Ozone maintenance Area.	26	NOx offsets are not required for the Medford Ozone maintenance area under this rule paragraph. The rule states: "*Requirements for NO_x offsets in Section (1) of this rule do not apply to proposed sources or modifications located in or near this area.*"

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Sources should be able to avoid offsets if they can demonstrate that significant topographical features exist between them and the maintenance or nonattainment area.	22, 23	The Department agrees and has added this provision to the proposed rule.
		225-0090(1)(c) should specifically identify that it is not applicable to the Salem ozone nonattainment area.	22, 23	Sources that may impact the Salem ozone nonattainment area are exempted from the offset requirements under 340-224-0050(4), so the requested change is not needed.
		Offsets would be required for sources locating within 100km of an ozone nonattainment area or maintenance area. The requirement for offsets in the current rule depends on the size of the source	21	The purpose of this rule is to have the amount of offsets be dependent on the size and location of the source. The rule proposes a smaller offset for smaller sources and for sources that are further away from a nonattainment or maintenance area. Note that some smaller sources now required to obtain offsets within 30 km would no longer be required to obtain offsets.
		Recommend deletion of new division 225 and simply reference the federal EPA guidance on air quality modeling	21	Division 225 is used to hold all of the air quality analysis requirements that were previously included in other rule divisions. This division is crucial for the functioning of the NSR and PSEL programs, and is required for EPA approval of the Oregon SIP.
General Emission Standards	226-0400	Alternative Emission Controls (Bubble) – in section (2), either delete the reference to an Oregon Title V Operating Permit or significantly expand this section to include all of the necessary elements as set forth in Appendix B of White Paper #2 for Implementation of the Title V Operating Permits Program.	8	The reference to "Oregon Title V Operating Permit" has been deleted from this proposed rule as requested. The Department will rely on source specific SIP revisions to implement complex "bubbles".
		The update to the generic bubble authority is one instance of true streamlining. These efforts improve rarely used rules. We support this concept.	22, 29	The Department appreciates your support on this issue.
		Alternative emission controls are now only allowed for VOC and NOx emissions. Alternative emission controls for other pollutants would have to be approved by DEQ and EPA.	27	The existing rule was much too broad without sufficient detail for establishing complex bubbles but was only used for simple VOC bubbles. The revised rule still allows simple bubbles to be used for VOC and NOx and establishes an approvable method for more complex ones.
Rules for Areas with Unique Air Quality needs	240-0180	The proposed rule should have the deleted clarifying information replaced.	27	The information that was deleted referred to types of permits and categories of sources that do not exist in the revised rules.
Emission Reduction Credits	268	Support the clarification of how emission reduction credits are calculated.	12, 22, 25, 29	The Department appreciates the support on this issue.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		It is recommended that language be added to Division 268 to clarify that [VOC] emission reductions resulting from MACT compliance initiatives may be considered surplus and creditable.	19	Rule required reductions are not creditable reductions. MACT is a requirement for HAPs and is normally set as a limit on the amount of HAPs a source can emit. If the limit is for HAPs and not VOC, then t any related reduction in VOC would continue to be creditable.
		ERC rules appear to be more restrictive in the creation and use of offsets. The proposed rules are also unclear as to what will be the role of cities, counties, or other local jurisdictions in the banking and trading of emission reduction credits. There needs to be clearly defined incentives to create and trade ERCs in order to assist existing industry in their expansion plans and help new industry interested in locating in the area. These rules do not provide the kind of ERC banking incentives needed.	26	The proposed ERC rules establish a clear process for creating and banking emission reductions that is consistent with federal requirements. The ERC rules also are consistent with the offset rules so that emissions that are banked can be used as offsets. The rules state that "any person" can create an emission reduction credit. With this language, it is no longer necessary to specifically address "cities, counties or other local jurisdictions" within the rules because they are included. In addition, the proposed rules create a special ERC permit that can be used by cities, counties and others to bank ERCs.
	268-0030	Unused Emission Reduction Credits - Both (a) and (b) of section (4) should be clarified so that the unused emission reduction credits will become unassigned emissions "for purposes of Plant Site Emission Limits".	8	This addition has been made to the rules as requested.
		The language in Section (~~5~~2) allows the EQC to reduce the amount of a banked reduction credit. This deprives the owner of the credit from 1) its intrinsic market value; and 2) the ability to make business decisions where the reduction credits are to be used on or off site by the owner. Business owners should not be harmed due to situations beyond their control and without any warning or compensation from the state.	14	This provision is more protective to ERC than the existing rules. Under the existing rules, emissions reductions due to over control, that are banked are subject to reduction if the EQC subsequently adopts a rule that requires that same reduction. Under the proposed rule, the Department would have to go to the EQC specifically to reduce the banked emissions and not just require controls on equipment. The reduction of banked credits by the EQC is expected to be rarely used in cases where other options to attain and maintain air quality standards are unavailable. The reduction of banked ERC would be a rulemaking process including the opportunity for public comment.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Concerned with the provision in 268-0030(2)(b) allowing the EQC to reduce banked credits in order to attain or maintain ambient air quality standards. In order for a credit market to operate efficiently, it is critical that the number of credits in existence not be manipulated by other then pure market forces. This creates a tremendous disincentive to sources who bank credits if there is a concern that those credits could be arbitrarily taken away by the EQC if an unrelated portion of the maintenance plan were not to produce the anticipated results. This is a pragmatic concern given the fact that the Department confiscated the reduction credits that were donated to the Portland Emission Reduction Bank several years ago.	22, 29	There is no intent of "arbitrarily" taking banked emissions away. Banked emissions would only be reduced if absolutely needed to attain and maintain standards. The reduction of banked ERC would be a rulemaking process subject to public participation and comment. See above for further explanation.
		The current rules do not require banking of over controlled emissions, and the reductions can be retained indefinitely for internal use. The proposed rules would require banking and the banking period would eventually run out so that the emissions would be lost. Contrary to DEQ's intent, the new banking rules do not provide incentive for sources to make voluntary reductions.	15	Banking is not required for any emission reduction; it is an option to extend the life of the emission reduction credits. Banking allows emission reduction credits to be retained for use as offsets for 10 years. At the end of the banking period, unused credits become unassigned emissions and are available for internal use subject to the limit on total unassigned emissions. The Department believes that, as a package, the proposed rules retain the incentive to make voluntary reductions and increase the incentive to bank those reductions.
		Concerned about the requirement to maintain an ERC permit when there may not be an entity to "hold" the permit.	22, 29	The ERC permit is a means of tracking ERCs without maintaining an operating permit. Local jurisdictions, economic development agencies or other organizations could be the holder of an ERC permit.
		A different starting point for the permanent shutdowns and curtailment must be created. The use of "out-of-service" date creates an overly stringent program. The Department has an interest in encouraging permanent shutdowns and curtailments. The simplest way to do that is to provide sources flexibility. Draconian cut-offs are an incentive for conservative management and actually work against the Department's efforts to reduce emissions available to the air shed.	22, 29	Emission offsets need to come from contemporaneous emission reductions. If the emissions are not banked or used within the contemporaneous period they cannot be considered actual emission reductions for the purposes of offsets. The contemporaneous period starts at the time the air shed 'sees' the emission reduction.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Why is it necessary to "continuously over control" in order to be able to obtain a credit? If a source over controls during the ozone season, then it should be capable of obtaining a credit. Requirement that the over control be continuous makes no practical or environmental sense.	22, 29	Emission reductions must be maintained in order for the reduction to be permanent. Permanent is a requirement of ERC banking and offset use. If the over control is not continuous there is no assurance that the reduction will meet the offset requirement. Continuous emission controls make significant environmental sense.
		The banking period should begin upon DEQ approval of the banked credit, not upon the actual emission reduction date	22, 29	In order for emission reductions to be usable as offsets they must be actual contemporaneous emission reductions. If emissions are not banked during the contemporaneous period, the life of the emissions reduction would not be extended and therefore would not be usable as offsets.
		Unfair to impose a two year window for banking emission reductions attributable to source shutdowns or curtailments. The current rules consider a source shutdown or curtailment to have occurred when he permit is modified, revoked or expires. Under existing rules a source does not have to consider a curtailment to have become permanent until it takes a step of requesting that the permit reflect the curtailment as permanent. The proposed rules create a new standard; the curtailment must be banked within two years of when the emission reduction occurred. This creates an incentive for sources to periodically restart processes, such as oil burning, so as to preserve the argument that the curtailment has not yet begun. IF DEQ disregards this comment, it should at least allow a "true-up" period where those sources that have relied upon the existing rules have two years in which to bank curtailments that started more than two years ago.	21, 22, 29	It is true that the current banking rule considers a source shutdown to have occurred when the permit is modified but, under current rules, emission reductions due to shutdowns cannot be banked to extend the life of the ERC. The new rule allows emission reductions due to shutdowns as well as over controls to be banked. In order to demonstrate that offsets from shutdown credits result in a net air quality benefit, it is necessary to require that they be used or banked while contemporaneous.
		10 ton minimum for banking emission reduction credits is too high. Should be able to bank as little as 10% of the SER. Also suggested greater than or equal to the de minimis threshold to be eligible for banking.	21, 27	The minimum requirements for banked emissions are based on current rules. This amount was set because it is difficult to quantify and track smaller amounts. The Department believes that the minimum requirements in the rule are a reasonable sum of emissions to be tracked through the banking process.
		In the Medford-Ashland AQMA sources should be able to bank emission reduction credits of 2 to 3 tons/yr. or less.	27	Because of the low SER and other unique factors in the Medford-Ashland AQMA, the rule will be revised to allow banking of reductions as small as 3 tons/yr. for that airshed.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The DEQ needs to clarify what will happen to facilities that did not bank over-controlled sources from previous years with the intent of using them as internal offsets in the future.	25	Emission reductions that were not banked and are not contemporaneous become unassigned emissions based on the source's netting basis and PTE. Unassigned emissions are not bankable or useable as offsets, but may be used in internal netting actions.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)

Second Public Notice Response to Comments

Provided below is the list of interested parties that provided comment in response to the second notice of the proposed rules. The public comment period was from January 26 through February 26, 2001. The commentor identification number is shown in the comment table that follows.

ID#	Commentor	Date of Comments
1	NORPAC	02/02/2001
2	Peterkort Roses, LLC	02/15/2001
3	Bright Wood Corp.	02/21/2001
4	C & D Lumber Co.	02/01/2001
5	Oregon Concrete & Aggregate Producers Association	02/23/2001
6	Kodak	02/23/2001
7	Southern Oregon Timber Industry Association	02/26/2001
8	Timber Products Company	02/21/2001
9	Boise Cascade	02/24/2001
10	PGE	02/26/2001
11	Northwest Pulp & Paper	02/26/2001
12	AOI	02/26/2001
13	Oregon Metals Industry Council	02/26/2001
14	Coalition to Improve Air Quality	02/26/2001
15	Sierra Club	02/19/2001

