

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 01/24/2002**



**State of Oregon
Department of
Environmental
Quality**

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Environmental Quality Commission Meeting

January 24-25, 2002

World Trade Center, Plaza Conference Room (on street level)
121 SW Salmon Street, Portland, Oregon

On the January 24, prior to the regular meeting, the Commission will tour the DEQ and Public Health Laboratories on the Portland State University Campus in downtown Portland.

Thursday, January 24 Beginning at 2:00 p.m.

- TALE #1
1A, 2A
1A, 3A, 4A, 5A
- A. Contested Case No. WPM/SP-WR-00-009 regarding Ronald C. La Franchi dba - 2:03p
B. Informational Item: Improvements in the Office of Compliance and Enforcement - 3:10p
- (MOTION) - MARK REEVE
2ND - DIDI MALARKEY

Friday, January 25 Beginning at 8:30 a.m.

1B The Commission will hold an executive session at 8:00 a.m. to consult with counsel concerning legal rights and duties regarding current and potential litigation against the Department. 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.

- 2B
3B, 3B
3B
5B, 6B
8B, 4B, 5B
6B, 7B
7B
7B
- C. Approval of Minutes - 8:41A (MOTION) DIDI MALARKEY (2ND) TONY VAN ULJET
D. †Rule Adoption: Amendment and Clarification of Asbestos Rules - 8:42A (MOTION) HARVEY BENNETT 2ND TONY VAN ULJET
E. †Rule Adoption: Water Quality NPDES and WPCF Permit Fee Increase - 9:31A (MOTION) MARK REEVE 2ND DIDI MALARKEY
F. Director's Report - 11:11A
G. Action Item: Consider Department Plan for Methane Regulation - 10:04A (MOTION) HARVEY BENNETT 2ND MARK REEVE
H. Informational Item: Port Westward Energy Facilities - 12:43p
I. Discussion Item: Development of Performance Appraisal Process for Director - 1:29p (MOTION) HARVEY BENNETT 2ND TONY VAN ULJET
J. Commissioners' Reports - 1:38p

6B

†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 the 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, January 25, 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. - 12:37p

The next Commission meeting is scheduled for March 7-8, 2002.

Copies of staff reports for individual agenda items are available by contacting Emma Djodjic in the Director's Office of the Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204; telephone 503-229-5990, toll-free 1-800-452-4011, or 503-229-6993 (TTY). Please specify the agenda item letter when requesting reports. If special physical, language or other accommodations are needed for this meeting, please advise Emma Djodjic as soon as possible, but at least 48 hours in advance of the meeting.

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- F. Director's Report
- G. Action Item: Consider Department Plan for Methane Regulation
- H. Informational Item: Port Westward Energy Facilities
- I. Discussion Item: Development of Performance Appraisal Process for Director
- J. Commissioners' Reports

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

IN THE MATTER OF THE)
ASSESSMENT OF A CIVIL)
PENALTY AGAINST)
RONALD C. LaFranchi dba)
RON'S OIL COMPANY,)
Respondent.)

FINAL ORDER

Case Number: WPMSPWR00009

This matter came before the Environmental Quality Commission on the Department of Environmental Quality's petition for Commission review of Hearing Officer Vance Bybee's Proposed Order. (A copy of the Proposed Order is attached to this Final Order.) The Commission considered the exceptions and proposed alternative conclusions submitted by the Department, as well as the briefs submitted on behalf of the Department and on behalf of the Respondent, Mr. LaFranchi. During its regular meeting on January 24, 2002, the Commission heard oral argument in the matter. Jeff Bachman, Environmental Law Specialist and Lynne Perry, Assistant Attorney General, argued on behalf of the Department. Fredrick J. Carleton, Attorney at Law, argued on behalf of the Respondent.

No challenge was presented to the Hearing Officer's findings of fact. The only legal issue before the Commission was whether the Hearing Officer correctly interpreted and applied the penalty formula in OAR 340-012-0045. Specifically, the Department challenged the Hearing Officer's application of the R-factor in the rule, OAR 349-012-0045(1)(c)(D).

The rule states:

(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.

Id. In its order assessing the civil penalty, the Department assigned a value of 2 based on the admitted negligence of the Respondent's employee. The Hearing Officer, in turn, concluded that a value of 0 was appropriate because there was no evidence that the Respondent himself had acted in a negligent manner. The Hearing Officer indicated that considering the facts, the Department would be required to demonstrate that the

Respondent "had knowledge of [a] problem, obstacle, deficiency or inadequacy either with his employee or his equipment that would have required him to employ a higher standard of care than he employed." Proposed Order at 4.