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
General Comments	All	DEQ should include a copy of its justification with scientifically defensible need statements with proposed rule revisions. It would seem that scientifically defensible need statements are necessary for DEQ to comply with the applicable Oregon Revised Statute (ORS 468A.310(2)) and the Oregon Legislatures expressed concerns about the DEQ not adopting rules that are more stringent than federal requirements without adequate justification.	4	The proposed rulemaking package is not an increase in stringency from existing rules or federal requirements. The Oregon AQ program is different from, but equivalent to the federal program. Overall it is no more or less stringent. ORS 468A.310(2) is specifically applicable to implementation of the Title V Operating permit program, and does not apply to underlying requirements that are included in Title V permits. The proposed rule changes do not affect the stringency of the Title V permit program, and therefore are not subject to the scientifically defensible demonstration called for in the referenced statute.
		The revised package of rules and statements is much improved over the earlier versions.	7	The Department appreciates this acknowledgment.
		In our previous comments to the proposed rules we provided a specific example of our decision not to locate a new facility within the area because of the limited availability of offsets required under the existing rules. The proposed rules will make it nearly impossible for us to expand our existing facilities, much less consider any new facilities.	9	The new rules only require offsets necessary to avoid adverse impacts on sensitive areas. In step with federal requirements, the Department believes the proposed rule protects air quality while allowing flexibility for siting new facilities. The Department can not allow new facilities to be built that will significantly impact nonattainment or maintenance areas.
		In previous comments, we strongly encouraged the Department to work with the regulated community and, after incorporating the comments made on the proposal, reissue the entire revised package for stakeholders to review before adoption. We are concerned that the Department did not find it necessary to go through this additional step to ensure that the public's concerns were addressed. We encourage DEQ to reconsider this decision and reissue the revised rules for a final round of public comment. While we support the idea of DEQ streamlining its rules, we believe that it is important to not sacrifice adequate process in favor of speedy issuance.	11	The Department provided significant opportunity for stakeholder involvement during the rule development process, prior to the formal public comment periods. The Department reviewed all comments received from the extended (60 day vs. 30 day) comment period, and then reopened the proposed rules for another 30 day period to take additional comment on the portions revised as a result of public comments received. The Department has taken an open, pragmatic approach to develop these rules. The process has been thorough, and the final version of the rules will be improved because of public input.
		Neither the adjacent definition nor the offset rule appear related to the streamlining concept originally stated for this rulemaking package. Urge DEQ to remove these elements from the rulemaking and focus efforts on attaining the original goal of streamlining.	11	The definition of "adjacent" is used to determine what constitutes a source. The definition is intended to help facilitate the determination and decrease the effort currently required to make it. The offset rule is part of the NSR program and is currently required in the existing rules. The rulemaking clarifies what offsets are needed to ensure all impacts are being addressed to protect air quality while streamlining the process.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Disappointed that DEQ did not re-notice a larger potion of the rules. Concerned the DEQ did not address some of he primary concerns stated during the first comment period and reopen the dialog with the public.	12	The Department provided significant opportunity for stakeholder involvement during the rule development process, prior to the formal public comment periods. The Department reviewed all comments received from the extended (60 day vs. 30 day) comment period, and then reopened the proposed rules for another 30 day period to take additional comment on the portions revised as a result of public comments received. The Department has taken an open, pragmatic approach to developing these rules. The process has been thorough, and the final version of the rules will be improved because of public input.
		Greatly concerned about the air permitting rule revisions and hope that DEQ will strive in this rulemaking to ensure that its streamlining efforts do not impose unnecessary burdens on sources.	13	The Department has made, and will continue to make, every effort to ensure the rule revisions fairly implement the permitting program without imposing unnecessary burdens on sources.
		Concerned that such a small portion of the rules have been placed out for additional comment and questions whether it is in the best interest of the rulemaking process to only place segments of what is intended to be a cohesive rulemaking out for public comment. Encourage DEQ to consider placing the entire rulemaking package out for public comment again so that the revisions can be adequately reviewed by the public. Find it ironic in a rulemaking that extends the ability of the public to comment on our member's permits that we are not feeling that we have had an adequate opportunity to comment on the rules. These rules will be in place for a long time; it is better not to rush the rulemaking process.	13	The Department provided significant opportunity for stakeholder involvement during the rule development process, prior to the formal public comment periods. The Department reviewed all comments received from the extended (60 day vs. 30 day) comment period, then reopened the proposed rules for an additional 30 days to take additional comment. The entire rule proposal was not reopened, only portions where the original proposal was amended, based on comments received. The Department has taken an open, pragmatic approach to develop these rules. The process has been thorough, and the final version of the rules will be improved because of public input.
		The significance of the changes being proposed in regards to major point sources in our air shed requires that they be presented to the Medford-Ashland Air Quality Advisory Committee for approval before being sent on to the Commission. For the past 4 years the Medford-Ashland Advisory Committee has worked to promote rule making that has led to cleaner air for all. As a member of this Committee and others going back for 14 years I feel any proposals to the Commissions that do not go through the AQ Committee will be an affront to all the good work the folks have done.	14	The proposed rulemaking applies statewide. The Industrial Source Advisory Committee was involved to develop key elements of the proposed rules, and the Department presented rule concept specifics throughout the state in preparation for the formal notice period. The Department agrees that local groups should be involved with rules, such as attainment and maintenance plans, that specifically affect the local area. The Department took additional measures to explain the rules to the Medford-Ashland advisory committee during the second comment period, and also conducted three other workshops with interested parties in the Medford area.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
Unassigned	222-0045	Request that the DEQ consider removing the July 1, 2007 reduction date and the other subsequent reduction dates and replace it with a no reduction policy. At least remove the reduction dates from the proposed rule changes for those locations which are outside environmentally stressed air sheds	4	The reason for the reduction date is to provide equity for all affected sources. Removal of the date would not only hinder the development of maintenance plans in environmentally stressed airsheds, but would also hinder the development of air quality prevention plans for areas that are growing rapidly and may develop problems in the future.
		Proposed rules do not provide adequate opportunity for meaningful review and comment and would make implementation subjective and flawed. Request sections be re-written to clarify intent and be opened for public comment again.	6	The Department disagrees with this comment. The proposed rules were placed on public notice from October 17 to December 21, 2000. They were revised based on comments received and re-opened from January 26 to February 26, 2001. The public has had more than 90 days to review and comment. The comments received for the second round were not substantially different from the first round, so it is reasonable to assume that additional comment periods would not substantially affect the proposal.
		Plans for establishing and eliminating unassigned emissions are unfair because the calculations are based in part on past emission reductions and do not allow for banking those reductions as ERCs.	6	Emission reduction banking was, and continues to be, an option for emission reductions that are contemporaneous. . Banking only extends the life of ERCs for up to 10 years, so banked emission reductions that occurred 10 years ago would already have expired. Federal rules do not allow banking of non-contemporaneous emission reductions.
		Under the proposed rules, the PSEL program and its flexibility would be undermined. Permit holders would be penalized for previous emission reductions that were not banked by losing the opportunity to use those emission reductions for future expansion and modifications.	6	The proposed rules maintain the flexibility of the PSEL program on the use of existing capacity. They also maintain an ample buffer of unassigned emissions for future expansion and modifications without triggering New Source Review. The emission reductions that occurred years ago have been available for expansion since the time the reductions occurred and will remain available until July 1, 2007.
		These new rules will likely increase DEQ workload, by creating a higher incentive to bank ERCs and by forcing more facilities to go through NSR for changes that would have previously resulted in no net increase to the PSEL.	6	The Department does not agree that this will increase the net workload. For example, if more emission reductions are banked, DEQ will know where to send potential new sources for offsets. This will reduce work in permitting new sources and supporting economic development goals of the state. Also, quantifying emission reductions while they are contemporaneous requires less work than quantifying them at a later date.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The definition of unassigned emissions (200-0020(137)) states that unassigned emissions are those in excess of the PSEL, but the calculation of unassigned in the rules (222-0045(2)) state that unassigned is the difference between the Netting Basis and the current PTE. This could allow the PSEL to count emissions that are also counted as unassigned.	6	This would be true only if the PSEL rule did not set the PSEL at the source's PTE or netting basis, whichever is less. Since this is the starting point for the PSEL (PSEL = PTE), there will not be double counting as unassigned and PSEL.
		The definition of netting basis and the provisions for establishing unassigned emissions appear to be circular calculations, which causes confusion in determining their applications.	6	The Department does not agree that the definitions of netting basis relating to unassigned emissions is circular. Each of the terms in the netting basis equation can be mathematically expressed using the other terms. The calculations for each are correctly expressed in the rules.
		The impact on the PSEL from establishing unassigned emissions and reduction of those unassigned emissions is not clearly defined in the proposed rules. 1) would existing PSELs be retained or would all regulated community be assigned a new "initial PSEL"? 2) would the PSEL be decreased from the unassigned emission reduction or would the impact only be to the Netting Basis?	6	Since the definition of unassigned emissions and the process for determining the PSEL have been established by the proposed rules, the PSEL for each source will need to be reevaluated to determine that it is properly set. The Department plans to address this at permit renewal or modification. The reduction in unassigned emissions affects the Netting Basis, as the calculation indicates, but does not effect the PSEL.
		Any emission credits removed from the industrial permits must be set aside and saved for subsequent growth of our existing companies, or for new industrial facilities.	7, 8	Growth allowance is a concept that relates to maintenance planning and cannot be addressed in this rulemaking package. The Department is committed to developing air quality maintenance plans that are consistent with economic development goals. However, individual areas will need to evaluate the potential impacts of a growth allowance to determine whether any can be established.
		Urges the Environmental Quality Commission to protect our industrial base by permitting unassigned emissions to remain available for future use.	7, 8	The Department believes that facilities will be able to grow under the proposed rules. First the rules provide adequate time for planning and using unassigned emissions. Second, the rules allow for netting and provide for growth above the netting basis of up to the significant emission rate without triggering New Source Review. Finally, growth above the significant emission rate is allowed through the New Source Review program as required by the federal Clean Air Act.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The June, 1998 agreement concerning unassigned PSEL between ODEQ and Timber Products Company needs to be considered in these rule making deliberations. A rule (or rules) under consideration should not obliterate the intent or value of the agreement. Our current understanding is that a detailed resolution of how ODEQ and Timber Products resolve this mater doesn't need to be determined at the present time as there seems to be options available. However, there is a need to recognize the future obligation to Timber Products Company.	8	The Department agrees with this comment. The rules have been revised to allow the Department to honor prior agreements that have been made in areas where a modeling demonstration of attainment is required by EPA. In these areas, the netting basis will be established based on modeling to ensure the area can maintain compliance with air quality standards if the sources increase emissions up to their netting basis.
		The reduction in unassigned emissions will have significant implications for future expansion at our Medford operations.	9	The unassigned emissions reduction rule has been modified so it does not apply to sources within areas such as Medford that are required by EPA to demonstrate compliance through modeling. In these areas, the maximum netting basis will be adjusted by rule to no more than the level indicated as acceptable by the modeling.
		Due to the lack of available external offsets in the area, internal offsets such as from our own unassigned emissions are the only mechanism we have for expansion. The proposed reduction in unassigned emissions will essentially punish BC for installing a pollution control device that exceeds the current permit requirements.	9	The unassigned emissions reduction rule has been modified so it does not apply to sources within areas that are required by EPA to demonstrate compliance through modeling. In these areas the maximum netting basis will be adjusted by rule to no more than the level indicated as acceptable by the modeling. This may increase or decrease the amount of retained unassigned emissions depending on what the air shed can accept.
		Under the proposed rules, there would be no incentive to install a higher efficiency pollution control device until a facility had a planned use for the reduced emissions.	9, 11, 12	The Department disagrees with this comment. Reduced emissions from high-efficiency pollution control equipment can be banked and protected from reduction for 10 years. Banked emissions can be sold as offsets, or used for internal netting for facility growth.
		Current rules allow facilities to create internal offsets by changing their permit emission factor when the facility can demonstrate the new factors are below rule limits. These internal offsets were not considered to be available for the Department to take away.	9	Under the current and proposed rules, allowable emission rates are based on the best information available. Internal offsets or unassigned emissions are not created by changing an emission factor. They are created by reducing emissions from the levels that were present during the baseline period. The proposed rules allow the source to maintain up to one SER above the facility's PTE for internal netting, and will not require NSR until two SERs above the facility's PTE. This "allowable" headroom of unassigned emissions, in conjunction with a 6 year period to use unassigned emissions greater than a SER, provides adequate internal netting for future growth.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The proposed rule cuts at the of heart how the Oregon PSD/NSR rules are different, and better, than the federal air rules. The whole concept is that facilities were given a baseline of emissions to measure against. If facilities are emitting less, then the air shed has benefited. Facilities should not lose their baselines simply because they do not emit at their full baseline emission rate.	9	The Department disagrees with this comment. The heart of the Oregon PSD/NSR program is the use of the PSEL concept as a plant-wide applicability limit. The program was not intended to lock-in baseline emission levels indefinitely, and currently allows for a variety of mechanisms to reduce the netting basis. By reducing the large amounts of excess unassigned emissions in an orderly and measured fashion, the Department is preserving the best features of the Oregon program, as well as creating room for growth in a manner consistent with air quality standards.
		The unassigned emissions reduction rule should be eliminated from the rulemaking proposal.	9, 13	The Department disagrees with this comment and does not intend to eliminate this concept from this rulemaking package for the reasons previously provided.
		All unassigned PM10 emissions at facilities located within the Medford-Ashland AQMA must be preserved within the exiting facilities air permits and these facilities have the right to use the unassigned emissions for future expansion without the threat of a loss under the proposed rule. This was offered as a compromise, in lieu of total elimination of the rule.	9	The rules have been revised so that the unassigned emissions limit will not apply in areas, such as Medford-Ashland, where a modeling demonstration of compliance with ambient standards is required by EPA. In these areas, the Department will set the netting basis at the modeled level (if equal or below baseline).
		Instead of automatic reductions in unassigned PM10 emissions required under the proposed rule, the Department should first determine if there is a need for additional air emission limitations within the AQMA as indicated by the current air shed modeling program If the Department's air shed modeling demonstrates that the Medford-Ashland AQMA will be out of compliance with AQ standards when all unassigned PM10 emissions are retained, the commentor will support local rulemaking efforts to reduce air emissions in the most effective manner to keep the AQMA in attainment with the AQ standards.	9	The rules have been revised so that the unassigned emissions limit will not apply in areas, such as Medford-Ashland, where a modeling demonstration of compliance with ambient standards is required by EPA. In these areas, the Department will set the netting basis at the modeled level (if equal or below baseline).
		If the Department wishes to maintain the unassigned forfeiture approach, no reductions should occur until July 1, 2011.	11, 13	The Department believes that the 6 years allowed in the proposed rule package is adequate time to allow sources to utilize unassigned emissions. By 2007, some of the unassigned emissions will be as much as 30 years old. The reduction date has not been extended to 2011.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		222-0045(5) appears to require the immediate elimination of all unassigned PSEL above the SER at each future permit renewal regardless of when the reduction occurred. This approach is neither fair to the source nor efficient for the Department. The source should be allowed to maintain future reductions for at least one permit term.	11	The Department agrees with this comment and has made the appropriate revision to the rule. Also note that the Department expects that most new emission reductions will be banked in the future. This will protect those reductions for 10 years plus one permit term before they become subject to the limit on total unassigned emissions.
		Encourages the department to allocate 75% of all forfeited unassigned PSEL to growth allowance. If DEQ used the forfeited unassigned PSEL to fund an industrial growth allowance bank, many of the concerns about the program would be alleviated.	11, 13	Although the Department cannot create growth allowances within this rulemaking package, it is committed to work with local jurisdictions in developing workable plans for attaining and maintaining the standards. The creation of growth allowance is encouraged and promoted where there is room in the air shed for such a provision, and the limit on unassigned emissions will enable growth allowances in many cases.
		A correction to the unassigned emissions calculation should be allowed for a correction to the emission factor based on better information.	11, 12, 13	The Department agrees with this comment and has made the appropriate change to the rule language.
		Support elimination of the proposed requirement in 222-0045(4)(a) that would have required a permit modification prior to assigning any unassigned PSEL. But the language that was substituted may result in inconsistencies in the implementation of the unassigned PSEL program. The unassigned PSEL should be capable of being assigned without having to open up the permit and this should be stated unequivocally in the rules.	11	In order to transfer unassigned emissions to assigned emissions, a permit modification will be necessary. Since the unassigned emissions cannot be physically used by the source without construction/modification, permitting is required to allow unassigned emissions to be assigned to new equipment or processes that previously did not exist, as well as to establish monitoring and other requirements for the new equipment or processes.
		Appreciate the additional clarity that was added to the rule in response to concern about some sources losing unassigned emissions earlier than other sources as the result of an ill-timed permit modification. We support the elimination of the unassigned emission plan that had been proposed. Having a common date for expiration of all unassigned emission makes sense and will ultimately be a fairer approach.	12	The Department appreciates the support on this issue.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Anticipate that there will be many different interpretations of what must be accomplished by July 1, 2007 in order to retain PSELs. If a source submits an NOC for a specific project and requests the assignment of some or all of its unassigned PSEL to that project, will the unassigned PSEL be considered assigned and not subject to forfeiture?	12	If the permit is modified to assign emissions to the planned construction, the emissions will be allowed to be retained in the permit. If, however, the proposed construction does not happen expeditiously, the emissions will be moved back to the unassigned category and subject to reduction upon the next permit renewal (without being maintained as unassigned for an additional permit cycle). The approach of assigning emissions to proposed construction will not be allowed as a means to indefinitely maintain emissions in excess of one SER over the PTE.
		The July 1, 2007 expiration date for initial unassigned reduction should be pushed further out so that the rule change does not result in serious harm to Oregon businesses.	12	The Department believes that the 6 years allowed in the proposed rule package is adequate time to allow sources to utilize unassigned emissions.
		Oppose the unassigned emissions rule as not being stringent enough.	15	The Department does not agree with this comment. The Department believes that reducing unassigned emissions over a reasonable period of time while providing adequate room for facility growth is environmentally prudent and retains incentives for facilities to make voluntary reductions. Under current rules, existing facilities may be permitted to use these emissions without control, compared to new sources that are subject to BACT or LAER. The fundamental reason for reducing unassigned emissions as proposed is for air shed planning purposes, well into the future.
Adjacent	200-0020	The definition of adjacent should not be tied to the term interdependent regardless of the definition of interdependent. Adjacent should simply mean "Having a common border"	4	"Adjacent" as used in the definition of "sources" does mean "interdependent" and "nearby" based on EPA guidance. The Department believes that incorporating common meanings provided in guidance simplifies interpretations when defining a source. Under EPA guidance, the term "common border" is more closely associated with the term "contiguous", than the term "adjacent".
		The definition, as proposed, seems to be intended to regulate air quality in one air shed by imposing emission limits from geographically distant air sheds. In effect, applying the most stringent emission level to all affected locations.	4	This definition of "adjacent" was proposed to help determine what a "source" is. For example, if two facilities are considered one source, their emissions and baselines are combined to determine NSR applicability. EPA established this concept to ensure that a source does not avoid regulatory requirements by artificially dividing into smaller facilities that still act as one source.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Confused on how "adjacent" plays into the definition of source when the facilities have different two-digit standard industrial classification codes. Are rock crushers and asphalt plants separate sources? Commentor understands them to be separate sources.	5	The definition of source has three parts: 1) common ownership or control; 2) common two-digit SIC or supporting; and 3) contiguous or adjacent. In the case of different two-digit SIC, the issue does not relate to adjacent, but supporting. Asphalt plant and rock crushers are separate sources unless one is supporting the other because of the different two-digit SIC. Adjacent is not the issue for that situation.
		The definition for adjacent should be indefinitely postponed. The Department can continue to rely upon EPA guidance. "Adjacent" is probably a determination that should be decided on a case-by-case basis.	7, 8, 9, 11, 13	The definition of "adjacent" will be presented to the EQC as "means interdependent and nearby" to capture the major concepts but allow a continued use of case-by-case determinations. This general definition is being maintained in the proposed rules to emphasize the difference from the Webster's dictionary definition.
		Supports the change from "non-deminimis portion" to "over 50%"	9	The Department appreciates the support on this issue. However, this and other specific aspects of the definition were removed from the proposed rule to allow for a case-by-case determination.
		Defining "adjacent" is a violation of the statutory mandate found in ORS 468A.310(2) requiring that the Department "take only those actions required to obtain the Administrator's approval and to implement the federal operating permit program and other requirements of the Clean Air Act unless the commission finds there is a scientifically defensible need for additional actions necessary to protect the public health or the environment".	11, 12, 13	The Department disagrees with this comment. The term "adjacent" is used in the definition of source. Defining the term adjacent does not affect the stringency of how the Department determines what is a source; it provides consistency. Further, ORS 468A.310(2) specifically relates to implementation of the Title V program; the term adjacent is applicable to the entire air quality permitting program.
		The revised definition of "adjacent" is less clear than the prior version. The language does not make grammatical sense.	11	The definition has been revised to "adjacent means interdependent and nearby", consistent with EPA guidance, for this rulemaking package.
		The proposed definition is simply not workable because it is not clear what constitutes a product and what 50% output means, along with other implementation issues.	12	The definition has been revised to "adjacent means interdependent and nearby", consistent with EPA guidance, for this rulemaking package.
		Encourage DEQ to eliminate the definition of "adjacent" entirely, or shorten it down to read "means interdependent facilities that are nearby to each other in accordance with EPA and DEQ guidance.	12	The Department agrees with this comment and has revised the definition to "adjacent means interdependent and nearby", consistent with EPA guidance, for this rulemaking package.
		Support the redefinition of "adjacent" as proposed.	15	The Department appreciates the comment. However, based on comments received, the definition has been revised to read "adjacent means interdependent and nearby". The Department intends to continue working on a more specific definition for this term, and may revisit this issue in future rule revisions.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
Fee and ACDP Applicability Table	216-0090	I have now reviewed the revised proposal and find it acceptable. Thank you for responding to my earlier comments.	1	The Department appreciates the acknowledgment.
		Proposed fee table will have adverse impact on small businesses as currently written. We object strongly to the "one size fits all" category groupings which are not in the interest of the small businesses who run at small margins.	2	The Department appreciates the affects that revenue changes have on all businesses. In response to comments, the Department decreased the fees from the original proposal for General Permit categories, which are likely to be used by most small businesses. Basic permits, which have even lower fees, will be another option for some small businesses.. The fee table was established based on a permitting workload analysis conducted by the Department and is intended to be a revenue neutral restructuring to streamline invoicing.
		This "one size fits all", though stated to be "revenue neutral" subsidizes the high priority work of the Department on the backs of small business.	2	The Department does not agree with this comment. ACDP fees currently cover only about 70% of the associated costs to run the ACDP program. As previously stated, every attempt has been made to minimize the impact on small businesses, including reducing the fees for general permits.
		Using the table on Attachment A, page 5, it seems that for a Standard ACDP the annual compliance could increase from $600 to $3,600. For a small business to absorb such an increase is questionable, since small businesses are expected to compete with large companies and there is already no room for price increases to pass the cost of such fees along to the customer.	2	This comment is true for the standard permit, but many if not most of the sources that currently pay $600 per year will be eligible for a basic, simple or general permit. All of these permits have annual fees in the range of $100 to $2,000. It is only when the facility does not qualify for a lesser permit category, or elects to obtain a standard permit, that the higher fees apply. Typically, a standard permit will only be needed for a large or complex facility, whether operated by a small or large business. Also, it is important to note that most of the existing permit fees far exceed the $600 per year under current rules.
		Pleased to note the proposed reduction in the annual fees for general ACDP. Fees are an added burden on any business and any reductions, no matter how small, are greatly appreciated.	4	The Department appreciates the commentor's support on this proposed change.
		"Late fees" should not exceed the amount of regular annual fees.	7, 8	The Department agrees with this comment and will propose a more equitable means for charging late fees in the final rule.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		The $5,000 fee for a non-PSD/NSR Simple Technical Permit Modification seems to be greatly out of balance with value for work and environmental significance.	8	Since the PSELs will be set at PTE or the generic level, permit modifications will be much less frequent than under existing rules. Any technical permit modifications are likely to require more analysis and time to process since they will likely include either construction or increased capacity at the facility. In response to comments, the Department added two low-end technical permit modification fees to accommodate basic and simple permit modifications.
		Many of the examples in foot note (2) could be handled in the non-Technical Permit Modification (part 3).	8	The Department believes the examples in the foot notes are properly placed.
		Objects to fees for compliance orders. This is unconstitutional and invites abuse. The small amount of additional money taken in by the Department appears to be inconsequential compared to the damage to DEQ's integrity created by the perception that the Department is issuing compliance schedules to make money. This provision should be deleted.	11, 12	There is a cost associated with monitoring compliance schedules that does not exist for permits without them. This cost is not recovered through enforcement. The only reason to have a compliance schedule in a permit is to allow a source to operate while it makes changes necessary to obtain the compliance level. This fee will not affect sources that operate in compliance with applicable standards. Without this fee, the annual fees would have to be increased meaning that all sources would, in effect, subsidize those with compliance schedules.
		Opposed to funding the air permitting program through fees targeted at a small portion of the regulated community. Concerned that DEQ increased fees for those mid-size businesses that require ACDPs so that it could decrease fees for the businesses on general permits.	12	The fee table is based on the type of permit, not the size of the business. The Department reconsidered the original proposal and believes that the proposed changes in the second public notice are more accurate considering the expected work associated with each type of permit. Many mid-sized businesses, like small businesses, will have the option of selecting lower cost general or simple permits.
		Understand the DEQ initially proposed fees after careful study of the costs associated with each class of permits. Now concerned with the proposed shift of those fees to sources with standard ACDPs without a demonstration that prior cost calculations were incorrect.	12, 13	The Department reviewed the workload analysis after receiving comments on the original proposed rules, and proposed fee changes to more closely compare to associated workload.
		Opposed to requiring large classes of de minimis sources to obtain regulated source ACDPs. All classifications in Table 1 should have de minimis thresholds below which permits are not needed.	12	The Department agrees with this comment and has added low-end cutoffs to categories of sources that are not expected to create environmental impacts or create nuisance conditions.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
Ozone precursor	225-0020	While proximity to VOCs is an issue for ground level ozone and smog, the reactivity of the VOCs is more important. Regulations based on Dr. Carter's maximum incremental reactivity scale are likely to provide a more reasonable, more effective alternative to purely mass based regulations. Any approach to ozone precursor requirements that does not take into account the reactivity of a particular VOC is missing the boat. [also included: copy of "Reactivity Scientific Advisory Committee" minutes]	2	The Department is quite familiar with Dr. Carter's work in atmospheric chemistry. Oregon and other western US states are working with Dr. Carter to implement his SAPRC-1999 mechanism for addressing the needs of the new Regional Haze Rule. His mechanism is being adopted in the EPA CMAQ model (part of Models-3). However, the Department is not proposing to require this level of analysis on all new sources. Instead, the proposed rules allow applicants to conduct this analysis if needed to demonstrate no impact on a nonattainment or maintenance area.
		Appreciates the proposed option for removal from the ozone precursor equation, of those sources that are not capable of impacting a nonattainment area or maintenance area.	4	The Department appreciates the support for this change.
		The proposed correction to the formula (removing the 40 ton/yr. subtraction) will increase the significant impact distance for new sources compared to the original formula. Based on this adjusted formula, new sources have a further significant impact distance and will need more offsets compared to the old formula. (Commentor understands the reason for the changes to the formula)	10	The proposed correction eliminates the unintended discontinuity at the nonattainment/maintenance area boundary. With the correction, the amount of needed offset in OAR 340-225-0090 now decreases evenly from the boundary.
		The proposed formula exerts an extreme pressure on power generation companies to prove their proposed plant will have no impact on maintenance areas.	10	The Department agrees with the commentor and has proposed to delay implementation of this portion of the rules for 18 months. This will allow, power generation facilities and other projects currently in the planning stages to be permitted under the current rule.
		Agrees with addition of text to allow an exemption for sources that cannot impact the sensitive area. But it is not clear what will be considered in the analysis of "not capable" or "generally not capable" of impacting a specific area. This introduces a disturbing set of unknowns for permitting a new source subject to this rule.	10	The criterion in the proposed rule has been clarified to say "impact that may contribute to an exceedance of the ozone standard." The Department intends to provide guidance on conducting these analyses, and believes that the rule should remain flexible to address a variety of situations.
		A more fundamental problem with the test and the entire ozone precursor rule formula is the basis for this rule, the 30 km "bright line" concept. The concept is outdated and should be dropped in favor of more up-to-date and innovative techniques	10	As currently proposed, the formula is an efficient screening concept that will allow many sources to avoid the cost of case-by-case analysis. The proposed rule allows up-to-date and innovative techniques to be used by an applicant who subject to the formula but wishes to demonstrate that the proposed source does not impact the attainment or maintenance area.
		An 18 month phase-in period for the new ozone precursor impact rule would be helpful in the short term.	10	The Department agrees with this comment and has included an 18-month phase in period in the final proposal.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		DEQ should resist changes in this area unless they are specifically mandated by EPA. This appears to be a regulation for regulation's sake and not to address an identified problem.	11, 13	EPA has informed the Department that the existing 30-km rule does not adequately deal with larger sources at greater distances. If not addressed, this issue could lead to EPA disapproval of Title V permits or imposition of Clean Air Act sanctions.
		Encourages DEQ to delete this portion of the rules.	11	DEQ has maintained this concept within the final proposed rules with a phase-in period to smooth the transition.
		The proposed offset requirement will result in a severe shortage of offsets in the future that could prevent facility expansion within the 100 km zones. This is a real danger and it is shortsighted to increase the demand for offsets in the absence of a demonstrated problem.	11	The Department disagrees with this comment. Many of the changes in the proposed rules will increase incentives and provide more options for banking emission reductions. New offsets can be generated from a variety of sources, including shutdowns and over-control of point and non-point sources.
		If the Department is going to continue with this rule, it should not take effect until 2004.	11	The final proposal delays implementation until January 1, 2003.
		Concerned about the extension of the 30 km ozone precursor significant impact distance out to 100 km. This is a bad policy.	12	The purpose of this change is to protect ozone nonattainment and maintenance areas from the impacts of new major sources. The proposal is not a simple expansion of the significant impact distance from 30 km to 100 km, but a formula based on size and distance. Larger sources can impact from greater distances downwind. Smaller sources that were previously required to obtain full offsets within 30 km will be required to obtain less or no offsets under the proposed rule.
		Concerned that the program will dramatically increase the need for offsets thus limiting the Portland and Medford areas' ability to grow in the future.	12	The increased need for offsets will only relate to sources that are outside of those areas but have an impact on those areas. New offsets can be generated from a variety of sources and are not limited to other point source emissions.
		DEQ should wait until EPA clearly states in writing that the revision to the 30 km "bright line" distance is necessary.	12	The Department ahas been informed directly by EPA that sources outside of the 30 km zone must be evaluated for impacts on ozone areas. During initial Title V permitting, the Department committed to EPA to make this change in this rulemaking.
		If the DEQ is determined to implement the proposed rule, we strongly endorse a reasonable phase-in period to allow potential sources to understand the rules and plan accordingly (complete permit application after July 1, 2003). The key day for the offset rule should be when a permit application is deemed complete.	12	The Department agrees with this comment and has revised the proposal to delay implementation of the new formula until January 1, 2003. The new formula will apply to complete applications received on or after that date.
		There is an inconsistency in this rule ("is not capable" versus generally not capable") that needs to be addressed. The rule should instead state that offsets are not required if a source can demonstrate that it will not significantly impact the nonattainemnt or maintenance area.;	12	The proposed has been changed to "... generally not capable ..." to ensure consistent application of the rule.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		Concerned that the methods DEQ will require to make the demonstration will be too onerous(too costly or too time consuming), or the thresholds so low that no source could pass.	12	The Department feels that relatively simple methods (such as trajectory analysis) can be used to satisfy this need in many cases and does not intend to impose onerous techniques where simpler methods are satisfactory. Further methods and possible exclusion zones will be evaluated during the proposed delay in implementation.
		The rule should state that in making this demonstration it is appropriate to: – Use regional meteorological data, including the use of wind rose (flow) data from a single station rather than multiple stations, and – Rely upon basic topographical features and general wind flow patterns, and – Rely upon the fact that adjacent sources have already made a similar showing, and if dispersion modeling is used, allow sources to choose simple models to estimate concentrations (e.g., use ISC to model VOC and NOx emissions directly as ozone as is allowed in other states, such as Nevada) or more sophisticated models, such as Reactive Plume Model	12	These methods along with others will be evaluated during the phase-in period. The Department intends to prepare guidance on conducting these analyses.
		Sources should not have to perform regional ozone modeling for the airshed in order to demonstrate that they are generally not capable of significantly impacting the sensitive area. A great aid in this demonstration would be the development of reasonable insignificant impact levels.	12	Significant impact levels can not be developed for ozone precursors because the impact of emissions depends on pollutant concentrations and photochemical reactions in the atmosphere. Instead, the significant impact distance formula acts as a screen to exempt insignificant sources. Only those within the formula distance must obtain offsets or conduct case-by-case analysis.
		Critical for the Department to develop geographic carve-outs to assist businesses in areas that have a low probability of impacting the sensitive area. Request a formal commitment from the DEQ to develop these carve-outs in a reasonable time frame.	12	The Department is committed to continuing to define "geographic carve-outs", and other methods of demonstrating non-impact, during the phase-in period.
		If DEQ is going forward with this rule, the offset requirements should not kick in until 2005 and the quantity of offsets should be slowly increased until the full 1:1 ratio (according to the formula) is reach in 2010	13	Implementation is proposed for an 18-month delay (until Jan 1, 2003) to allow projects currently in the planning stages to proceed under the current rules.
		This phased-in approach has been used in the Houston area to allow sources to adjust in a reasonable time frame If that approach is deemed to work by EPA for the most severe nonattainment area in the country, we believe it should suffice for Oregon's maintenance areas.	13	Implementation is proposed for an 18-month delay (until Jan 1, 2003). Texas is also imposing required emission reductions on existing sources over a significant part of that state. This extends well beyond 100 km of the Houston area. Oregon does not intend to follow this example.

Rule concept	Affected Division/rule	Comments	Commentor ID(s)	DEQ response/proposed rule change
		DEQ must establish an offsets bank, akin to the industrial allowance program it established for Portland, with the confiscated unassigned PSEL. It would be irresponsible for DEQ to require offsets, but not ensure there is an available means of obtaining them.	13	The proposed rules increase incentives to create and bank emission reductions. By encouraging sources to bank reductions while they are contemporaneous and allowing shut down credits to be banked, the proposed rules will increase the pool of available offsets. Some of the options for possible future offsets include: retrofitting or replacing existing boilers and burners with low NOx technology; shutting down old and inefficient facilities; add on controls for either VOCs or NOx (in the development stage); reformulation to low VOC coatings; and employee commute reduction programs.
		Support the concept that emissions do not go to zero at an arbitrary boundary and therefore support the proposal in this rule package that increases the Ozone Precursor Significant Impact Distance from the original definition in 225-0020(7). But the gradient area should be larger than proposed and DEQ should specifically allow for geographical differences and meteorology so that impacted areas are included in relationship to the topography and meteorology rather than just extending the area.	15	The Department appreciates the support for this concept. The Department believes that the 100 km gradient area is sufficiently large to include sources that may impact nonattainment and maintenance areas. The Department has allowed for case-by-case analysis to evaluate differences in meteorology and topography, and intends to further evaluate this issue during the phase-in period.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)

Summary of Significant Changes Due to Public Comment

The following is a summary of the significant changes, by rule division, that are proposed as a change to the version of the rules that was placed on public notice from October 17 to December 21, 2000. The other changes that were made to the proposed rules were to add clarity and correct typographical errors.

Division 200

- Definition of "adjacent" changed to "interdependent and nearby". This concept is used to define a source, but is not currently defined in existing rules. The definition as originally proposed detailed the process of determining if two facilities are adjacent. The definition was re-proposed with modifications based on the first round of public comment. This first change dropped the distance criteria and focused on interdependence. Following the second round of comment the Department decided that additional consideration is still need for the interdependent portion of the definition to create a workable system for the Department and affected sources. The proposed definition will hold a place for future definition expansion and states the primary elements of the definition. The determination of adjacent will continue to be a case-by-case determination as in the existing rules.

- De minimis and Generic PSEL definitions regarding specific pollutants has been corrected. The original proposal listed pollutants (dioxins, furans, combustor metals, combustor acid gases and landfill gases) without the designation of the specific industries that they are applicable to. The first four pollutants are applicable only to "municipal waste combustors" and the last pollutant only applies to "municipal solid waste landfills". The definitions were too broad and needed to be revised to be consistent with existing rules and federal requirements. The language is modified for the final proposed rule to reflect the proper application of the standards.

- Immediately definition changed from "within one hour of the start of an excess emission period" to "within one hour after a source knew or should have known of an excess emission period". This is to allow a more realistic approach to addressing excess emissions. A permittee can not be expected to report excess emissions when they would not reasonably be discovered yet.

- Netting basis for areas where EPA requires an attainment demonstration based on modeling has been modified. The Netting basis in these areas is reduced to the modeled level. This revision allows for maximum flexibility of sources within these areas but also protects air quality by eliminating the use of emissions that will violate a standard. This may be less or more stringent then the requirement to reduce unassigned emissions depending on the air shed capacity.

- Deleted TSP from the Significant Impact Level table to be consistent with federal regulations. TSP is no longer a pollutant of concern under the federal regulations. The change makes DEQ and federal rules consistent.

- Deleted Mercury, Beryllium, asbestos and Vinyl Chloride from the Significant Emission Rate table to be consistent with federal regulations. These are remnants from old rulemakings that no longer apply.

Division 216

- Changed "Regulated Source ACDP" to "Basic ACDP" to eliminate confusion regarding the name. All of the sources required to get a permit are "regulated" and therefore the name was confusing. The idea was to have the most basic requirements apply to sources that qualify for Table 1 Part A so the name of "Basic" was chosen.

- Provisions to allow the adoption of General ACDPs by rule have been added to the division. This is simply the framework for future rule adoption and does not adopt any permits at this time. The rule will be revised in the future to actually adopt the General ACDPs by reference.

- Added source categories that were left off original proposal. The original proposal dropped off some of the source categories that were previously permitted by the Department. Since the intent of this rulemaking was not to allow any environmental backsliding, these categories were added back into Table 1.

- Added low end cutoffs so small sources drop to lower permitting requirements (From Part B to Part A) or out of the permitting program (from Part A to out of the permitting process). Low end cutoffs are used to allow small operations to get less burdensome permits. It also creates an incentive to reduce operations and emissions by allowing sources to pay lower fees for lesser permits. Very small sources should not be permitted at all, and relatively small sources should be tracked on Basic ACDPs instead of requiring Simple, General or Standard ACDPs. This is also a workload savings for the Department because the simpler permits are easier to draft and issue, and the annual reports are much simpler to review for simpler permits.

- Added two lower fees for modification of permits (there are now four levels of non-NSR technical permit modifications) to address Basic and Simple permit modifications. Concern was raised that a simple non-PSD technical permit modification would cost $5,000. The Department reviewed this and agrees that this is excessive for some types of permit modifications. The lower fees are proposed to

address very basic and simple technical modifications that do not constitute the higher fee. The Department expects that permit modifications will be minimized by the other provision of the proposed rules so this change will have little affect on total revenue projections.

Division 222

- Unassigned emissions reduction rule was modified so it does not apply to sources located in areas where EPA requires an attainment demonstration based on modeling. This change is in conjunction with the change to the netting basis definition. This change will allow areas that have limited air shed capacity maximum flexibility and the ability to balance maintenance plans appropriately.

Division 225

- Ozone precursor significant impact distance and associated offset requirements were modified from the original proposal to allow the permittee to demonstrate that they will not impact the sensitive area because of topography, wind direction or other factors. Also, the rule is revised to implement a phase-in period for the new impact distance equation. The existing 30 km "bright line" will continue until January 1, 2003 when it will be replace by the new proposed formula. The trigger for the phase-in timeline is the application date. This same phase-in period is included in the Net Air Quality Benefit rule for offset requirements because it is tied directly to the Ozone Precursor Distance rule.

- References to specific limits relating to Air Quality Related Values (AQRV) impacts and specific models that are not codified in federal regulations have been removed from the proposed rules. This was done to continue to allow the flexibility associated with these analysis instead of nailing them down to fixed parameters. The original proposal included specific limits in the rule so it was clear what limits the Department expects a source to meet. Establishing new applicable requirements is outside the scope of this rulemaking, and the streamlining effects can be realized through the use of guidance.

- References to "major source or major modification" are deleted from this division. Divisions 222 and 224 refer to the requirements in this division so this reference caused conflict and confusion for some scenarios. These changes do not affect the intended applicability of the rules, just make them easier to follow.

- The Columbia River Gorge (CRG) has been removed from the requirement to evaluate Class I impacts and changed to an encouragement instead. This was done because the CRG is not a designated Class I area. Again, codifying this requirement would establish new applicable requirements that are considered appropriate but voluntary under existing rules. This change from the original proposal helps maintain maximum flexibility and environmental protection without creating new limits.

- Specific reference to the FLAG (Federal Land Managers AQRV Group) report and associated limits, including visibility, have been removed and replace with a

recommendation to follow this guidance. The report is a guidance document developed by the federal land managers and should be considered when evaluating impacts on Class I areas, but it is not appropriate to codify the limits into rule without further evaluation.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Revisions to Point Source Air Management Rules (New Source Review, Plant Site Emission Limit, and Air Quality Permitting Requirements)

Rule Implementation Plan

Summary of the Proposed Rule

The Department is proposing to modify the industrial point source air management rules; amending sixteen existing Air Quality Administrative Rule (OAR) Divisions, and adding two new OAR Divisions. These proposed changes clarify and update existing permitting requirements, improving the efficiency of Air Quality's industrial source permitting program. Overall, this rulemaking is no more or less stringent than existing rules. The proposed changes are intended to protect air quality more effectively with fewer resources, and provide an opportunity for the Department to focus on other high priority air pollution concerns.

Proposed Effective Date of the Rule

The proposed rules will be effective July 1, 2001, following adoption by the Environmental Quality Commission (EQC) scheduled May 4, 2001.

It is important to note that most of the concepts contained in the proposed rule will apply to existing sources when they modify or renew their permits, and new sources after the effective date. However, the ozone precursor impact distance will apply to permit applications received on or after January 1, 2003, and the unassigned emission reduction will occur in 2007. Also, the Department will recommend that the Salem Offset exemption reinstatement (OAR 340-224-0050(4)) be effective upon filing, shortly after EQC adoption.

Notification of Affected Persons

The Department put the entire proposal on public notice October 17 through December 21, 2001. A second public notice was prepared on specific portions of the proposed rules from January 26 through February 26, 2001. Both notices were sent to all permitted sources and interested parties. The proposed rules affect all permitted point source sources in Oregon.

Proposed Implementing Actions

If adopted, these proposed rules will greatly simplify how sources are permitted and assessed fees. Except for General Permits that will be effective July 1, 2000, many of the concepts contained in the proposed rules will be implemented when new sources apply for, or when existing sources modify, permits. The proposed rules will continue to be implemented under the ACDP, Title V Permit, and construction approval programs.

The General Permits portion of these rules alone will allow more than one half of sources, now permitted one at a time, to be permitted in larger groups – source categories. Regional staff permit drafting teams are now completing these new General Permits for approximately 20 source categories. Department permit writers will be contacting all sources that are candidates for General Permits this summer to assure they understand the new system. The Department plans to place the permits on public notice in May, and adopt the permits by rule at the August EQC meeting. Sources opting for General ACDPs will be assigned to permits with an effective date of January 1, 2002, with a life of 10 years.

The proposed rule changes will be incorporated into source-specific permits for the remaining sources upon modification or renewal following rule adoption.

Proposed Training/Assistance Actions

External stakeholder workshops will be conducted May 21-24 in Portland, Salem, Roseburg, Medford, Bend, and Pendleton. These workshops are intended to ensure sources thoroughly understand how the new permitting system works, and discuss permitting options that make the most sense for their facilities. Also, because the General Permits will be adopted by rule, stakeholders will have the opportunity to provide public comment to the specific requirements of the permits this June. Final assignments to the general permits will be complete this August.

Over the last year, the Department has provided training to permitting staff on the proposed rule changes. Department staff will also receive pre-workshop training associated with the May stakeholder permitting workshops. General Permit implementation training will be provided for staff in August, prior to the final source permitting assignments. Additional training will be conducted to review the entire rule package in each region this fall. Inspector's Forum, a semi-annual meeting of all permit writers and inspectors will also be utilized to address elements of the rulemaking that require further discussion.

The Department will also propose additional rulemaking to amend these rules as needed to address implementation issues that should be improved.

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Date: March 29, 2001

To: Environmental Quality Commission

From: Brian Jennison, Director of LRAPA

Subject: Agenda Item H, Information Item: Briefing on LRAPA
May 3, 2001 EQC Meeting

Purpose of Item Brian Jennison, Director of the Lane Regional Air Pollution Authority, will brief the Commission on the history, authority and functions of LRAPA, Oregon's only local air pollution control district. The purpose of this briefing is to better acquaint the Commission with LRAPA, given that the Commission approves many of LRAPA's rules.

Next Steps LRAPA generally tries to follow DEQ practice in terms of permit regulations and policies, in order to provide a "level playing field" for all Oregon industry. Therefore LRAPA is working with DEQ on the current permit streamlining process.

EQC Involvement The Commission will be asked to adopt LRAPA's revised permit regulations following adoption of the revised DEQ regulations. This will occur several months after the amended DEQ regulations are adopted.

Attachments A brief history of LRAPA, showing the authority under which the agency is constituted, describing the agency's functions and discussing the agency's budget is attached.

Available Upon Request NA

LRAPA ATTACHMENT

The Lane Regional Air Pollution Authority was formed in 1968, pursuant to ORS 468A105, et seq. The governments of Lane County, Eugene and Springfield entered into a joint agreement and created a governing board, which now consists of one member each from the following: the Lane County Commission, the Eugene City Council, the Springfield City Council, and either the Cottage Grove City Council or the Oakridge City Council, on a two-year rotating basis, plus three at-large members representing Eugene and the county.

The Commission has the same general authority over LRAPA as it does over DEQ; under the provisions of ORS 468A.135, when authorized to do so by the Environmental Quality Commission, a regional authority (i.e. LRAPA) shall exercise the functions related to air pollution control vested in the Commission and the DEQ, insofar as such functions are applicable to the conditions and situations of the territory within the regional authority (i.e., Lane County).

Although LRAPA is the only local air pollution control agency in Oregon, the local agency model is a common one in the West: the State of Washington has seven local agencies, representing their principal urban centers; Nevada has two (Reno and Las Vegas) and California has over 40 (each county, or consortia thereof). LRAPA's mission is "To protect public health, community well-being and the environment as a leader and advocate for the improvement and maintenance of air quality in Lane County." The agency acts in lieu of the DEQ in air permitting, monitoring, airshed planning, public information and compliance issues in Lane County.

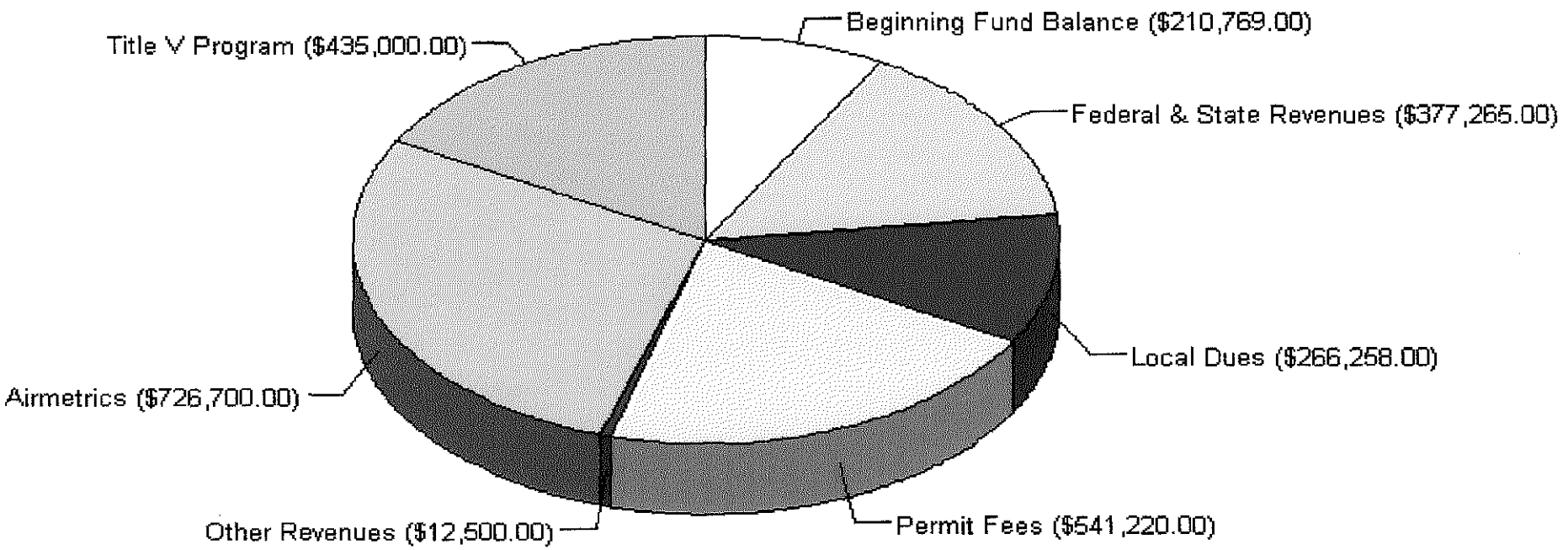
LRAPA currently has 23.5 FTE and an annual budget of $2.5 million. Revenues come from permit fees, a federal grant under Section 105 of the Clean Air Act, local "dues" paid annually by the county and the cities of Eugene and Springfield, an air pollution monitoring device manufacturing enterprise, Airmetrics, and a small amount from the state general fund. The agency issues and administers Title V Federal Operating Permits and Air Contaminant Discharge Permits for Lane County sources. Staff inspects industrial sources, responds to citizen complaints, provides compliance assistance and takes enforcement actions as necessary, consistent with ORS and DEQ practice. LRAPA also handles open burning, home wood heating, asbestos renovation/demolition and indirect source permits. The agency operates an ambient air quality monitoring network in Lane County and conducts periodic emissions inventories of the criteria pollutants and hazardous air pollutants. LRAPA owns Airmetrics, a separate enterprise company that manufactures and markets air pollution monitoring devices worldwide. Finally, the agency has an important public information and education function.

LRAPA staff recognizes the need to provide services consistent with those provided by the DEQ elsewhere in the state. Staff from both agencies coordinate at all levels to address and resolve emergent issues, such as budgetary matters, amended regulations and special projects.

This briefing is intended as an information item only, so the Commission may better understand LRAPA's function.

Lane Regional Air Pollution Authority

Resources - All Funds 2001-2002



Total Resources: $ 2,569,712

State of Oregon

Department of Environmental Quality Memorandum

Date: April 13, 2001

To: Environmental Quality Commission

From: Stephanie Hallock, Director S. Hallock

Subject: Agenda Item K, Informational Item: Enforcement Issue Follow-up to November 2000 EQC/DEQ Summit, May 3-4, 2001 EQC Meeting

Purpose of Item This item will address the following:

Enforcement Program Primer

- Different compliance tools
- Enforcement process – from notice of non-compliance to contested case hearing

Compliance and Enforcement Priorities

- Program priorities
- Enforcement priorities and actions
- Link between priorities

Potential Process Improvements in Enforcement

- What can be done to improve efficiency, effectiveness and overall impact of the Office of Compliance and Enforcement and entire enforcement process?

Equity and Fairness in Enforcement

- What does equity and fairness mean in the context of enforcement?
- What enforcement information is currently available in order to analyze and address issues of consistency, equity, balance and fairness?
- What could be tracked?