The Commission disagrees with the Hearing Officer's interpretation of its rules. Under the Rule, the "act of the Respondent" includes not only direct acts but also the acts of employees for which the Respondent is legally responsible under the established doctrine of *respondeat superior*. As noted by the Department, the essence of the doctrine is that an employer is accountable for the act of an employee so long as the employee is acting within the scope of the employment relationship and regardless of whether the employer expressly authorizes the act in question. The imputation of negligence under these circumstances is both consistent with the general law and sound public policy. Any other interpretation would create an incentive for employers to avoid inquiry and knowledge regarding both employees and equipment.

Accordingly, the Commission concludes:

- 1. The discharge of gasoline into Knowles Creek was caused by the negligence of the Respondent.**
- 2. The Department's method of calculating the civil penalty, including assigning a value of 2 to the R-factor, was correct.**
- 3. The civil penalty imposed on the Respondent is \$6,000.00.**

With the exception of those provisions in the second and third paragraphs in the Conclusions of Law, the portion of the Opinion addressing the R-factor, and the stated amount of penalty, the Commission adopts the Proposed Order by reference and incorporates it into this decision and Order.

ORDER: The Respondent is ordered to pay the sum of \$6,000 in civil penalties for violation of ORS 468B.050, pursuant to the provisions of ORS 468.126 to 468.140, OAR 340-011-0132, and OAR 340, Division 12.

Dated this 11th day of February, 2002.

Stephanie Hallock

Stephanie Hallock, Director
Department of Environmental Quality
On behalf of the
Environmental Quality Commission

Notice of Appeal Rights

RIGHT TO JUDICIAL REVIEW: You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served on you. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

GENA9487

Ref No.: G60424
Case No: 01-GAP-00054
Case Type: DEQ

STATE OF OREGON
Before the Hearing Officer Panel
For the
DEPT OF ENVIRONMENTAL QUALITY
875 Union Street NE
Salem, Oregon 97311

Attachment G
Dec Mailed: 07/30/01
Mailed by: LMV

HEARING DECISION

RONALD C. LA FRANCHI
580 N CENTRAL ST

COQUILLE OR 97423 1248

FREDERICK J. CARLETON
PO BOX 38

BANDON OR 97411 0038

DEPT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE

PORTLAND OR 97204 1334

JEFF BACHMAN
DEQ ENFORCEMENT SECTION
811 SW 6TH AVE
PORTLAND OR 97204 1334

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

BEFORE THE HEARING OFFICER PANEL
for the
DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF THE ASSESSMENT	)	PROPOSED ORDER
OF A CIVIL PENALTY AGAINST)	
RONALD C. LA FRANCHI dba)	
RON'S OIL COMPANY	)	Hearing Officer Panel Case No. G60424
	)	Agency Case No. WPMSPWR00009

HISTORY OF THE CASE

On April 20, 2000, the Department of Environmental Quality ("DEQ" or "department") issued Ronald C. La Franchi ("La Franchi" or "respondent") a Notice of Assessment of Civil Penalty (exhibit 2(b)) assessing a penalty in the amount of \$6,000.00. The notice informed the respondent of an opportunity to discuss the assessment with the department informally. It also notified the respondent of his right to appeal the notice by requesting a hearing.

In "Respondent's Answer and Appeal to Notice of Assessment of Civil Penalty; Request For Hearing" (exhibit 3) dated May 2, 2000, the respondent requested a contested case hearing.

On October 18, 2000, the Hearing Officer Panel received the department's referral of agency Case No. WPMSPWR00009. The Hearing Officer Panel notified the parties of a hearing scheduled for January 30, 2001. The hearing scheduled for January 30, 2001 was postponed. The Hearing Officer Panel notified the parties of a hearing scheduled for February 13, 2001. The hearing scheduled for February 13, 2001 was postponed. The Hearing Officer Panel notified the parties of a hearing scheduled for March 20, 2001.

On March 20, 2001, Steven F. Bear, an Administrative Law Judge for the Hearing Officer Panel, conducted a contested case hearing in the matter of the assessment of a civil penalty against Ronald C. La Franchi, Case No. G60424 in Coos Bay, Oregon. The respondent appeared in person and was represented by his attorney, Frederick Carleton. The department appeared at the hearing through its representative Jeff Bachman. The record of the hearing closed the same day, with the exception of providing the parties an opportunity to submit written closing arguments. The department submitted a Hearing Memorandum dated April 6, 2001. As of July 9, 2001, the respondent had submitted closing arguments. On that date, the record of the hearing, as it related to the submission of closing arguments, closed.