Next Steps The Department will continue to evaluate these and other enforcement issues and would like to return to the Commission in the future for further discussions in the areas of greatest interest to the Commission.

EQC Involvement As the EQC requests.

Available Upon Request Enforcement Rules – OAR 340-012; Enforcement Guidance – Draft

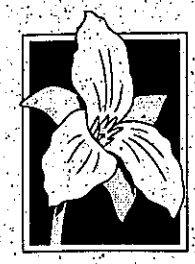
Approved:

Division: Anne P. Price

Report Prepared By: Anne Price

Phone: 503-229-6585

NORTHWEST ENVIRONMENTAL ADVOCATES



Good afternoon. My name is Nina Bell and I am the Executive Director of Northwest Environmental Advocates, the organization that brought a federal lawsuit against the City of Portland over its Combined Sewer Overflows (CSOs) a decade ago.

I would like to give the Commission several reasons why it should:

1. Support the Department's telling the City of Portland not to continue attempting to postpone implementation of the CSO control program; and
2. Inform the City that it is wasting everybody's time and resources -- particularly the limited resources of the Department -- in continuing this attempt.

I would like to start by saying that not only are clean water and habitat equally important, but they are intimately related. This is both from the standpoint of what the beneficial uses need and because habitat degradation causes pollution and pollution undoes the benefits of habitat restoration. "Clean" and "green" should not be positioned against each other, but that is what the City is doing.

In seeking to postpone the clean-up of its water pollution based on allegations of insufficient resources with which to meet all of its environmental obligations, and a variety of other minor unsupportable excuses, the City is attempting to lure the State into establishing several bad policies.

1. First, it would be **bad policy for salmon**. Sources of water pollution and habitat damage throughout the state are being asked to reduce their impacts to public resources to help save and recover salmon. All sectors are resisting a certain amount of change -- some more than others -- and making change in a timely manner. To bend to the City's desire to postpone its clean-up for financial reasons is to encourage other sources to postpone their clean-up/restoration activities. This is especially true where some sectors are acting on a more or less voluntary basis which depends so heavily on political will and a collective sense that everybody is pulling together.

   In addition, water pollution contributes to the threatened and endangered status of salmon, both in rural and urban areas, upstream and downstream. There is a growing and definitive body of knowledge about the effects of toxic pollutants and metals on salmon, pollutants contributed by the City's stormwater and CSOs. Postponing the clean up and control of these pollutants is bad for salmon

2. Second, it would be **bad policy for the public in Portland**. Clean water is something the public wants in reality, not just in theory. To postpone the clean-up of the Willamette River is to postpone the benefits of clean water to the people who live in Portland (and downstream), and denying those benefits to some portion of the public that is currently helping to pay for the clean up.

www.NorthwestEnvironmentalAdvocates.org
133 S.W. 2nd Avenue, Suite 302, Portland, OR 97204-3526 Tel. (503) 295-0490 Fax (503) 295-6634

3. Third, **postponing legal requirements leads to litigation.** Portland's unwillingness to clean up its raw sewage led to the litigation that established the current 20-year plan in the first place. It is contrary to law to postpone meeting the requirements of the Clean Water Act because an entity doesn't want to pay for clean-up. We wouldn't accept that rationale from private sources and we shouldn't hold public sources to a different standard. Moreover, for the City to change the terms of its CSO program it must go before the federal court to alter the existing consent decree. Northwest Environmental Advocates will oppose any attempts to do so, leading to further litigation.

4. Fourth, **further postponement may result in program failure.** The longer the program drags out the greater the likelihood that success will be elusive. Ratepayers will become more resistant if meeting the goal of clean water seems as if it will never happen. The political impetus to clean up the Willamette could fade away, again. Most important, the design changes the City says it needs time to make could in fact be made now. These changes are merely convenient excuses the City uses to disguise its real reason for postponement: the desire to postpone making investments.

5. Fifth, **multiple legal requirements must be met.** The excuse provided by the City for postponing clean-up of its raw sewage discharges is that it has a limited pot of money with which to meet the requirements of the Clean Water Act and the Endangered Species Act. Again, this excuse isn't valid for other sources, so why the City of Portland? In fact,

    - The City is **resisting a less expensive way to meet both federal statutory** requirements -- namely its power to make ordinances that ensure that polluters pay -- relying instead on education and voluntary approaches, such as the all-voluntary roof drain disconnect program in lieu of a mandatory approach.
    - Using a mandatory roof drain disconnect program would **eliminate the City's excuse** that it cannot finalize its engineering plans until it has gauged success in reducing stormwater volume.
    - The City **does not have the option of simply ignoring salmon.** There are many things it can do to achieve its ESA goals including funding its ESA commitments through sources other than sewer rates, supporting voluntary actions by its citizens and businesses, and requiring actions through ordinances.
    - The City **does not have the option of postponing its obligations under other federal environmental laws** either, including particularly the Portland Harbor Superfund site and the polluted stormwater from city streets. It will have to find the funds to support these efforts and it should find them in other ways other than saddling sewer ratepayers. If the Commission allows the City to play one federal law against another, where will it end?

6. Sixth, postponement will **undermine the Willamette River TMDL process.** TMDL development is just underway and will be concluded in 2003. These TMDLs are the

forum for all sectors to see that success requires everybody making significant efforts at the same time. If the Commission signals to agriculture that urban areas are off the hook, it cannot expect significant movement on the part of farmers to clean-up, cool down, and restore the habitat along Oregon's streams.

Finally, the Commission must resist buying into circular arguments. For example, the City argues it shouldn't clean up contaminated sediments until the sources that could re-contaminate those sediments are controlled. It uses its own strong resistence to cleaning up the sources then as a basis for not doing the sediment clean-up. Similarly, the City is also fond of saying it's pointless to clean up Portland's pollution discharges until the quality of the water coming from upstream is improved. Well, the upstream sources don't see a reason to clean up the water only to have raw, human wastes dumped into it, a fact of which the City is well aware. The Commission as a statewide, public body has to see beyond these circular and self-serving arguments. In fact, it should address some of the legitimate complaints of rural interests by directing the Department to better utilize its legal authorities to ensure the control of polluted urban stormwater.

5/3 - Dean Marriott, Clean River Plan present.

Clean River Plan

Environmental Quality Commission

May 3, 2001

Dean Marriott

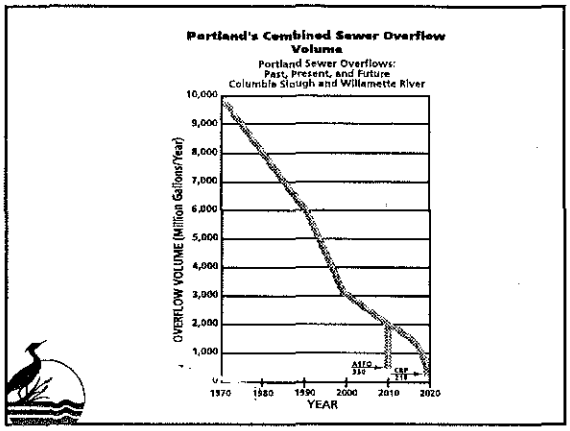
Director

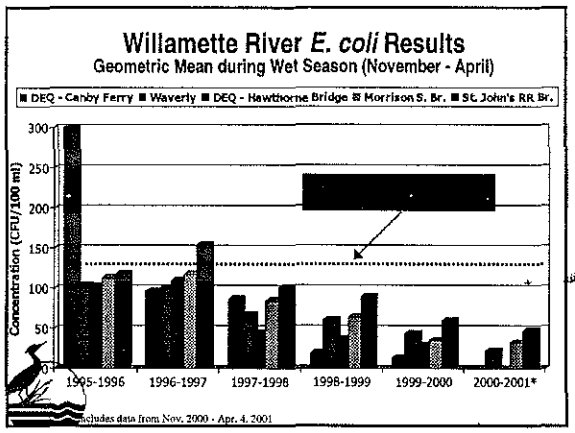
CSO Program History

- Original EQC Order was signed in 1991.
- Amended in 1994 based on better understanding of cost and control strategy.
- Set targets for Columbia Slough and Willamette River.

CSO Program Background

- ASFO target is removal of 96% of CSO volume by 2011.
- The City has invested more than $300 million.
- Presently 99% of CSO volume removed from the Columbia Slough and 40% from the Willamette.





Why a Clean River Plan?

- We know more today about river conditions than we did in 1993.
- Restoring watershed health is the way to deliver clean water and improved fish habitat.
- The Clean River Plan was developed to give us restored watershed health.

Eroded streambank

Improved streambank

Clean River Plan

- The City is about to spend the next $800 million.
- A comprehensive approach to solving water quality problems in the lower Willamette
- Addresses multiple pollutants and sources
- Watershed approach that meets multiple objectives

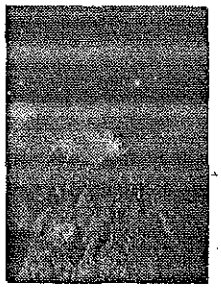
Key summary slide
- what the plan IS.

Clean River Plan

- A smarter approach that addresses watershed health, improved water quality and fish recovery.
- The City would commit $77 million additional.
- Applies the science of watershed restoration and health.

Clean River Plan

- By developing programs based on good science we will deliver fish recovery and improved water quality.
- Ten Actions for the Plan.



Plan consisting of 10 action items

Actions 1-3

Action 1: CSO pipes completed by 2020

Action 2: Plant 4,000 acres of trees and native vegetation to create and improve stream buffers.

Action 3: Reduce stormwater flows and double the removal of pollutants like TSS, lead, copper, zinc and phosphorus.

Actions 4-6

Action 4: Upgrade Eastside sewer system - add capacity to reduce overflows prevent sewer backups to 8,000 properties

Action 5: Improved Erosion Control

Action 6: Increase pollution prevention efforts and source control

Actions 7-10

Action 7: Increase environmental education and promote community stewardship of the river.

Action 8: Restore 100 acres of floodplains

Action 9: Monitoring and Watershed Assessments

Action 10: Improved coordination and partnership with local, state and federal agencies.

Clean River Plan Benefits

- Higher environmental benefits can be achieved throughout all City watersheds.
- Continue to implement CSO controls as we address other pollution problems. ($200 million westside projects on schedule for 2006 finish)
- Integrated watershed solutions take longer to develop and see results. 10 years is too long to wait.

Parking lot swales

Clean River Plan Benefits

- Improved water quality for more than just bacteria
- Improved fish, wildlife, human habitat
- 24 miles of stream restorations
- Reduce stormwater flows and stormwater pollutants entering the river
- Restoration to help with flooding tributaries

Clean River Plan Benefits

- Increased stewardship opportunities and more public knowledge about river conditions.
- Increased green spaces, cooler water temperatures, improved habitat.

CSO program limitations

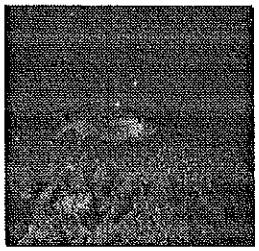
- Relies heavily on pipe solutions to catch rainfall
- Timelines are so tight it doesn't allow the ability to use integrated watershed solutions to clean and keep stormwater out of the sewer system.
- Does not focus on improve watershed health
- Does not address new emphasis on fish recovery.

Schedule and Costs

- Sequencing is essential if we are to maximize watershed improvements before relying on concrete pipes.
- Rates have increased 150% over 10 years.
- $14/mo. to $35/mo. Rates to reach $90/mo by 2011.
- 2011 deadline means $ to CSO only
- $ for Green Solutions not available until 2011 without program changes.

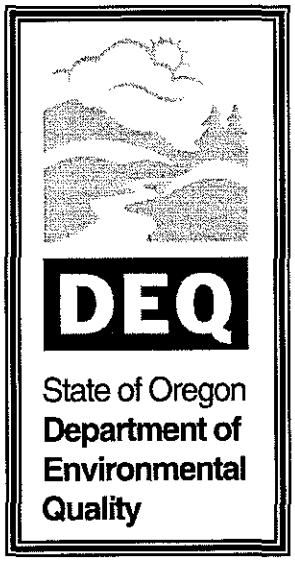
Results

- Achieve fish recovery through watershed health improvements.
- Improved water flow, water quality, habitat and bio-communities.



Results

- The Clean River Plan provides the best options for improved water quality and watershed health.
- It is now the time to work smarter and adapt to changing conditions.



DEQ 99-00 Tax Credit Report

January 1, 1999 through December 31, 2000

Pollution Control Facilities

Pollution Prevention

Reclaimed Plastic

Contents

Tables

DEQ Administered Tax Credit Programs

The Department of Environmental Quality (DEQ, Department) is the administrative agency for the Pollution Control Facilities Tax Credit (PCTC), the Pollution Prevention Tax Credit and the Reclaimed Plastic Tax Credit programs. This document reports the Environmental Quality Commission's actions regarding these programs for the calendar years 1999 and 2000.

Table 1
Certificates Issued
Statistics by Program
All DEQ Administered Tax Credit Programs
January 1, 1999 through December 31, 2000

Media	Tax Expenditure Liability[1]	Avg.	Minimum	Maximum	# Cert.
PCTC	35,289,095	108,249	300	2,806,733	326
Pollution Prevention	271,933	20,918	2,873	37,500	13
Reclaimed Plastic	678,654	26,102	672	244,275	26
Total Certificates	$36,239,682				365

Most tables presented in this report are a summary of reports found at www.deq.state.or.us under Programs: Tax Credits: 99-00 Report.xls. A printed version is available on request.

The Environmental Quality Commission (EQC, Commission) is the authority that approves, denies or rejects certification for tax credit purposes. The EQC issued 365 certificates in the years 1999 and 2000.

The certificate holders and the Oregon Department of Revenue rely on the EQC's certification as proof that an Oregon taxpayer's investment met the eligibility criteria for the tax credit.

[1] The *Tax Expenditure Liability* reported in this document is the liability the state incurs at the time EQC issues a tax credit certificate. The tax expenditure liability is fifty percent of the results obtained by multiplying the certified investment amount by the percentage of the cost allocated to environmental benefits.

Table 2
Certificates Issued
Summary of All DEQ Tax Credit Programs by Year

Year	# of Certificates	Tax Expenditure Liability	Average	Minimum	Maximum
1968	39	$2,618,426	$67,139	$1,174	$710,525
1969	37	$2,606,028	$70,433	$2,428	$526,352
1970	50	$3,553,209	$71,064	$833	$2,017,852
1971	65	$8,566,588	$131,794	$597	$3,202,811
1972	123	$7,659,505	$62,272	$506	$2,702,638
1973	142	$12,720,643	$90,197	$383	$3,050,909
1974	80	$11,744,998	$146,812	$2,169	$4,255,991
1975	94	$17,339,494	$184,463	$1,369	$6,025,886
1976	112	$18,026,115	$160,947	$660	$3,701,457
1977	95	$10,099,350	$107,355	$251	$2,356,183
1978	80	$30,427,490	$385,082	$882	$12,118,804
1979	85	$17,714,066	$208,401	$734	$4,392,593
1980	161	$34,440,257	$215,230	$1,129	$7,079,554
1981	141	$47,809,943	$341,389	$317	$23,676,924
1982	98	$40,679,273	$415,095	$336	$15,491,404
1983	79	$33,871,933	$423,435	$1,600	$6,621,993
1984	60	$15,553,898	$259,232	$1,279	$5,687,760
1985	48	$3,420,580	$71,262	$1,151	$306,282
1986	77	$23,718,062	$308,027	$1,500	$19,625,635
1987	70	$1,839,775	$26,282	$2,461	$384,698
1988	46	$7,852,420	$170,705	$1,323	$2,413,003
1989	61	$4,998,086	$86,682	$1,750	$1,226,911
1990	205	$4,451,995	$22,181	$232[2]	$797,565
1991	410	$21,536,030	$54,893	$601	$3,928,543
1992	215	$16,048,583	$79,753	$715	$5,059,650
1993	254	$33,808,944	$137,545	$539	$7,758,430
1994	138	$19,999,544	$103,496	$648	$5,993,396
1995	168	$50,107,149	$296,523	$349	$16,400,000
1996	131	$7,326,070	$56,749	$598	$933,372
1997	126	$7,783,337	$62,267	$479	$2,492,441
1998	226	$67,657,217	$299,368	$1,050	$39,577,895
1999	171	$21,168,094	$123,790	$300	$2,806,733
2000	194	$15,071,589	$77,689	$500	$2,238,119
1/68-12/00	**4081[3]**	**$622,218,691[4]**	**$152,467**	**$232**	**$39,577,895**

[2] The EQC issued a certificate for a zero dollar amount in the years 1990, 1992 and 1994. The next lower amount is reported in this analysis.
[3] This report does not reflect adjusted certificates.
[4] The Pollution Control Facilities tax credit is 97% of all DEQ administered tax credits. This Table exemplifies the variation in the number of applications and the average amount of the applications certified in any one year.

Table 3
Statistics by Period
All DEQ Administered Tax Credit Programs

Statistical Period	Average Annual Tax Expenditure Liability
Last 10 years	$26,050,656
Last 5 years	$23,801,261
1999-2000	$18,119,842

The Department frequently receives requests for information about the state's liability incurred upon the Environmental Quality Commission's certification of the Pollution Control Facilities, the Pollution Prevention and the Reclaimed Plastic Tax Credit investments. The number of applications that Oregon taxpayers submit; the size and amount of the capital improvements; and the number of EQC issued certificates in any one year varies. Table 3 provides the average tax expenditure liability based on several historical periods.

Pollution Control Facilities Tax Credits

ORS 468.150 -.190; ORS 307.015; ORS 315.304
OAR 340-016-0005 - 340-016-0080

> The purpose of the Pollution Control Facilities Tax Credit program is ". . . to assist in the prevention, control and reduction of air, water and noise pollution and solid waste, hazardous wastes and used oil in this state by providing tax relief with respect to Oregon facilities constructed to accomplish such prevention, control and reduction."
>
> ORS 468.160

The 1967 Legislature established the Pollution Control Facilities[5] Tax Credit (PCTC) program to compensate businesses responding to environmental requirements. The program expanded over the next few years to encourage businesses to make investments in technologies and processes that prevent, control or reduce significant amounts of pollution. A summary of the major legislative actions regarding the Pollution Control Facilities Tax Credit laws beginning in 1967 is on the following page.

The Commission certified 4032 pollution control facilities for a tax expenditure liability amounting to about $603 million issued to 1501 Oregon taxpayers since the inception of the PCTC program.

[5] The term "facility" or "facilities" used in the PCTC program refers to the pollution control as defined in ORS 468.155; it does not refer to the plant site, the entire construction project or the business endeavor.

Table 4
Summary of Legislative Actions
Pollution Control Facilities Tax Credit Laws
ORS 468.150 -.190; ORS 307.015; ORS 315.304

Year	Summary
1967	**Originating Legislation:**
	Tax credit limited to air and water pollution control facilities
	Available as an election for property tax exemption or income tax credit
	20-year property tax exemption for the cost of the facility
	10-year income tax credit of 5% of the cost for each year, with a 3-year carry-forward
	1978 sunset
1969	Prorated credit to proportion of cost for pollution control
	Began phase out of property tax exemption
1971	Restarted phase out of property tax exemption
	Added mobile field incinerators
1973	Required preliminary certification
	Added garbage burners
1975	Added recovery of useful products from solid waste
	Added 468.150 - provision for alternatives to open field burning
1977	Added noise pollution
	Limited property tax exemption to non-profits and cooperatives
	Adjusted credit where useful life under 10 years
	Extended sunset to 1988
1979	Added hazardous waste and used oil recovery
1983	Expanded hazardous waste eligibility
1987	Reduced total credit to 25% of cost allocated to pollution control for facilities constructed after 6/30/89
	Disqualified energy recovery facilities & clean-up of hazardous waste spills
	Extend sunset to 1990
1989	Restored credit to 50% of cost allocated to pollution control
	Removed preliminary certification requirement
	Eliminated burning and use of materials for fuel
	Disqualified asbestos abatement
	Extended sunset to 1995
1995	Altered certification requirements
	Limited consideration to percentage of time the facility is used for pollution control for facilities costing up to $50,000.
	Allowed co-ops subject to the income tax the option of taking the income tax credit rather than a property tax credit
	Extended sunset to 2001
1999	Added nonpoint source pollution controls to list of eligible facilities.

Table 5
PCTC Tax Expenditure Liability
by
Business Entity
January 1, 1999 through December 31, 2000

Business Entity	Tax Credit Liability	# of Certificates
C-Corporations	$28,659,367	195
S-Corporations	$3,252,490	81
LLCs	$2,266,954	15
Joint Venture	$42,805	1
Partnerships	$272,202	9
Cooperatives	$134,878	1
Non-profits	0	0
Individuals	$660,398	24
Total	$35,289,095	326

The Pollution Control Tax Credit (PCTC) provides a credit to offset corporate or personal income taxes equal to about 50% of the cost of pollution control facilities. The amount may be claimed over the useful life of the facility or ten years whichever is the lesser number of years. If the Oregon taxpayer is not able to use the credit in any one year the credit can be carried forward for up to three years. Nonprofit corporations and cooperatives qualify for a 20-year property tax exemption on the facility.

Corporations claim PCTCs on Oregon corporate income and excise tax returns.[6] Cooperatives and non-profit corporations report exemption from ad valorem taxes by filing with the county assessor and the Department of Revenue each year.[7] Credits for all other entities are passed through to individual returns.

The Environmental Quality Commission issued 81% of the total tax expenditure liability to corporations in 1999 and 2000.

[6] ORS 315.304
[7] Any corporation organized under ORS chapter 62 or 65. ORS 307.405

The Environmental Quality Commission issued 326 certificates to 176 Oregon taxpayers for installing pollution control facilities in the years 1999 and 2000. The certificates represent a tax expenditure liability in the amount of $35,289,095. (See the tax credit website for a listing by individual certificates.)

There is no limit to the amount of investment cost available for certification in one year, to any one applicant, or to the program. Ten out of the 176 Oregon taxpayers with certified facilities hold certificates for 54% of the total tax expenditure liability as shown below.

Table 6
Top Ten Certificate Holders
PCTC Certificates Issued
January 1, 1999 through December 31, 2000

Applicant	Sum Of Tax Expenditure Liability	% of Total Tax Expenditure Liability ($35,289,095)	# of Certificates
Willamette Industries, Inc.	4,519,783	12.81%	22
HMT Technology Corp.	3,342,968	9.47%	2
Hewlett-Packard Company	2,238,119	6.34%	1
Intel Corporation	1,987,918	5.63%	4
Boeing Company	1,852,418	5.25%	1
Oregon Steel Mills, Inc.	1,414,821	4.01%	4
Integrated Device Technology (IDT)	1,126,455	3.19%	1
Cascade General, Inc.	998,460	2.83%	1
Portland General Electric Co.	904,585	2.56%	15
Truax Harris Energy LLC	810,983	2.30%	6
Top 10 Certificate Holders	**$19,196,507**	**54%**	**57**

Table 7
Oregon Department of Revenue
PCTCs

Year	Amount Claimed	Returns with Credits
2000	0	0
1999	14,411,304	110
1998	13,187,485	139
1997	13,918,720	158
1996 & Prior	185,593,727	1722
Totals	**$227,111,236**	**2129**

Report date 1/31/01

The Department of Revenue, in their report dated January 31, 2001, shows the amount of Pollution Control Facilities Tax Credits claimed on corporate returns. The Department of Revenue does not have the capability to readily identify the amount of PCTCs claimed on individual returns because all Oregon tax credits, not just the PCTCs, are combined on the Oregon tax return.

Table 8
PCTC Certificates Issued
by
Standard Industrial Classification[8]
January 1, 1999 through December 31, 2000

Tax Expenditure Liability	Standard Industrial Classification Headings
$24,339,242	Manufacturing
4,266,504	Transportation and Public Utilities
3,371,485	Retail Trade
1,092,095	Agricultural Services, Forestry & Fishing
993,156	Finance, Insurance and Real Estate
562,016	Services
491,507	Wholesale Trade
100,891	Mining
70,910	Unclassified
1,289	Construction
$35,289,095	**Total**

The Environmental Quality Commission issued certificates for 69% of the tax expenditure liability to Oregon manufacturers in 1999 and 2000 as identified by the certificate holder's primary Standard Industrial Classification.

[8] See website for complete listing.

Table 9
PCTC Tax Credit Summary by City
January 1, 1999 through December 31, 2000

City	Tax Credit Liability	# Certificates	City	Tax Credit Liability	# Certificates
Albany	1,933,683	12	Heppner	44,595	1
Amity	7,429	1	Hermiston	402,933	3
Ashland	40,103	1	Hermistor	2,650	1
Astoria	45,770	1	Hillsboro	3,751,600	14
Athena	15,170	1	Hood River	105,622	1
Aumsville	55,665	1	Jefferson	115,523	1
Beaverton	485,261	5	Junction City	70,470	1
Bend	958,332	8	Keizer	38,617	1
Boardman	342,383	5	Klamath Falls	165,569	4
Boring	86,297	4	Lake Oswego	3,846	1
Brooks	22,301	1	Lincoln City	137,627	5
Brownsville	23,998	1	Madras	9,288	1
Canby	866,231	5	McMinnville	266,491	3
Canyon City	54,643	2	Medford	135,790	6
Clackamas	10,476	1	Milwaukie	59,828	2
Clatskanie	379,650	1	Monroe	49,412	1
Coburg	1,490	1	Mount Angel	33,217	1
Coos Bay	128,606	1	Mt. Angel	43,334	1
Cornelius	232,017	1	Mt. Vernon	43,439	1
Corvallis	2,379,567	2	Myrtle Point	15,020	1
Cottage Grove	69,095	1	Newberg	54,884	6
Creswell	53,550	1	Oregon City	146,419	3
Dallas	170,874	4	Portland	6,141,064	42
Dayton	65,241	2	Powell Butte	16,067	1
Durkee	103,045	1	Prairie City	294,254	1
Eagle Creek	116,451	1	Riddle	444,718	2
Eugene	5,165,883	21	Rogue River	61,360	2
Florence	122,199	2	Rufus	61,784	1
Forest Grove	375,991	3	Salem	1,733,347	34
Gaston	10,244	1	Sandy	24,992	1
Gervais	74,421	1	Seaside	73,426	2
Grants Pass	37,880	1	Sheridan	53,233	1
Gresham	1,853,408	2	Sherwood	5,279	2
Halsey	90,689	3	Silverton	248,491	4
Harrisburg	106,793	5	Springfield	758,974	2

City	Tax Credit Liability	# Certificates	City	Tax Credit Liability	# Certificates
St. Helens	108,678	6	Veneta	14,583	1
St. Paul	182,143	4	Warrenton	31,483	1
Sweet Home	638,625	7	Wasco	31,356	2
Tangent	46,688	1	West Linn	4,952	2
Terrebonne	5,917	1	Willamina	22,023	1
Tigard	9,240	2	Wilsonville	215,330	4
Tillamook	60,065	1	Winston	35,762	1
Tualatin	350,472	5	Woodburn	726,075	28
Vale	707,715	1			
				$35,289,095	**326**

The Environmental Quality Commission's certification means that a facility has a pollution control purpose[9] as defined in ORS 468.155 and in OAR 340-016-0060 (2). It means the investment had one of the following purposes:

> *Principal Purpose* of the claimed facility is to comply with a requirement imposed by DEQ, EPA or a regional air pollution authority where the primary and most important purpose is to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.
>
> OR
>
> *Sole Purpose* of the claimed facility is exclusively to provide pollution control to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.

Table 10
Purpose of PCTC
January 1, 1999 through December 31, 2000

Purpose	Tax Expenditure Liability	% of TC Liability	Average	# of Certificates	% of Certificates
Principal	26,701,577	76%	160,853	166	51%
Sole	8,587,518	24%	53,672	160	49%
	$35,289,095	100%		326	100%

[9] The term "purpose" as it is used in the Pollution Control Facilities Tax Credit program means either the principal or sole pollution control purpose as defined in ORS 468.155 not the purpose of the applicant's business endeavor or the plant site.

PCTC Subprograms

There are a number of subprograms to the Pollution Control Facilities Tax Credit.

Table 11
PCTC Certificates Issued by Subprogram
January 1, 1999 through December 31, 2000

Sub Program	Tax Expenditure Liability	Avg.	Minimum	Maximum	# Cert.
Air	12,597,630	188,060	645	2,238,119	66
Field Burning	855,346	38,879	2,750	115,523	22
Hazardous Waste	120,409	60,204	24,370	96,039	2
Noise	232,613	46,523	2,104	122,248	5
Solid Waste	4,061,505	44,121	300	410,678	93
USTs	4,033,360	58,454	2,650	232,017	69
Water	13,388,233	194,032	1,250	2,806,733	69
Total Program	**$35,289,095**	**$108,249**	**$300**	**$2,806,733**	**326**

The eligibility requirements are different for each of these subprograms but they have the following elements in common.

The applicant must

- be an Oregon taxpayer;
- make a qualifying investment; and
- be the owner and operator of the facility or for material recovery facilities the applicant may be either the lessee or the lessor.

The investment must

- be land, structure, building, installation, excavation, machinery, equipment or devices;
- not include investments that do not meet the definition of a pollution control facility. This list includes items such as air conditioners; septic tanks or other facilities for human waste; asbestos abatement; or any investment used for cleanup of emergency spills or unauthorized releases;
- not include distinctive portions that make an insignificant contribution to the purpose of the facility. The list includes such items as automobiles, landscaping, parking lots, and roadways; and
- be reasonably used for a pollution control purpose.

The purpose of the investment must

- be in response to a requirement of the Oregon Department of Environmental Quality, the federal Environmental Protection Agency, or a regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or
- function exclusively to control, prevent or reduce a significant amount of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.

Certified AIR Pollution Control Facilities

The Department of Environmental Quality (DEQ) Air Quality Division is responsible for protecting Oregon's air quality. DEQ monitors air quality to ensure that Oregon meets and maintains national air quality health standards. The Pollution Control Facilities Tax Credit program supports this effort.

The Environmental Quality Commission (EQC) certified 66 air pollution control facilities in 1999 and 2000. This group of air pollution control facilities includes 56 baghouses, 18 scrubbers, 11 electrostatic precipitators and 5 thermal oxidizers. The state incurred a tax expenditure liability in the amount of $12.6 million upon the EQC's certification of these air-cleaning devices. The high-tech and forest products industries are the primary beneficiaries of the PCTC program as a result of the EQC's certifications in the years 1999 and 2000.

DEQ, the federal Environmental Protection Agency (EPA) or a regional air pollution control authority required the majority of the air pollution control facilities. Ninety six percent ($12.1 million) of the tax expenditure liability amount was incurred as a result of these requirements.

This group also included 14 facilities for refrigerant recovery equipment for controlling chlorofluorocarbons (CFC.) The Oregon taxpayers that use this tax credit are automotive repair shops, and heating and air conditioning businesses. The state incurred a tax expenditure liability of about $15 thousand upon the EQC's certification of these facilities in 1999 and 2000.

Air Pollution Control Facilities
Tax Credit Eligibility Criteria

All certified Air Pollution Control Facilities met the following eligibility criteria.

1. The facilities prevent, control, or reduce air pollution.

   Air pollution means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

2. The air pollution control:

   Complies with a DEQ, EPA, or regional air pollution authority requirement, where the primary and most important purpose of the facility is air pollution control

   OR

   Has an exclusive purpose to prevent, control or reduce a substantial quantity of air pollution.

3. The facility accomplishes the air pollution control through the disposal or elimination of air contaminants, air pollution, or air contamination sources through the use of air cleaning devices.

   Air contaminant means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

   Air contaminant source means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property by which the emission is caused or from which the emission comes.

   Air cleaning device means any method, process, or equipment that removes, reduces, or renders less noxious air contaminants prior to their discharge in the atmosphere.

AIR: Alternatives to Open Field Burning

The transition from open field burning to straw removal has required a tremendous capital investment in equipment and facilities. The Pollution Control Facilities Tax Credit program played an instrumental role in the successful transition by encouraging industry investment in tractors, rakes, balers, loaders, flat beds, straw storage buildings, flail choppers and assorted other equipment and facilities for the gathering, densifying, processing, handling, storing, transporting and incorporating of grass straw.

The Environmental Quality Commission (EQC) certified 22 alternatives to open field burning facilities in 1999 and 2000. The state incurred a tax expenditure liability of about $855 thousand upon the Commission's certification. Certified facilities included 21 implements, 12 straw storage sheds, 6 tractors, 1 drainage tile system, and 1 flatbed trailer.

Alternatives to Open Field Burning
Tax Credit Eligibility Criteria

All certified Alternatives to Open Field Burning Pollution Control Facilities met the following eligibility criteria.

1. The facilities prevent, control, or reduce air pollution.

   Air pollution means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

2. The air pollution control:

   Complies with a DEQ, EPA, or regional air pollution authority requirement, where the primary and most important purpose of the facility is air pollution control
   OR
   Has an exclusive purpose to prevent, control or reduce a substantial quantity of air pollution.

3. The facility accomplishes the air pollution control through the substantial reduction or elimination of:
   a. Open field burning and may include equipment, facilities, and land for gathering, densifying, handling, storing, transporting and incorporating grass straw or straw based products;
   b. Air quality impacts from open field burning and may include propane burners or mobile field sanitizers; or
   c. Grass seed acreage that requires open field burning. The facility may include:
      - Production of alternative crops that do not require open field burning;
      - Production of rotation crops that support grass seed production without open field burning; or
      - Drainage tile installations and new crop processing facilities.

The legislative history of ORS 468.150 indicates that the legislature intended that a tax credit be available to encourage farmers to use alternatives to field burning by providing a financial benefit to those who purchase "machines" to be used as an alternative method of field sanitation.

In 1975, ORS 468.150[10] was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 by legislative action. It gave the EQC the authority to adopt rules regarding alternative field burning methods that qualify for tax credits.

In 1991 the legislature enacted a field burning reduction plan, "declar[ing] it to be the policy of the state to reduce the practice of open field burning while developing and providing alternative methods of field sanitation and alternative methods of utilizing and marketing crop residues." This policy ties the reduction of field burning to the encouragement and the development of alternative methods of field sanitation, and straw utilization and disposal. However, the enactment of the field burning reduction plan did not incorporate or address tax credits in ORS 468.150.

The reduction in acreage burned is governed by statute, dropping from 180,000 acres in 1991 to the final level of 65,000[11] acres in 1998 although the industry historically burned between 70% and 80% of the permitted acreage. Attainment of the final field burning reduction level does not limit the intent of the tax credit for field burning alternatives.

The EQC has the authority to allow experimental field sanitation of another 1000 acres and, in fact, has allowed Oregon State University to perform experimental field sanitation on an average of 100 acres per year.

Extensive research during the phase-down period demonstrated that non-thermal management of grass seed production provided a seed yield and stand life that were an acceptable replacement for open field burning of major grass species grown in Oregon. Removal and reduction of residues in place of burning a full straw load is now practiced in all major areas of seed production in the state. Straw removal in one form or another has been the universally adopted alternative to open field burning.

The 1995 legislature amended many of the field burning statutes and transferred the field burning program to the Department of Agriculture.

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[10] 1975 c.559 s.15

[11] This includes 25,000 acres that may be burned in certain steep terrain areas of the Willamette Valley.

HAZARDOUS WASTE

The DEQ is authorized by the federal Environmental Protection Agency (EPA) to regulate hazardous waste in Oregon. Proper hazardous waste management is an integral part of protecting Oregon's land, air, and water systems.

The Environmental Quality Commission certified two hazardous waste facilities in 1999 and 2000; one to a semiconductor manufacturer and one to a printed circuit board manufacturer. The state incurred a tax expenditure liability in the amount of $120 thousand upon certification of waste collection sumps, and a secondary containment system.

Hazardous Waste Pollution Control Facilities
Tax Credit Eligibility Criteria

All certified Hazardous Waste Pollution Control Facilities met the following eligibility criteria.

1. The facilities prevent, control, or reduce hazardous waste pollution.

   Hazardous waste does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste unless the waste is classified as hazardous waste under paragraph (a), (b), or (c) of this subsection on some basis other than the radioactivity of the material, container or receptacle.

   a. Hazardous waste can include discarded, useless, or unwanted materials or residues resulting from any substance or combination of substances intended for the purposes of defoliating plants or involving insects, fungi, weeds, rodents or predatory animals.

   b. It can include residues resulting from any process of industry, manufacturing, trade, or business or government or from the development of any natural resources, if such residues are classified as hazardous by commission order after notice and public hearing.

   c. Hazardous waste includes discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in (a) and (b).

2. The hazardous waste pollution control:

   Complies with a DEQ, or EPA requirement, where the primary and most important purpose of the facility is to prevent control or reduce hazardous waste,

   OR

   The exclusive purpose of the hazardous waste pollution control is to prevent, control or reduce a substantial quantity of hazardous waste.

3. The facility accomplishes the hazardous waste pollution control through material recovery, the treatment, substantial reduction or elimination of hazardous waste.

   Treatment means any method, technique, activity or process, including but not limited to neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render the waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume

   Material Recovery means the facility shall eliminate or obtain useful material from material that would otherwise be hazardous waste as defined in ORS 466.005. The facility shall produce an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state. The facility shall produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

   a. Have useful chemical or physical properties and which may be used for the same or other purposes; or

   b. May be used in the same kind of application as its prior use without change in identity.

NOISE

The Environmental Quality Commission certified five noise pollution control facilities for reducing noise at the taxpayer's property line in 1999 and 2000. The taxpayers included a steel manufacturer, a utility, and a wood-products manufacturer. The state incurred a tax expenditure liability in the amount of $233 thousand upon certification.

Noise Pollution Control Facilities
Tax Credit Eligibility Criteria

All certified Noise Pollution Control Facilities met the following eligibility criteria.

1. The facilities prevent, control, or reduce noise pollution.

2. The noise pollution control:

   Complies with a DEQ, or EPA requirement, where the primary and most important purpose of the facility is noise pollution control
   OR
   The exclusive purpose of the noise pollution control is to prevent, control or reduce a substantial quantity of noise pollution.

3. The facility accomplishes the noise pollution control through the substantial reduction or elimination of noise pollution or noise emission sources.

The State of Oregon adopted noise control standards and regulations as has many cities and counties. The intent of these regulations and standards is to protect human health and the livability of our communities.

Although DEQ no longer investigates noise complaints[12], regulated sources of noise are legally responsible for complying with the provisions and standards outlined in state regulations. Other state agencies regulate some types of noise. The Oregon State Marine Board, for instance, regulates noise from boats, with enforcement of suspected boat-noise violations handled primarily through county marine enforcement offices. The Oregon Liquor Control Commission regulates noise from licensed liquor establishments.

[12] DEQ terminated its Noise Control Program in July 1991 as a cost-saving measure.

AIR & WATER: Nonpoint Source

The 1999 legislature explicitly included "activities known to reduce or control a significant amount of nonpoint source pollution" in the eligibility for Pollution Control tax credits. Nonpoint source (NPS) pollution controls became eligible for the Pollution Control Facilities Tax Credit on January 1, 2000.

The Department has not received any NPS Pollution Control Facilities Tax Credit applications to date.

Nonpoint Source Pollution Control Facilities
Tax Credit Eligibility Criteria

The Nonpoint Source Pollution Control Facilities Tax Credit is intended to cover expenditures for "on-the-ground" management practices and improvements. It is not intended to cover education, outreach or monitoring costs. In order to be eligible for this tax credit, nonpoint source pollution control expenditures must be documented. Similarly, these expenditures must be incurred as part of implementation of at least one of the following elements.

1. The facilities prevent, control, or reduce air or water pollution.

2. The air or water pollution control:

   Complies with a DEQ, or EPA requirement, where the primary and most important purpose of the facility is to prevent, control or reduce a substantial quantity of air or water pollution.

   OR

   The exclusive purpose of the facility is to prevent, control or reduce a substantial quantity of air or water pollution to prevent, control or reduce a substantial quantity of air or water pollution.

3. The Nonpoint Source Pollution Control Facilities Tax Credit is intended to cover expenditures for "on-the-ground" management practices and improvements. It is not intended to cover education, outreach or monitoring costs. In order to be eligible for this tax credit, nonpoint source pollution control expenditures must be documented. Similarly, these expenditures must be incurred as part of implementation of at least one of the following elements:
   a. Any facility that implements a plan, project, or strategy to reduce or control nonpoint source pollution as documented:
      - By one or more partners listed in the Oregon Nonpoint Source Control Program Plan; or
      - In a Federal Clean Air Act State Implementation Plan for Oregon; or
   b. Any facility effective in reducing nonpoint source pollution as documented in supporting research by:
      - Oregon State University, Agricultural Experiment Station; or
      - The United States Department of Agriculture, Agriculture Research Service; or
      - The Oregon Department of Agriculture; or
   c. Wood chippers used to reduce openly burned woody debris; or
   d. The retrofit of diesel engines with a diesel emission control device, certified by the U.S. Environmental Protection Agency.

   Nonpoint Source Pollution means pollution that comes from numerous, diverse, or widely scattered sources of pollution that together have an adverse effect on the environment. The meaning includes:
      (a) The definition provided in OAR 340-041-0006(17); or
      (b) Any sources of air pollution that are:
         - Mobile sources that can move on or off roads; or
         - Area sources.

SOLID WASTE

The Environmental Quality Commission certified 92 facilities that controlled or reduced a substantial quantity of solid waste in 1999 and 2000. Certified facilities included 42,400 recycling bins and containers, 9,500 yard-debris containers, 69 drop-boxes, 23 trucks, 4 trailers, and material recovery processing equipment such as balers, conveyers, and compactors. The state incurred a tax expenditure liability in the amount of $4.1 million upon certification of these material recovery facilities.

The Pollution Control Facilities Tax Credit has been successful in encouraging solid waste recycling providers to invest in the necessary infrastructure, especially in a market where the value of recyclable materials is in flux. The availability of the tax credit allows the collectors and recyclers to provide their service at a cost the public is able to bear.