On July 3, 2001, Vance Bybee, an Administrative Law Judge for the Hearing Office Panel was assigned to review the entire record of Case No. G60424, including all documents and testimony admitted, and to issue a Proposed Order. Also on July 3, 2001, the Hearing Officer Panel notified the parties of the reassignment of Case No. G60424 and invited them to file any objection to the reassignment no later than close of business on July 6, 2001. At the close of business of July 6, 2001, neither party had submitted an objection to the reassignment.

ISSUES

Whether the Department's assessment of a civil penalty in the amount of \$6,000.00 against the respondent for discharging wastes into waters of the state without a permit is correct pursuant to ORS 468.126 through ORS 468.140, ORS 468B.005(8), ORS 468B.050(1)(a), and OAR Ch. 340 Divisions 11 and 12.

EVIDENTIARY RULING

On March 20, 2001, Judge Bear admitted exhibits 1 – 14 into the record without objection from either party. The respondent testified on his own behalf. Chris Field and Paul Rosenberg testified on behalf of the department.

FINDINGS OF FACT

1. On August 23, 1999 a tractor with trailers owned by the respondent was hauling an 11,000 gallon load of gasoline on Oregon Highway 126. At approximately 5:00 p.m., the respondent's truck driven by an employee was rounding a sharp curve approximately 8 to 10 miles outside of Mapleton, Oregon. The truck pulling the tankers of gasoline collided with a pickup. The tankers of gasoline left the highway, rolled down a 30 foot embankment, and stopped approximately 150 feet away from Knowles Creek.
2. Eventually, the driver of the respondent's truck pled guilty to criminally negligent homicide for his part in the collision of August 23, 1999.
3. Of the 11,000 gallons of gasoline being carried, 6,400 gallons were recovered by pumping out the wrecked tankers. Of the 4,600 gallons unrecovered through the pumping process: some gasoline remained on the highway, some evaporated, some seeped into the soil that was later removed and hauled away, and some entered groundwater flow and was carried into Knowles Creek. That no more than 4,600 gallons of gasoline went unrecovered was due in great part to the rapid and effective response to the spill from the respondent and his agents. That as much as 4,600 gallons of gasoline went unrecovered was due in part to the governmental agencies' decision to disregard the respondent's proposal to lift the tankers up to the highway with a crane. Instead, the crumpled tankers were dragged up the side of the embankment causing the aluminum tankers to rupture further and spill out additional gasoline.
4. After the accident and the resultant spill of gasoline, tests indicated that gasoline contaminants were present in Knowles Creek. The contamination level in the creek peaked approximately one month after the accident and the resultant gasoline spill. Although the entire amount of gasoline and gasoline related contaminants that entered the creek are unknown, according to standards set by the National Marine Fish Service, the amount of gasoline related contaminants in Knowles Creek never exceeded safe levels for fish.
5. Knowles Creek is a spawning bed for Chinook, Coastal Coho (listed as an endangered species), Cutthroat, and Steelhead. At the time of the accident on August 23, 1999, juvenile Cutthroat and Steelhead were present in Knowles Creek. At the time of the spawning season that immediately followed the gasoline spill, there was no indication of aversion by fish to the spawning beds in Knowles Creek or of illness due to gasoline contamination.

ULTIMATE FINDING OF FACT

1. The respondent did not have a permit to discharge gasoline into Knowles Creek.

CONCLUSIONS OF LAW

The respondent, without a permit, discharged waste into the waters of the state by virtue of gasoline spilling from tankers owned by the respondent and traveling a natural course through the ground into Knowles Creek.

The discharge of gasoline into Knowles Creek was not due to any negligence on the part of the respondent.

The agency's method of calculating the civil penalty was incorrect. Inasmuch as the respondent was not negligent, the "R" value (whether the violation resulted from an avoidable accident, or a negligent, intentional or flagrant act of the respondent) is zero (0). Therefore, the civil penalty imposed upon the claimant is calculated to be \$4,800.00.

OPINION

Discharging Waste into Waters of the State

ORS 468B.050(1) states,

Except as provided in ORS 468B.053 or 468B.215, without first obtaining a permit from the Director of the Department of Environmental Quality, which permit shall specify applicable effluent limitations, no person shall: (a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

ORS 468B.005(7) provides,

"Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.