The majority of the 1999 and 2000 solid waste Pollution Control Facilities Tax Credit certificates were issued to garbage and recycling companies. Others certificates were issued to auto wrecking yards, landfills, wood products manufacturers, asphalt plants, equipment leasing companies, and forest products manufacturers.

Oregon law establishes the following hierarchy for the management of solid waste in order of most desirable to least desirable.

1. Prevent the generation of the waste
2. Reuse
3. Recycling
4. Composting
5. Energy recovery
6. Safe disposal

Oregon's general goal is to achieve a 50% solid waste recovery rate through recycling activities. Local governments support the state goal by developing recycling programs that are in turn implemented by local waste collection and recycling providers. The majority of the certificates that were issued in 1999 and 2000 were part of a local government program designed to support state goals.

The Commission adopted new permit requirements for composters in 1999. Composters are purchasing processing equipment like grinders, loaders, and windrow turners to support this requirement. The Department anticipates an increase in applications for facilities like impermeable asphalt and concrete operating surfaces, leachate collection and treatment systems, engineered bioswales, forced aeration slabs, and odor control biofilters. Some of these installations will be eligible for the PCTC under the solid waste, the water or the nonpoint source pollution control portions of the law.

Over the last few years, both the Department and local governments have actively encouraged companies in the solid waste collection industry to expand their yard debris collection

activities. In many cases, this increase in yard debris collection is necessary for local waste-sheds to meet their required recovery rate goals. The increase in yard debris collection has resulted in the purchase of a variety of new yard debris collection equipment including residential collection containers, commercial collection bins and drop boxes and yard debris collection trucks. The increase in collection has also contributed to an increase in material processing capacity at composting facilities.

AIR & WATER: Underground & Aboveground Storage Tanks

The Environmental Quality Commission certified 69 underground and aboveground storage tank facilities that prevented, reduced or controlled air and water pollution in 1999 and 2000. The state incurred a tax expenditure liability in the amount of $4.0 million upon certification.

Oregon taxpayers in this group upgraded their petroleum storage tanks to meet federal Environmental Protection Agency requirements. The certificate holders include retail gas stations, cardlock fueling stations, petroleum distributors, farms, utilities, and equipment sales companies. Most installations included doublewall tanks and piping, spill containment basins, tank gauge systems, sumps and vapor recovery.

WATER

The Environmental Quality Commission certified 69 facilities in 1999 and 2000 that controlled, reduced or prevented water pollution. The Department of Environmental Quality (DEQ) or the federal Environmental Protection Agency (EPA) required the majority of the water pollution control facilities. The state incurred a tax expenditure liability in the amount of $13.4 million upon certification of various systems that included wastewater treatment plants, wash areas with oil/water separators; catch basins, sand traps, containment pads, settling ponds, bio-swales and grassy remediation swales, and clarifiers.

Twenty-six facilities controlled pollution of ground– and surface– water, 25 pretreated industrial waste prior to discharge to a publicly owned treatment works, 12 provided secondary containment, 3 were for Confined Animal Feeding Operations, and 3 were for containment pans and misters used by the dry cleaning industry.

Water Pollution Control Facilities
Tax Credit Eligibility Criteria

All certified Water Pollution Control Facilities met the following eligibility criteria.

1. The facilities prevent, control, or reduce water pollution.

   Water pollution means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

2. The water pollution control:

   Complies with a DEQ, or EPA requirement, where the primary and most important purpose of the facility is water pollution control

   OR

   The exclusive purpose of the water pollution control is to prevent, control or reduce a substantial quantity of pollution.

3. The facility accomplishes the water pollution control through the disposal or elimination of industrial waste, or through the use of treatment works for industrial wastes.

   Industrial waste means any liquid, gaseous, radioactive or solid waste substance or combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

   Waste includes sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances, which will or may cause pollution or tend to cause pollution of any waters of the state.

   Treatment works means any plant or other works used for the purposes of treating, stabilizing, or holding wastes.

WATER: CAFOs

The Commission certified three animal wastewater management systems in 1999 and 2000. All three systems were installed on dairies. The state incurred a tax expenditure liability in the amount of $161 thousand upon certification of these three systems.

A Confined Animal Feeding Operation (CAFO) means the concentrated confined feeding or holding of animals or poultry. This may include horses, cattle, sheep, or swine feeding areas. It may also include dairy confinement areas, slaughterhouses, holding pens at shipping terminals, poultry and egg production facilities, and fur farms, in buildings or in pens. The surface area in these areas has been prepared with concrete, rock or fibrous material to support animals in wet weather or which have wastewater treatment works. The Oregon Department of Agriculture's (ODA) issues permits to these operations to help ensure that animal waste does not impact nearby surface waters or groundwater. The permit authorizes owners/operators to construct, install, modify or operate a wastewater treatment and disposal system.

ODA's program registers CAFOs under a general permit, they inspect the facilities, and work with operators to promote water quality. Voluntary compliance, supported by educational outreach, is the primary means to achieve the water quality goals of the CAFO program. Several agencies and services support this effort:

- The Environmental Protection Agency (EPA) has overall regulatory authority for the CAFO program but delegates to the state under the Clean Water Act;
- ODA administers the program in Oregon using inspections, permit registrations and animal waste management plan reviews;
- The Department of Environmental Quality (DEQ) is the regulatory arm for water quality violations;
- USDA Natural Resources Conservation Service (NRCS) provides technical assistance for resource-based planning;
- The Farm Services Agency (FSA), part of USDA, provides financial incentives to CAFO operators through the Environmental Quality Incentive Program (EQIP).
- The DEQ administers Oregon's Pollution Control Facilities Tax Credit program, which provides incentives for installing animal waste systems;
- Oregon State University's Cooperative Extension Service provides educational opportunities for CAFO operators.

WATER: Containment Pans and Evaporators to the Dry Cleaning Industry

The Commission certified three containment pans and evaporators as pollution control facilities in 1999 and 2000 with the certificates valued at $4,591.

The 1995 legislature required dry cleaners to practice sound environmental management. Two of the waste minimization requirements are eligible for a Pollution Control Facilities Tax Credit. They are:

1. Containment under and around dry cleaning machines to reduce the potential for spills and releases of solvents from etching through the flooring material and causing groundwater contamination; and

2. Management of wastewaters on-site using evaporators or atomizers resulting in no discharges to the sewer system.

Rejections

The Environmental Quality Commission (EQC) rejected certification of twelve facilities because the applicant filed the Pollution Control Facilities Tax Credit application more than two years after construction of the facility was substantially completed. The rejection to approval ratio, when considering the tax expenditure liability, for the report period is 9.79%; the ratio is 3.68% when considering the number of applications.

The EQC must reject an application is the applicant fails to submit the Pollution Control Facilities Tax Credit application within the timing requirements.[13] The Department published the *TOPIC DISCUSSION: Deadline for Filing* in August of 2000 to help applicants understand the DEQ's and the EQC's interpretation of the filing deadline regulations.

Denials

The Environmental Quality Commission (EQC) denied certification of thirteen facilities because they failed to meet the definition of a pollution control facility. Seven facilities did not have a pollution control purpose, three did not accomplish the pollution control by one of the required methods, one lacked the required documentation, one made an insignificant contribution to pollution control, and one had a return on investment that exceeded the maximum percentage.

The denial to approval ratio, when considering the tax expenditure liability, for the report period is 15.73%; the ratio is 3.99% when considering the number of applications.

The EQC does not have the authority to issue certificates unless the facility is constructed in accordance with Department regulations.[14] The EQC must deny certification if the percentage of the facility cost allocable to pollution control is zero percent[15] or if the facility does not meet the definition of a pollution control facility.[16]

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[13] ORS 468.165(6); OAR 340-016-0055
[14] ORS 468.180(1)
[15] ORS 468.190 (2); OAR 340-016-0075
[16] ORS 468.170

Pollution Prevention Tax Credits

ORS 468A.095 - 468A.098

OAR 340-016-0100 - 340-016-0150

> The Legislative Assembly finds that:
>
> (1) It is desirable to determine whether a tax credit program that encourages businesses to utilize technologies and processes that prevent the creation of pollutants should be offered.
>
> (2) Based upon projections by the Department of Environmental Quality, a four-year pilot program should provide a sufficient period of time to determine the desirability of the tax credit without resorting to a program extension.
>
> ORS 468A.095

In 1995, the Legislature established the Pollution Prevention Tax Credit pilot program focusing on eliminating chemicals with significant health effects used by:

- Perchloroethylene based dry cleaners,
- Chromium electroplaters and anodizers, and
- Businesses using targeted halogenated solvents for in-line cleaning or vapor degreasing.

The Pollution Prevention Tax Credit program supports Oregon's goal to eliminate toxic chemicals that are known or suspected carcinogens; or that have other significant health effects.

The 1999 legislature did not choose to extend the sunset date for the Pollution Prevention Tax Credit program. The four–year pilot program expired on December 31, 1999. However, applicants that installed qualified equipment prior to January 1, 2000 were allowed to submit applications through December 31, 2000. The EQC certified four investments in 1999 and nine in 2000. The combined tax expenditure liability was $271,933.

The 1995 legislation allocated a maximum of $5.2 million in certified investments to the pilot program. The EQC certified 35 pollution prevention investments to 32 Oregon taxpayers during the pilot period with a tax expenditure liability of $739,932.

Table 12
Pollution Prevention Certificates Issued
January 1, 1999 through December 31, 2000

Media	Tax Expenditure Liability	Avg.	Minimum	Maximum	# Cert.
Pollution Prevention					
Perchloroethylene	231,561	21,051	3,934	34,400	11
Halogenated Solvents	40,373	20,186	2,873	37,500	2
	$271,933				**13**

The Department of Revenue, in their report dated January 31, 2001, shows the amount of the Pollution Prevention Tax Credits claimed on corporate returns as listed below. The certificates issued to non-corporate entities are not represented in this report. The Department of Revenue does not have the capability to readily identify this tax credit if it is claimed on individual returns because all of the various Oregon tax credits are combined on the Oregon tax return.

Table 13
Corporate Returns
Oregon Department of Revenue
Pollution Prevention Tax Credits

Year	Amount Claimed	Returns with Credits
2000	0	0
1999	3,248	20
1998	11,601	40[17]
1997	6,675	4
1996 & Prior	0	0
Totals	**$21,524**	**64**

Report date 1/31/01

[17] EQC issued 35 certificates in the pilot period. The DEQ was not able to reconcile the number of certificates issued with the number of corporate returns claiming this tax credit in time for this publication.

Reclaimed Plastic Tax Credits

ORS 468.451 - 468.491

OAR 340-017-0010 - 340-017-0055

> In the interest of the public peace, health and safety, it is the policy of the State of Oregon to assist in the prevention, control and reduction of solid waste in this state by providing tax relief to Oregon businesses that make investments in order to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product.
>
> ORS 468.456

The 1989 Legislature established the Reclaimed Plastic Tax Credit program to encourage the recycling of plastic and the manufacture of reclaimed plastic products. Reclaimed plastic includes waste plastic from industrial, commercial and post-consumer sources. The tax credit provides an incentive to this industry to make the infrastructure investments necessary to support increasing Oregon's recycling efforts.

The Reclaimed Plastic Tax Credit program supports Oregon's goal to recover plastic from the waste stream at a rate that is equivalent to the use of similar materials used in packaging and consumer products. Plastic recovery in Oregon will help the state to meet the 50% recovery goal, and the rigid plastic container recycling rate goals.

The Reclaimed Plastic Tax Credit entitles a taxpayer who invests in eligible equipment to take up to 50% of the cost of that equipment as a credit against their Oregon tax liability over five years. The program is limited to preliminary approval of $1.5 million in investments each year. Of that $1.5 million, $500,000 is set aside for investments under $100,000 and there is a limit of $500,000 available to any single application.

The program has been effective for the purpose of influencing an increase in the rate of recovery and recycling of plastic from the waste stream and the use of recycled plastic in the manufacture of new products. Plastic recycling has a high capital investment to income ratio. The Reclaimed Plastic Tax Credit provides an incentive for an Oregon taxpayer to make an investment in plastic recycling equipment. It encourages and rewards the use of recycled rather than virgin plastic in manufactured products where either feed stock is suitable.

When compared to other types of recycling, plastic recycling is an underdeveloped activity in Oregon. Plastic makes up about 8.5% of the solid waste stream amounting to more than 200,000 tons per year. Less than 8% of that amount is collected and recycled. Several reasons contribute to this low plastic recycling rate:

- Selling recycled plastic in a market that is dominated by large virgin resin manufactures limits its marketability.
- It is difficult to collect, process, and recycle.
- Handling costs often exceed income for collectors and processors.

Plastic and plastic products have been identified as potential items for a variety of regulatory applications. Bans, taxes and deposit systems have all been proposed. As an alternative to more restrictive options the Legislature identified tax credits a positive incentive for increased recycling.

An applicant must submit an application for preliminary approval prior to making an investment in equipment. The Environmental Quality Commission certified seven reclaimed plastic facilities in 1999 and nineteen in 2000. The tax expenditure liability of the 26 certified facilities was $678,654.

Table 14
Reclaimed Plastics Tax Credit Certificates Issued
January 1, 1999 through December 31, 2000

Media	Tax Expenditure Liability[18]	Avg.	Minimum	Maximum	# Cert.
Reclaimed Plastic	678,654	26,102	672	244,275	26

The Commission certified 105 reclaimed plastics' investments for a tax expenditure liability amounting to about $2 million issued to 48 Oregon taxpayers since the inception of the program.

The Department of Revenue, in their report dated January 31, 2001, shows the amount of the Reclaimed Plastic Tax Credits claimed on corporate returns as listed below. The majority of Reclaimed Plastic Tax Credit certificates were issued to non-corporate entities not represented in this report. The Department of Revenue does not have the capability to readily identify this tax credit if it is claimed on individual returns because all of the various Oregon tax credits are combined on the Oregon tax return.

[18] The *Tax Expenditure Liability* reported in this document is the liability the state incurs at the time EQC issues a tax credit certificate. The tax expenditure liability is fifty percent of the results obtained by multiplying the certified investment amount by the percentage of the cost allocated to environmental benefits.

Table 15
Corporate Returns
Oregon Department of Revenue
Reclaimed Plastic Tax Credits

Year	Amount Claimed	Returns with Credits
2000	0	0
1999	0	0
1998	0	0
1997	80,129	8
1996 & Prior	88,701	3
Totals	**$168,830**	**11**

Report date 1/31/01

For Further Information

Maggie Vandehey
Tax Credit Manager
(503) 229-6878

or toll-free within Oregon
1-800-452-4011 Ext. 6878
TTY: (503) 229-6993

You can also visit our DEQ website at http://www.deq.state.or.us/

This publication is available in alternative formats upon request.

State of Oregon
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

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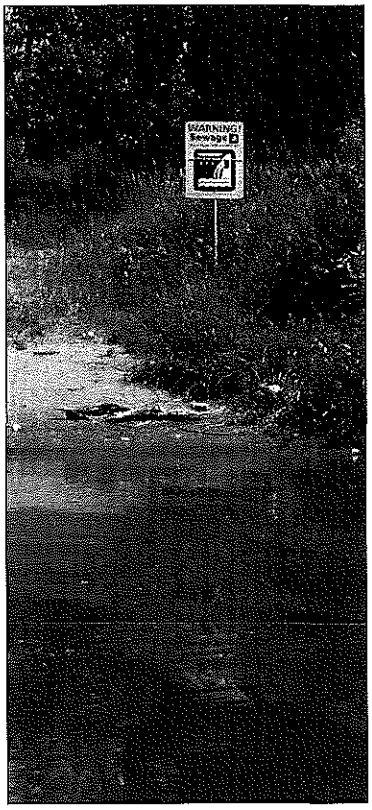
Combined Sewer Overflow Progress Report

Our Mission

Environmental Services serves the Portland community by protecting public health, water quality, and the environment. We protect the quality of surface and ground waters and conduct activities that promote healthy ecosystems in our watersheds. We provide sewage and stormwater collection and treatment services to accommodate Portland's current and future needs.

CSO Program Reaches Halfway Mark

A Message from Dean Marriott



In October 2000, sewage stopped flowing into the Columbia Slough for the first time in a century. Completing our Columbia Slough Combined Sewer Overflow (CSO) Projects virtually eliminated sewer overflows to the Slough. This is a major milestone in Portland's program to control CSOs.

Our Columbia Slough Consolidation Conduit - the Big Pipe - went into service in October, two months before the deadline imposed by the State of Oregon. The conduit is now intercepting an estimated 350 million gallons annually of combined sewage that used to flow into the Slough during rainy weather. This will reduce Columbia Slough overflows to once every five years in the winter and once every ten years in the summer.

When we began this program almost ten years ago, our annual CSO volume was estimated at six billion gallons. To date, our efforts have reduced that annual volume by nearly 53 percent. That has dramatically reduced the amount of bacteria going into the Columbia Slough and Willamette River as well as the metals, suspended solids, chemicals and other pollutants contained in stormwater runoff.

As we neared completion of our CSO obligations in the Columbia Slough watershed in the year 2000, we began to shift more attention to the control of Willamette River CSOs. By the end of the year, we were well into the planning and design of several large CSO projects on the west side of the Willamette River, which must be finished by 2006. And we are already looking ahead to starting construction on a similar set of projects on the east side of the river in 2006. When we finish the program in 2011, we will have achieved a CSO control level in excess of 96 percent.

Dean C Marriott

Director, Environmental Services

History

Portland's sewer system developed over the past century much like those all around the country. The City collected wastewater from homes and businesses and piped it directly to the Willamette River. Following World War II, Portland built its first sewage treatment plant and installed large pipes to intercept the discharges and carry them to the plant for treatment. As in hundreds of other cities, these pipes carry sewage from homes and businesses and stormwater runoff from streets and other hard surfaces. When it rains, these "combined" sewers fill with stormwater and overflow into the Willamette River.

In the 1970's, Portland took the first steps toward reducing combined sewer overflows (CSOs). At its worst, the system dumped an estimated 10 billion gallons of combined sewage into the river and slough every year. We have worked aggressively to reduce this problem and we have made solid progress.

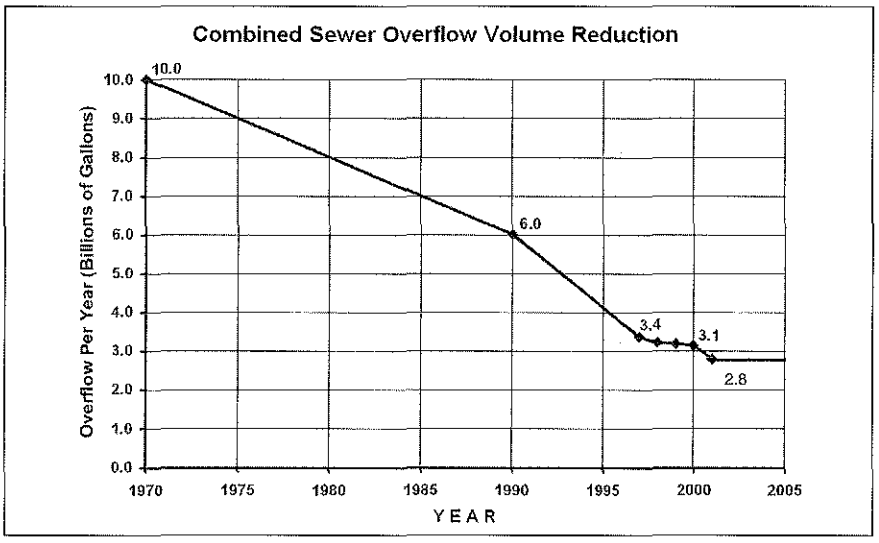
That progress is possible because of the hard work of many dedicated Environmental Services employees, volunteer citizen advisory panels, the Portland City Council, and through the dollars committed by our sewer ratepayers. The cost of a typical residential sewer bill has increased from $14 a month in 1992 to roughly $34 a month today. The cost of dealing with our combined sewer legacy will approach $1 billion by 2011. The typical monthly residential sewer bill will be $65 by then.

We still have much work to do, but we have made a tremendous amount of progress. Environmental Services will continue to work hard to protect our rivers and streams, and to give our ratepayers a solid return on the money they have invested in this effort.

The Combined Sewer Overflow Problem

In 1991, Portland and the Oregon Department of Environmental Quality (DEQ) signed a Stipulation and Final Order (SFO) directing Portland to remove 99 percent of its CSOs by 2011. When the agreement was signed, the City knew relatively little about the quantity of CSOs or their impact on receiving waters. Portland began a facilities planning process in that year.

In 1994, new information was received and the order was amended. The Amended Stipulation and Final Order (ASFO) required control of Columbia Slough overflows by December 2000, and significant reduction of Willamette River overflows by 2011. The ASFO calls for a total CSO control of 96 percent.



A summary of how the City

Cornerstone Projects

The Cornerstone Projects reduce CSOs by keep stormwater runoff out of the combined sewer system. They are a cost-effective solution to the problem. To date, our projects have diverted about 1.8 million gallons of stormwater annually from the combined sewer system.

Cornerstone Succes

1. **Sewer Separation Program**
   - 7 of 9 Sub-basins Separated
2. **Sump Installation Program**
   - 2,860 Sumps Installed (in the C
3. **Downspout Disconnection Pro**
   - nearly 24,000 downspouts disc
4. **Stream Diversion Projects**
   - 2 streams

Cornerstone Projects allow construction of s less expensive pipes and treatment facilities, a hold down total program costs. The total budg these projects is $165 million. Environmental S has spent $85 million to date on four Cornerst Project areas.

1. Sewer Separation

In some Portland neighborhoods, Environmer Services installed new pipes to separate storm from sewage and remove stormwater runoff fr the combined sewer system. Sewer separation projects are complete in some areas of north a northwest Portland.

Environmental Services is studying the poss of additional separation projects in two areas Southeast Portland. These sewer improvemen help prevent basement flooding problems, an help reduce combined sewer overflows.

2. Sump Installation

Environmental Services has installed thousan sumps in North/Northeast Portland. Sumps c street runoff and allow stormwater to seep int ground, rather than flow into the combined s system and contribute to overflows. More tha sumps have been installed in areas served by bined sewers. Sump installation projects will b stantially completed by the end of 2001.

3. Downspout Disconnection

The Downspout Disconnection Program gives homeowners, neighborhood associations, and community groups the chance to work as partners with Environmental Services to help reduce combined

sewer overflows. Residents of selected east Portland neighborhoods disconnect their downspouts from the combined sewer system and allow their roof water to drain to their gardens and lawns.

Nearly 24,000 residential downspouts have been disconnected through the Program, removing more than 20 million gallons of stormwater per year from the combined sewer system.

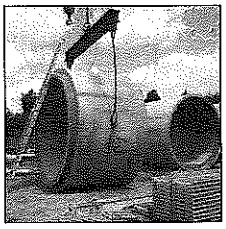
4. Stream Diversion

Environmental Services is building new pipelines to divert Tanner Creek and smaller West Hills streams from the combined sewer system. These creeks were piped into the sewer system decades ago. Today, this relatively clean runoff contributes to combined sewer overflows. Work began in October 2000 on a section of the Tanner Creek sewer on NW 11th Avenue between NW Lovejoy and Naito Parkway.

Columbia Slough Projects

Environmental Services is nearing completion on a set of projects in north Portland to reduce combined sewer overflows to the Columbia Slough by more than 99 percent. The total estimated cost of the Columbia Slough projects is $195 million. Environmental Services has spent approximately $172 million to date.

The Big Pipe



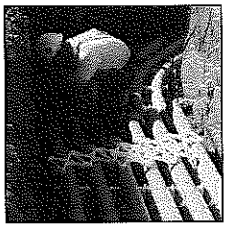
Construction on the Columbia Slough Consolidation Conduit, known as the Big Pipe, was finished in October 2000. It took Environmental Services three years to build the 3.5-mile, 12-foot diameter, reinforced concrete pipeline. In October, the Big Pipe began collecting and transporting combined sewage to the Columbia Boulevard Wastewater Treatment Plant. The $70 million conduit removes 99 percent of the combined sewage that once overflowed into the Columbia Slough when it rains.

Columbia Boulevard Treatment Plant Additions

In conjunction with Big Pipe construction, Environmental Services has completed construction of an influent pump station to draw sewage from the Big Pipe for treatment. In addition, Environmental Services constructed a new dry weather facility and modified existing structures for wet weather treatment at the Columbia Boulevard Wastewater Treatment Plant. These modifications will accommodate increased flow from the Big Pipe. Construction has also been completed on a second outfall pipe to transport the treated wastewater to the Columbia River. These projects were completed before the December 1, 2000 ASFO deadline for the control of CSOs to the Columbia Slough.

Willamette River Projects

Over the next six years, Environmental Services will build large pipes and pump stations along the west side of the Willamette River. The pipes will carry combined sewer overflows to the Columbia Boulevard Wastewater Treatment Plant. This will reduce overflows to the Willamette River by about 94%. CSOs will then occur only four or five times a year instead of almost every time it rains. The size and cost of these facilities depends on how much stormwater can be removed from the combined system.



Westside Stream Diversion Project

Most of the stormwater runoff in Portland's southwest hills flows into the combined sewer system through a network of inlets. The Stream Diversion Project will remove stormwater from the combined sewer system in the west hills.

In the year 2000, Environmental Services gathered data on terrain and flow volumes to help develop project options. Six to eight potential stream diversion projects in the west hills will be completed. Work will begin in 2001.

Southwest Parallel Interceptor

In 2000, Environmental Services completed most of the design work on the Southwest Parallel Interceptor (SWPI) Project. The SWPI is one of several large projects we will build by 2006 to control combined sewer overflows (CSOs) to the Willamette River.

The interceptor will be a pipe three to seven feet in diameter that will run parallel to the river and collect westside CSOs. The current interceptor pipe, built in the 1950's, is too small to handle both wastewater and storm flows. The new interceptor will add capacity so the system will be able to handle most combined flows from the west side of the Willamette and transport them to the Columbia Boulevard Wastewater Treatment Plant. Design of the new pipeline will be finished in early 2001. Construction will start in 2001 and be finished by 2003.

continued on the back

Ankeny Pump Station

The City will rebuild this old pump station that sits under the Burnside Bridge on the west side of the river. The existing Ankeny Pump Station is too small to house the new equipment needed. It also needs to be improved to meet today's earthquake, electrical and safety standards.

Westside CSO Tunnel

The City will bore a large tunnel to build a new pipeline from the Marquam Bridge to the northwest industrial area. This pipe will carry combined sewer overflows to the new northwest CSO pump station.

Northwest CSO Pump Station

A new pump station in the northwest industrial area will pump combined sewage to the treatment plant through the new northwest CSO force main.

Northwest CSO Force Main

The City will build a new sewer line to convey flow from the new northwest CSO pump station across the river to the existing Portsmouth Tunnel.

Community Enhancement

Environmental Services is working to minimize the impact of large CSO construction projects on communities. We are committed to enhancing areas impacted by construction. As we design and build these projects, we are asking impacted communities to work with us to develop opportunities to improve neighborhood livability.

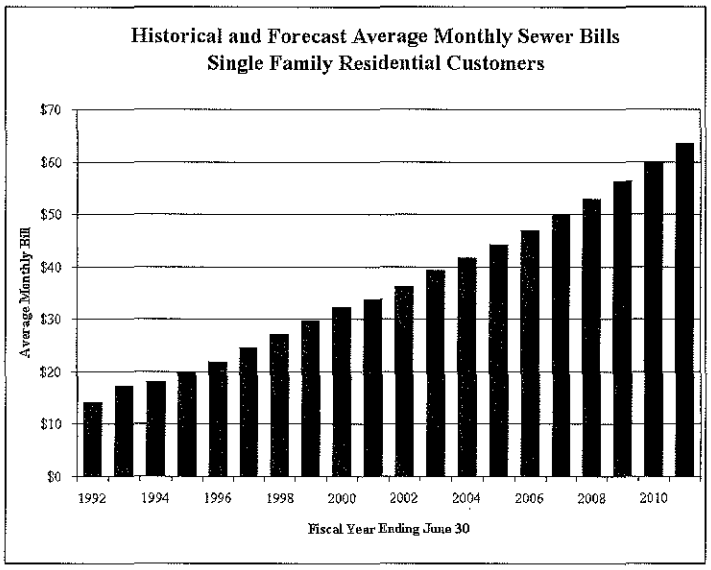
The Clean River Plan

The Clean River Plan is a comprehensive effort to clean up the Willamette River, create healthier tributaries and watersheds, improve habitat for endangered fish and create a livable, sustainable community. Reducing combined sewer overflows (CSOs) is a key part of the Clean River Plan. The Plan outlines activities in all Portland watersheds to promote clean rivers and streams, including:

- expanding Portland's program to disconnect residential downspouts from the combined sewer system,
- encouraging commercial landowners to install swales, vegetated ponds, and other facilities to store and filter stormwater runoff,
- planting more street and landscape trees to absorb rainfall, filter stormwater runoff, and shade streams, and
- offering incentives to homeowners to reduce stormwater runoff from private property.

Paying For the Program

Environmental Services will have spent an estimated $1 billion dollars by the time the CSO Program is finished in 2011. Sewer rates pay for the program. Rates are increasing gradually. The average residential monthly sewer bill in 2000 was $33. The average bill is expected to be $65 a month by 2011.



ENVIRONMENTAL SERVICES
CITY OF PORTLAND
CLEAN RIVER WORKS

Dan Saltzman, Commissioner

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Approved_____
Approved with Corrections____

Minutes are not final until approved by the EQC

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

May 3-4, 2001
Regular Meeting

On May 3 and 4, 2001, the Environmental Quality Commission (EQC) held a regular meeting at the Department of Environmental Quality, Room 3A, 811 SW Sixth Avenue, Portland, Oregon. The following Environmental Quality Commission members were present:

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

Also present were Larry Knudsen and Larry Edelman, Oregon Department of Justice (DOJ); Stephanie Hallock, Director, Department of Environmental Quality (DEQ); and other DEQ staff.

Note: Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director.

Chair Eden called the meeting to order at 1:30 p.m. on May 3, 2001. Agenda items were taken in the following order.

A. Action Item: Contested Case No. WMC/SW-HQ-98-143 regarding Northwest Plastics Recovery, Inc.

Larry Edelman, DOJ, presented the appeal from Northwest Plastics Recovery, Inc., of a March 3, 2000 Hearing Order finding the company liable for a civil penalty of $800 for failing to submit a 1997 Oregon Material Recovery Survey to DEQ. Larry Knudsen, DOJ, asked Commissioners to declare any ex parte contacts or conflicts of interest regarding this case. Commissioners declared none.

Eric Norton, representing Northwest Plastics Recovery, Inc., summarized exceptions to findings of the Hearing Order, including: (a) Northwest Plastics Recovery violated the requirement to submit the 1997 Survey, and (b) Northwest Plastics Recovery was liable for a civil penalty. Mr. Norton requested the Commission reverse the Order. Mr. Edelman, representing DEQ, summarized findings of the Order and requested the Commission uphold the Order.

Commissioner Bennett asked Mr. Norton about the burden on his business of compliance with DEQ's survey reporting requirement. Mr. Norton explained the process he would go through to collect information in his business operation for the survey, and the time associated with collecting and reporting the information to DEQ. Commissioner Reeve commented that this was a straightforward legal issue and he did not see much room for the Commission to take action other than uphold the Order. Commissioner Reeve added that because DEQ and Mr. Norton share many of the same goals related to recycling, it was unfortunate that significant resources were spent in opposition in this situation. Chair Eden commented that she shared Commissioner Reeve's disappointment, but agreed that this was a straightforward legal issue.

Commissioner Reeve moved to uphold the Hearing Order. Commissioner Malarkey seconded the motion and it carried with five "yes" votes. The Commission directed Mr. Knudsen to prepare the Order for the Director to sign on behalf of the Commission, and to include notice of appeal rights as requested by Mr. Norton. Director Hallock

commented that DEQ would review what was learned from this contested case and consider opportunities for rulemaking to improve current agency processes. Commissioner Van Vliet asked what the penalties would be if Mr. Norton refused to comply with the Order. Mr. Knudsen summarized enforcement procedures for pursuing collection of the penalty in this case.

B. Action Item: Contested Case No. WMC/SW-NWR-98-060 regarding Pacific Western Company

Larry Edelman, DOJ, presented the appeal from Pacific Western Company of a March 29, 2000 Hearing Order finding the company liable for a civil penalty of $24,622 for establishing, maintaining and operating a solid waste disposal site without a permit. Larry Knudsen, DOJ, asked Commissioners to declare any ex parte contacts or conflicts of interest regarding this case. Commissioners declared none.

Bill Cox, Attorney for Pacific Western Company, present with William Patton, President of Pacific Western Company, summarized exceptions to findings of the Hearing Order, including: (a) asphalt roofing is solid waste, (b) the company was operating a solid waste disposal site without a permit, and (c) the company was liable for a civil penalty including economic benefits. Mr. Cox requested the Commission reverse the Order. Mr. Edelman, representing DEQ, summarized findings of the Order and requested the Commission uphold the Order.

Commissioner Van Vliet asked what legal protection Mr. Patton had against someone giving him asbestos material without his knowledge. Mr. Edelman explained that Mr. Patton agreed to accept roofing material, which often contains asbestos, as shown in the Hearing record. Commissioner Bennett asked Mr. Patton about the expected timeline for putting the material on his site to use. Mr. Patton responded that it could be used, processed or disposed of in six months or sooner, but processing would be expensive. Commissioner Malarkey asked why it took the company over three years to sample the smaller pile of material, why the other material pile was not sampled, and why the company did not apply for a solid waste disposal permit. Mr. Patton responded that the company did not apply for a permit because it did not believe it was a solid waste disposal facility. He added that DEQ suggested an independent agency test the material, but testing would have been a significant cost. Material testing by Pacific Western Company was not feasible because it required spreading the material over a larger amount of area than was available at the site. Commissioner Bennett asked whether the amount of time the untested material was on the site was the basis for its classification as solid waste. Mr. Edelman answered that time was not the basis and the material was classified as solid waste until beneficial reuse. He added that if the site was permitted as a disposal site, an operation plan would have required sampling of the material. Commissioner Reeve asked how the penalty and economic benefit assessment were calculated, and the Commission discussed the calculation process with Mr. Edelman and Mr. Knudsen. Chair Eden asked Mr. Cox whether the company questioned DEQ authority to require testing of the material. Mr. Cox answered that the company did question this. Mr. Edelman responded that DEQ authority includes determination of the existence of a solid waste disposal site unless testing shows no environmental or public health threat. Commissioner Van Vliet asked what it would cost Mr. Patton to dispose of the material on his site. Mr. Cox answered that it would cost approximately $150,000 to remove the material using Metro.

Commissioner Reeve stated his agreement with the Hearings Officer decision regarding the legal issues of this case, but added his concern with the economic benefit calculation and assessment of a penalty to resolve the problem at this stage. Commissioner Reeve moved the Commission uphold the Order and reduce the amount of the civil penalty from $24,622 to $9,600 by eliminating the economic benefit assessment of $15,022, contingent upon correct disposal of the material by Pacific Western Company within 60 days. Commissioner Malarkey seconded the motion and it passed with four "yes" votes. Commissioner Bennett voted no. The Commission directed Mr. Knudsen to prepare the Order for the Director to sign on behalf of the Commission.

C. Informational Item: Potential Legislation Regarding City of Portland Clean River Plan

Director Hallock explained that DEQ has worked with the City of Portland for many years to address Willamette River water quality issues. Currently, the City is required by an Order from the Commission to nearly eliminate combined sewer overflow (CSO) to the Willamette River by 2011. The City's recently released Clean River Plan (CRP) proposes completion of the CSO project by 2020. DEQ has raised questions and concerns about extension of the CSO project deadline. This informational item was planned to provide an opportunity for the City and Department to discuss the CRP with the Commission, and to provide Representative Randy Leonard and Nina Be Executive Director of Northwest Environmental Advocates (NEA), an opportunity to comment.

Dean Marriott, Director of the City of Portland Bureau of Environmental Services, explained the history and status of the CSO project, summarized the CRP and asked for Commission endorsement of independent third-party review of the CRP. Commissioner Van Vliet asked how the City is financing the CSO project. Mr. Marriott answered that the City is selling 20-year revenue bonds as part of a $4 million capital program. Commissioner Van Vliet asked why the City was not asking for legislative consideration of lottery bonding to support the CRP. Mr. Marriott responded that the City has requested federal funding, but is unsure whether adequate funds will be provided. Commissioner Bennett asked whether the CRP took an approach that extended beyond political boundaries to watershed boundaries. Mr. Marriott answered that the CRP included projects focused on whole-watershed restoration. Commissioner Malarkey asked about the City's coordination with local watershed councils. Mr. Marriott responded that the City is in close coordination with and provides funding to many urban watershed councils. Commissioner Malarkey encouraged the City to continue placing high priority on partnering with councils.

Representative Leonard shared his belief that elimination of CSO is critical to restoring Willamette River water quality and described his support for proposed legislation to reduce CSO. Although he understood DEQ's concern about extension of the CSO project deadline, he supported the CRP as a plan to achieve greater watershed improvements over a longer time period. He encouraged the Commission to endorse independent review of the costs and benefits associated with the CRP. Commissioner Van Vliet asked why there was no legislative interest in a bond measure to pay for implementing CSO projects in major cities statewide. Representative Leonard responded that current legislative priorities for using the state's bonding capacity included K-12 education, infrastructure needs in Eastern Oregon, and baseball stadium funding.

Ms. Bell encouraged the Commission to support DEQ in directing the City to halt attempts to postpone implementation of the CSO project. Ms. Bell presented several reasons for NEA opposition to the City's proposal to postpone CSO elimination as proposed by the CRP. Commissioner Reeve, Ms. Bell and Jan Betz, attorney for the City of Portland, discussed the legal process associated with challenging the agreement between the City and Commission.

Director Hallock and Neil Mullane, Acting Deputy Director, briefly summarized Department questions and concerns with extension of the CSO project deadline as proposed by the CRP. Commissioner Reeve commented that he did not see the benefit of independent third-party review of the general ecological value of the CRP. If questions about technical aspects of the report existed, independent review could be used to resolve these. Director Hallock commented that while the City and Department do have minor disagreements about some technical aspects, endorsement of the CRP comes down to consideration of the best approach to addressing water quality problems. Director Hallock asked that if the Commission endorses proceeding with independent panel review, Commissioners provide direction for a valuable panel product and panel membership.

Chair Eden stated that while she supported the restoration projects included in the CRP, she was concerned with the City's proposal to extend the CSO project deadline and did not support the City's request for Commission reconsideration of the current Order. Commissioner Bennett suggested the possibility of financing the CSO project with a tax to provide an incentive to taxpayers for environmental protection. Commissioner Van Vliet and Commissioner Reeve asked for more time for Commission discussion of the City's request. Chair Eden added continuation of Commission discussion to the May 4 meeting agenda, scheduled for approximately 1:00 p.m.

Chair Eden adjourned the meeting at approximately 5:30 p.m.

On May 4, 2001, the Commission met in executive session at 8:00 a.m. to consult with legal counsel regarding rights and legal duties relating to certain pending litigation including Hawes v. State of Oregon, Northwest Environmental Advocates v. EPA and NMFS and Tualatin River Keepers v. Browner, and potential litigation relating to certain general permits issued by the Department.

On May 4, 2001, Chair Eden called the meeting to order at 8:30 a.m.

D. Approval of Minutes

January 11-12, 2001 Minutes: Commissioner Reeve proposed amendments to draft minutes. On page 2, Item B, "designated" was changed to "delegated," and "The Commission considered delegating" replaced "Commission considered deferring." On page 3, Item C, "Establish" was changed to "Established." On page 5, Item I, "EQP" was changed to "EQC." Commissioner Van Vliet moved the Commission approve minutes as amended for January 11-12, 2001. Commissioner Bennett seconded the motion and it passed with five "yes" votes.

March 8-9, 2001 Minutes: Commissioner Reeve proposed amendments to draft minutes. On page 1, Item A, "the" was deleted. On page 4, Item B, "they're" was changed to "it is" and "DEQ" was added. On page 6, Item F, "full" was changed to "fullest" and "in" was deleted. On page 7, Item G, "motioned that" was changed to "moved" and this change was made throughout the minutes. On page 8, Item K, "Malarkey" was added. On page 9, Item L, "this" w: changed to "these." Commissioner Van Vliet moved the Commission approve minutes as amended for March 8-9, 2001. Commissioner Bennett seconded the motion and it passed with five "yes" votes.

March 30, 2001 Minutes:
Commissioner Reeve proposed amendments to draft minutes. On page 2, Item A, "apart" was changed to "a part" and "reeve" was changed to "Reeve." Commissioner Van Vliet moved the Commission approve minutes as amended for March 30, 2001. Commissioner Bennett seconded the motion and it passed with four "yes" votes. Commissioner Malarkey abstained from voting because she was not present at the March 30, 2001, meeting.

E. Commissioners' Reports

Commissioners had no reports.

F. Director's Report

Director Hallock gave the Director's Report and led Commission discussion of future interaction with other state Commissions and Boards. DEQ was in the process of planning a potential joint Commission meeting with the Oregon Economic and Community Development Commission for December 2001. Commissioners identified the Oregon Water Resources Commission and Land Conservation and Development Commission as priority joint meetings for 2002. The Oregon Board of Education was identified as a potential priority meeting for 2003.

G. Rule Adoption: Revisions to Point Source Air Management Rules

Andy Ginsburg, Air Quality Division Administrator, commended staff for extensive work with stakeholders and the public in developing proposed rules, which streamline current air quality rules while maintaining the same level of environmental protection. Dave Kauth, Air Quality staff, presented proposed rule amendments and explained changes DEQ made throughout the public involvement process.