ORS 468B.005(8) describes "the waters of the state" as:

lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

On August 23, 1999 tankers that were owned by the respondent and filled with gasoline spilled approximately 4,600 gallons of gasoline within 150 feet of Knowles Creek. Eventually an undetermined amount of gasoline seeped into the soil, entered groundwater flow, and was carried into the creek. Since the spill was unplanned and unintentional, the respondent did not (nor would any reasonable person ever) apply for or obtain a permit to discharge gasoline from wrecked tankers into a creek.

Knowles Creek is found near Mapleton, a town located in Oregon's coastal range; therefore, it is considered to be "waters of the state". When gasoline enters a creek, it may cause pollution. Therefore, the gasoline from the respondent's truck that entered Knowles Creek was waste. On August 23, 1999 the respondent did not have a permit to discharge waste into waters of the state. As a result, the respondent violated the provisions of ORS 468B.050(1) when, in the absence of a permit, gasoline from the respondent's tankers eventually entered Knowles Creek.

Imposition of a Civil Penalty

Pursuant to ORS 468.140(3)(b), civil penalties not to exceed \$10,000.00 for each day of a violation may be assessed for violating any law, rule, order or standard found in ORS Chapter 468B. On or a short time after August 23, 1999, the respondent violated the provisions of ORS 468B.050(1). Therefore, pursuant to ORS 468.140(3)(b), he is subject to the imposition of a civil penalty.

Civil penalties imposed for violating provisions of ORS Chapter 468B are calculated by working through the civil penalty formula found in OAR 340-012-0045. That formula is:

$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$. OAR 340-012-0045(1)(c).

BP = base penalty. OAR 340-012-0045(1)(b)

P = prior significant actions. OAR 340-012-0045(1)(c)(A).

H = history of correcting prior significant actions. OAR 340-012-0045(1)(c)(B).

O = whether the violation was repeated or continuous. OAR 340-012-0045(1)(c)(C).

R = whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act. OAR 340-012-0045(1)(c)(D).

C = the respondent's level of cooperativeness. OAR 340-012-0045(1)(c)(E).

EB = economic benefit the respondent gained by noncompliance. OAR 340-012-0045(1)(c)(F).

OAR 340-012-0055 provides that discharging waste into waters of the state without a waste discharge permit is a Class One violation. Pursuant to OAR 340-012-0045(1)(a), such a violation is of moderate magnitude. The base penalty for a Class One violation of moderate magnitude is \$3,000.00 according to OAR 340-012-0042(1). Additionally, OAR 340-012-0042(2) provides that when violations involve discharging oil into waters of the state, the base penalty is doubled. In this case, the respondent's waste discharged into the waters of the state was gasoline, an oil product. Therefore, the base penalty (BP) value applied to the respondent's violation of ORS 468B.050(1) is \$6,000.00.

The record reflects that the respondent had not committed any significant actions prior to the spill of August 23, 1999. Therefore, pursuant to OAR 340-012-0045(1)(c)(A)(i), the value assigned to (P) is zero (0).

Furthermore, since the respondent had no prior significant actions, there is no history of the respondent ever correcting significant actions. Therefore, the (H) value is zero (0). OAR 340-012-0045(1)(c)(B)(ii).

Inasmuch as the respondent's violation was a single incident that occurred on a single day, OAR 340-012-0045(1)(c)(C)(i) provides that the (O) value is zero (0).

In this case, the violation, a gasoline spill, was caused by the admitted negligence of the respondent's driver. There is no evidence in the record that the respondent, Ronald C. La Franchi dba Ron's Oil Company, was negligent in any way. In order for the respondent to be found negligent, there would have to be evidence established by a preponderance that the respondent failed to exercise the same standard of care that a reasonable and prudent person would have exercised if placed in the same situation. For example: if the respondent had known that his truck driver was an alcoholic and permitted him to transport a tanker filled with gasoline, that would have been a negligent act. If the respondent had known that the tread on the tractor's tires was worn bald and permitted the tractor to be used to pull tankers filled with gasoline (or for any purpose), then the respondent would have acted negligently. However, there is no evidence in the record that the respondent had knowledge of any problem, obstacle, deficiency or inadequacy either with his employee or his equipment that would have required him to employ a higher standard of care than he employed. The respondent acted reasonably; therefore, pursuant to OAR 340-012-0045(1)(c)(D)(i), the value of (R) is zero (0).