Commissioner Van Vliet asked whether DEQ established a procedure to evaluate the effectiveness of the proposed rule changes. Mr. Ginsburg responded that DEQ plans to monitor the effectiveness of the rule changes in enabling staff to process and manage permits more quickly and efficiently. Commissioner Van Vliet asked whether a stakeholder education program was part of the proposed rules. Mr. Kauth answered that DEQ plans training sessions for staff and workshops for stakeholders and the public on the program changes. The Commission discussed with Mr. Ginsburg the implementation of proposed rules in the Medford/Ashland Air Quality maintenance area, which experiences heavy air inversions, resulting in a more complex permitting situation than in other areas of the state. Commissioner Van Vliet noted that while remaining revenue neutral, proposed rules simplify and improve the structure for air quality permitting fees. Editorial changes to the proposed rules were made part of the record as Addendum One and Addendum Two to the staff report.

Commissioner Van Vliet moved the Commission adopt the proposed rules including Addendum One and Addendum Two regarding the Air Quality permitting program as an amendment to the State Implementation Plan. Commissioner Reeve seconded the motion and it carried with five "yes" votes. Mr. Knudsen noted that the Commission received a request for public comment on proposed rules, and that the Commission was aware that public testimony could not be taken during this agenda item because the public comment period had closed. Mr. Ginsburg and Director Hallock recognized key staff for the exceptional work that resulted in this rulemaking. Chair Eden thanked DEQ staff on behalf of the Commission.

H. Informational Item: Lane Regional Air Pollution Authority

Andy Ginsburg, Air Quality Division Administrator, introduced Brian Jennison, Director of the Lane Regional Air Pollution Authority (LRAPA). Mr. Jennison presented the roles and responsibilities of LRAPA in relation to DEQ. Mr. Ginsburg described coordination between LRAPA and DEQ regarding air quality rulemaking and program implementation. The Commission discussed the partnership between LRAPA and DEQ and thanked Mr. Jennison for his presentation.

I. Discussion Item: Development of Performance Appraisal Process for Director

Director Hallock described DEQ performance evaluation processes as a foundation for Commission discussion of a

performance appraisal process for the Director. Larry Knudsen, DOJ, explained that while the Commission has significant flexibility in designing an appraisal process, any appraisal criteria or standards must be developed and adopted in a public forum. Appraisal of the Director using the criteria could occur in executive session. The Commission discussed ideas and examples for performance appraisal, and asked staff to solicit models from the Governor's Office and other Commissions and Boards for consideration at a future meeting. The Commission asked Director Hallock to provide ideas for how she would like her performance to be evaluated. The Commission and Director agreed to strive for finalization of an appraisal process by late 2001 or early 2002. Chair Eden suggested that when the Commission considers additional information, it appoint an executive committee of two or three Commissioners to evaluate the information and report back to the Commission.

Public Comment

At approximately 11:30 AM, Chair Eden asked whether anyone wished to provide public comment. Dr. Robert Palzer, who signed up to provide public comment, stated that he chose not to provide comment to the Commission.

J. Informational Item: Oregon Watershed Enhancement Board Strategic Plan

This item was postponed because Geoff Huntington, Director of the Oregon Watershed Enhancement Board, was unable to attend.

K. Informational Item: Enforcement Issue Follow-up to November 2000 EQC/DEQ Summit

Neil Mullane, Acting Deputy Director, explained that the need for the Commission and Department to work jointly on addressing enforcement issues arose in the November 2000 EQC/DEQ Summit. Anne Price, Office of Compliance and Enforcement Administrator, presented agency compliance and enforcement priorities and potential improvements. The presentation covered many aspects of enforcement, including technical assistance, information and data management, agency resource allocation, regional coordination, equity and fairness in enforcement, and managing difficult cases. The Commission discussed with Mr. Mullane and Ms. Price opportunities for administrative, regulatory and legislative improvements to the enforcement program.

Commissioner Van Vliet and Chair Eden expressed concern that some portions of the penalty calculation matrix could be interpreted as subjective. Director Hallock suggested a future presentation on the process for penalty calculation to describe in detail DEQ efforts to be fair and objective in enforcement. Chair Eden asked for a follow-up presentation in approximately six months to discuss progress on compliance and enforcement initiatives and improvements. Director Hallock noted specific issues for future discussion, including equity in enforcement, taking quick action and ticketing in the field, reducing the number of contested cases that reach the Commission, and calculation of penalties. Chair Eden thanked Ms. Price for her presentation.

Added Discussion Item: City of Portland Clean River Plan

The Commission continued discussion on the City of Portland Clean River Plan (CRP). Chair Eden asked DEQ to continue its presentation and City representatives and audience attendees to respond. Director Hallock summarized some Department concerns with the CRP, including potential impacts of delaying the deadline for addressing combined sewer overflow (CSO) from 2011 to 2020.

Commissioner Reeve invited City of Portland Commissioner Dan Saltzman to comment. Commissioner Saltzman stated the unanimous support of the City Council for the CRP, and asked the Commission to endorse an independent panel evaluation of the plan. Chair Eden asked whether the parties involved had an agreement to dedicate resources toward elements of the CRP while continuing CSO project implementation. Commissioner Saltzman answered that agreement had been reached, but the City believed the CRP to be a better approach to improving water quality. Commissioner Van Vliet expressed concerns about endorsing an evaluation of the CRP by a panel financially supported by the City, and creating public perception that the Commission was interested in considering changes to the current Order. Commissioner Van Vliet noted that the primary question was not the ecological value of the CRP, but how the City would pay for the changes required by the Order. Commissioner Saltzman responded that he did not perceive a public perception problem, and that the City would be willing to share costs of a panel to avoid a potential problem if necessary.

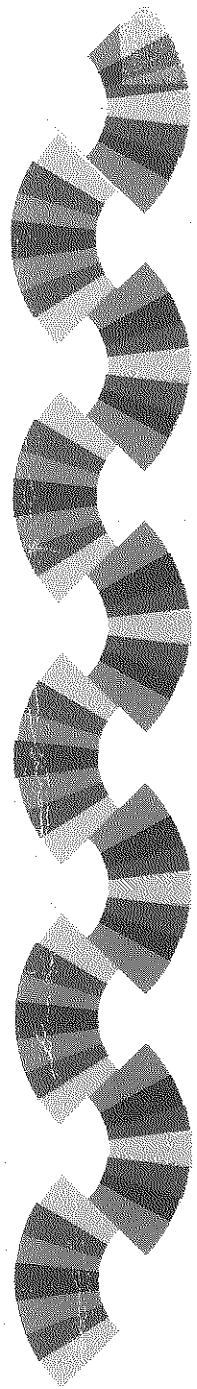
Commissioner Reeve asked Dean Marriott, City of Portland Bureau of Environmental Services Director, about the three action alternatives in the CRP, noting that an independent evaluation would probably support the third alternative, which proposes the most environmental improvements by 2011. Commissioner Reeve asked whether it

was the City's current position that financial constraints made the third option impracticable. Mr. Marriott responded that he believed the CRP, with extension of the CSO project deadline, was a better approach to restoration because of public education and involvement opportunities related to the proposed on the ground watershed projects. Commissioner Reeve commented that while public education and involvement would continue to be a pa of restoration, he remained uncertain about the value of an independent review of the CRP.

Commissioner Malarkey commented that watershed councils were engaged in the type of restoration work the CRP proposed, and encouraged the City to partner with councils as much as possible. Commissioner Malarkey added that the EQC and DEQ must adhere to statutory responsibilities to protect and maintain water quality standards. Commissioner Reeve suggested that the City could initiate a panel to examine creative financing options for doing CRP projects while continuing CSO project implementation.

Chair Eden summarized the discussion, affirmed that the Commission did not support extension of the CSO project deadline, and encouraged the City to explore funding options to comply with the current order and implement parts of the CRP. Commissioners clarified that while DEQ would not have a role in a panel designed to explore financing, DEQ would be responsible for working with City on elements of the CRP to ensure projects are based on reliable science and monitoring information.

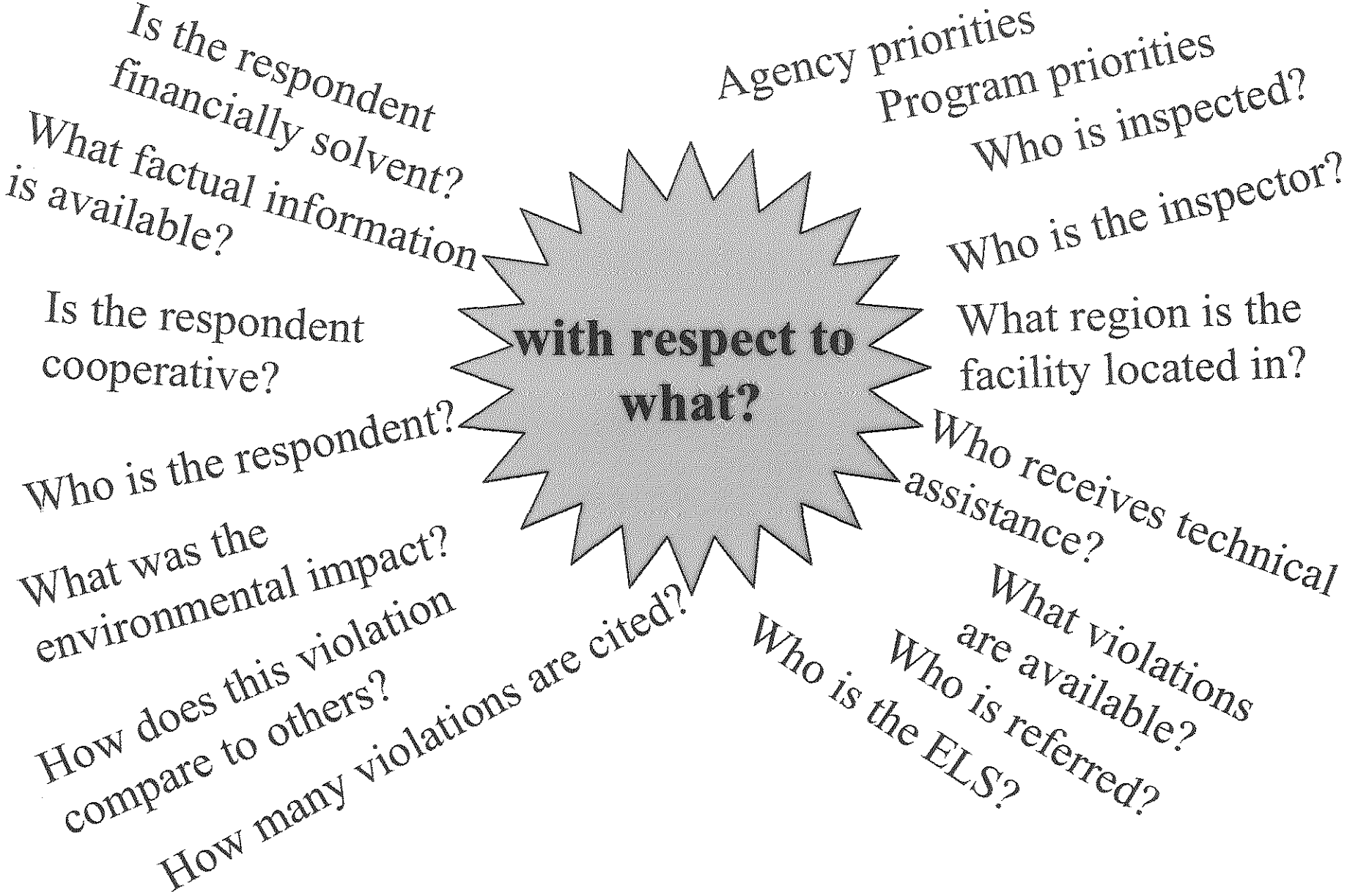
There being no further business, Chair Eden adjourned the meeting at approximately 2:30 p.m.

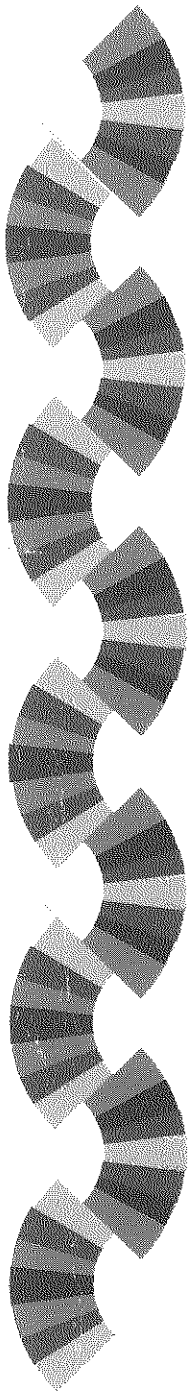


What are we talking about today?

- Fairness/Equity in Compliance and Enforcement -- What is it?
- Introduction to the enforcement process -- The Basics
- Potential Process Improvements -- Early Thoughts
- Compliance and Enforcement Priorities -- What's the Link?
- Penalty Calculation process -- Built in Equity?

Fairness and Equity in Compliance and Enforcement --





Consistency Tools:

- Internal Agency Process Guidance
- Program Rules
- Division 12 - Enforcement Rules
- Enforcement Guidance
- Staff Training
- Document Templates

Compliance Tools:

Regional

- Technical Assistance Visits
- Complaint visits
- Inspections visits
- Notices of Non-Compliance
- Civil Tickets (not currently used)

OCE

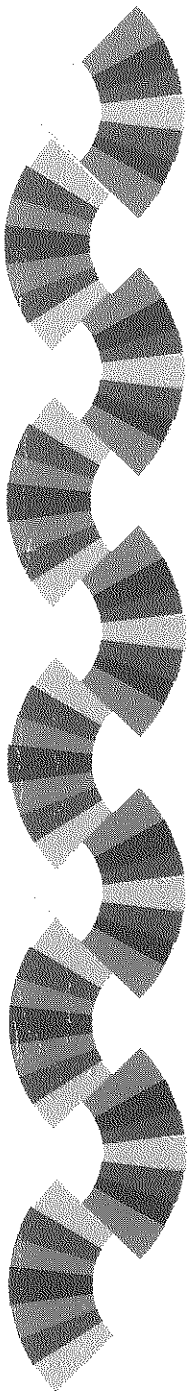
- Civil penalty orders
- Notices of Permit Violation
- Mutual Agreements and Orders
- Supplemental Environmental Projects
- Civil Injunctions (not frequently used)
- Criminal Actions

Enforcement Process:

Flow Diagram Overview

In Calendar Year 2000 --

- Technical assistance visits -- inconsistent tracking across the agency, e.g., in HW 600
- Inspections -- agency-wide approx. 2700, e.g., in HW 275
- NONs -- 1460,
  approx. 1/2 of the inspections receive an NON
- NONs referred w/ formal enforcement action taken -- 204
- Penalties assessed -- nearly $1.4 million
- Collection rate -- historically, approx. 1/3 of amt. assessed

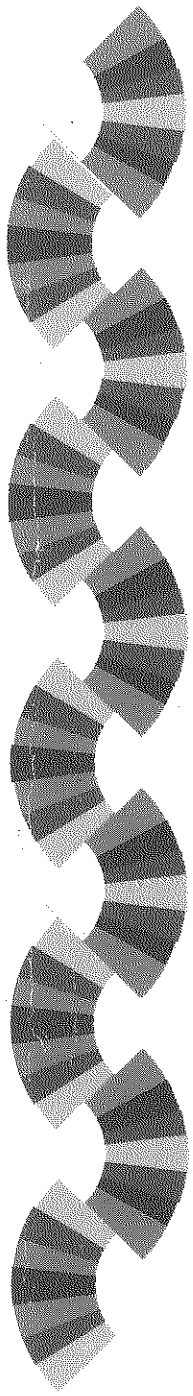


Compliance and Enforcement Priorities:

- Agency compliance priorities set in program strategic and operational plans
- No independent substantive priorities in enforcement
- First come, first served
- Enforcement process priorities:
  - Timeliness from referral to CPO issuance
  - Less so:
    - Case movement
    - Collections

Enforcement Resources:

- 10 staff in OCE: 9 ELS, 1 Senior Enforcement Advisor
- Average open case load: Approx. 35 cases
- Sample ELS case distribution by stage:
  - 4 - File review and drafting
  - 4 - In review
  - 13 - Informal meeting/settlement
  - 2 - Hearing/post-hearing settlement
  - 2 - Contested case/appeal
  - 10 - Payment/collections



Future Growth Areas:

Enforcement --

- Tanks
- Cleanup
- Underground injection control
- Stormwater

Compliance --

- Link priorities of programs to enforcement priorities
- Effortless compliance as the goal
- Broader use of enforcement tools

REGIONAL OFFICE

OFFICE OF COMPLIANCE AND ENFORCEMENT (OCE)

INSPECTION/ COMPLAINT

NON – Informal Enforcement

★ Refer to Enforcement?

YES

Referral Drafted

NO

OCE Administrator Assigns

★ **ELS Drafts Notice and Civil Penalty Order**

Review/concurrence loops with the regions and w/in OCE

Civil penalty issued

Answer Received?

YES

INFORMAL DISCUSSION

NO

Issue default order

Settlement?

YES

- Penalty Due
- Prepare Payment Plan
- Ability to Pay Process

NO

Hearing held and decided

Appeal?

YES

EQC Contested Case

NO

PAID?

YES

CASE CLOSED

NO

- File Lien
- Refer to Dept. of Revenue

PAID?

YES

NO

Refer to Private Collection Service

REGIONAL OFFICE

OFFICE OF COMPLIANCE AND ENFORCEMENT (OCE)

INSPECTION/ COMPLAINT

- Match to agency priorities.
- Clarify post-inspection process with facility/ individual.
- Provide evidence collection training to inspectors

NON – Informal Enforcement

- Clarify Enforcement Guidance
- Ensure use of Enforcement Guidance
- Standardize referral language in NON
- Track NONs

★ Refer to Enforcement?

YES → Referral Drafted

NO

- Clarify referral needs to get facts needed to support case development.
- Ensure use of Enforcement Guidance

- Speed up referral assignment to ELS.
- Provide case development assistance at later stage

OCE Administrator Assigns

★ **ELS Drafts Notice and Civil Penalty Order**

- Meet weekly with staff to review case load.
- Provide case development support.
- Improve the draft review, approval and signature process.
- Improve the templates.
- Address consistency and equity issues in the penalty calculation process.

Civil penalty issued

Answer Received?

NO → **Issue default order**

YES → INFORMAL DISCUSSION

- Increase resources to manage this portion of the enforcement cycle.
- Improve database to monitor this flow.

Settlement?

YES →
- Penalty Due
- Prepare Payment Plan
- Ability to Pay Process

- Increase use of creative compliance options (e.g., SEPs) where possible.
- Evaluate consistency in settlement.
- Improve MAO review and approval process.

NO → Hearing held and decided

Appeal?

YES → EQC Contested Case

NO

PAID?

YES → CASE CLOSED

NO
- File Lien
- Refer to Dept. of Revenue

PAID?

YES → CASE CLOSED

NO → Refer to Private Collection Service

General Process Improvements

- Create a greater link between program priorities, referral/case priority and resources.
- Improve NON and Enforcement databases.
- Improve feedback loop on referrals and cases, between inspectors and OCE ELS.
- Clearly identify document review loop.
- Make case status information more readily available to all staff.
- OCE presence at program manager group meetings.
- Increase OCE presence in the regions.
- Assist in program rule development for early identification of enforcement issues and links to Division 12.

PENALTY CALCULATION PROCESS

BY PROGRAM

- AIR QUALITY
- HAZARDOUS WASTE
- SOLID WASTE
- TANKS
- CLEANUP
- WATER QUALITY

DETERMINE MATRIX

$10,000
- AQ, EXCEPT FOR SOME OPEN BURNING
- WQ WPCF VIOLATIONS
- WQ ON-SITE BY PROFESSIONAL
- UST
- HW
- SPILLS (INTENTIONAL OR NEGLIGENT OIL SPILLS = $20,000)
- PCBs
- CLEANUP
- SW
- NOISE

$2,500
- ON-SITE
- OPEN BURNING

$1,000
- PLASTIC CONTAINER RECYCLING

$500
- WOOD STOVE
- RECYCLING
- FINANCIAL ASSURANCE FOR SHIP TRANSPORT OF HW AND OIL

$100,000
- IMMINENT LIKELIHOOD FOR AN EXTREME HAZARD TO PH, OR
- EXTENSIVE DAMAGE TO ENVIRONMENT

SELECT CLASSIFICATION

MAGNITUDE

CLASSIFICATION	MAJOR	MODERATE	MINOR
I	*	*	*
II	*	*	*
III	*	*	*
I	*	*	*
II	*	*	*
III	*	*	*
I	*	*	*
II	*	*	*
III	*	*	*
I	*	*	*
II	*	*	*
III	*	*	*

$100,000
$50,000
$25,000

AGGRAVATING FACTORS*

Past Occurrences
(P= 0 – 10)
+
History
(H= -2 or 0)
+
One-Time
(O= 0 or 2)
+
Responsibility
(R= 0, 2, 6 or 10)
+
Cooperativeness
(C= -2, 0 or 2)

ECONOMIC BENEFIT FACTORS

DELAYED
OR
AVOIDED
COSTS

BASE PENALTY + **[(.1 X BP) X (P + H + O + R + C)]** + **EB** = **TOTAL PENALTY**