When addressing the cleanup of the gasoline spill, the respondent's response was both rapid and effective. Since the respondent demonstrated a substantial effort to correct the violation, the value of (C) is -2. OAR 340-012-0045(1)(c)(E)(i).

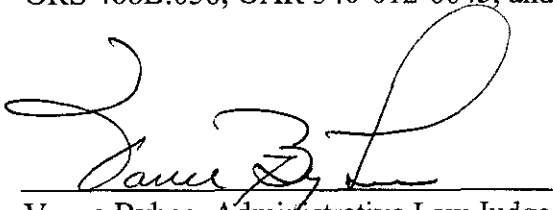
The respondent did not benefit economically as a result of the gasoline spill. Therefore, OAR 340-012-0045(1)(c)(D)(i) establishes the value of (EB) to be zero (0).

Using the values established above, the calculation of the civil penalty imposed upon the respondent is:

$$\begin{aligned} \$6,000.00 + [(0.1 \times \$6,000.00) \times (0 + 0 + 0 + 0 + (-2))] + 0 &= \$4,800.00. \\ \$6,000.00 + (\$600.00 \times (-2)) &= \$4,800.00. \\ \$6,000.00 - \$1,200.00 &= \$4,800.00. \end{aligned}$$

PROPOSED ORDER

It is hereby proposed that: the respondent pay the sum of \$4,800.00 in civil penalties for violation of ORS 468B.050(1) pursuant to the provisions of: ORS 468.126 – ORS 468.140, ORS 468B.005, ORS 468B.050, OAR 340-012-0045, and OAR 340-012-0055.



Vance Bybee, Administrative Law Judge
Hearing Officer Panel

APPEAL PROCEDURE

If you are not satisfied with this decision, you have the right to have the decision reviewed by the Oregon Environmental Quality Commission. To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date this order is served on you as provided in Oregon Administrative Rule (OAR) 340-011-0132(1) and (2). The Petition for Review must be filed with:

Environmental Quality Commission
c/o Stephanie Hallock, Director, DEQ
811 SW Sixth Avenue
Portland, OR 97204.

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as in provided in OAR 340-011-0132(3). If the petition, exceptions and brief are filed in a timely manner, the Commission will set the matter for oral argument and notify you of the time and place of the Commission's meeting. The requirements for filing a petition, exceptions and briefs are set out in OAR 340-011-0132.

Unless you timely and appropriately file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Environmental Quality Commission 30 days from the date of service on you of this Proposed Order. If you wish to appeal the Final Order, you have 60 days from the date the Proposed Order becomes the Final Order to file a petition for review with the Oregon Court of Appeals. See ORS 183.400 et. seq.

Ref No.: G60424
Case No: 01-GAP-00054
Case Type: DEQ

STATE OF OREGON
Before the Hearing Officer Panel
For the
DEPT OF ENVIRONMENTAL QUALITY
875 Union Street NE
Salem, Oregon 97311

Dec Mailed: 07/30/01
Mailed by: LMV

HEARING DECISION

RONALD C. LA FRANCHI
580 N CENTRAL ST

COQUILLE OR 97423 1248

FREDERICK J. CARLETON
PO BOX 38

BANDON OR 97411 0038

DEPT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE

PORTLAND OR 97204 1334

JEFF BACHMAN
DEQ ENFORCEMENT SECTION
811 SW 6TH AVE
PORTLAND OR 97204 1334

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

Certificate of Service

County of Marion)
)
State of Oregon)

I certify that on July 30, 2001 a true copy of the above Proposed Order was served on each of the parties by depositing the same in the United States Mail in Salem, Oregon, postage paid and certified, and sent to the addresses appearing on the Notice of Hearing unless otherwise noted below.



Laurel Van Fleet
Hearing Officer Panel

State of Oregon
Department of Environmental Quality

Memorandum

Date: January 4, 2002

To: Environmental Quality Commission

From: Stephanie Hallock, Director *S. Hallock*

Subject: Agenda Item A: Contested Case No. WPM/SP-WR-00-009 regarding Ronald C. LaFranchi, January 24, 2002 EQC Meeting

Appeal to EQC On August 28, 2001, the Department appealed the proposed order (Attachment G) assessing Ronald C. LaFranchi a \$4,800 civil penalty for discharging wastes to waters of the state without a permit.

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

On August 23, 1999, a gasoline tanker truck, owned by Mr. LaFranchi and operated by his employee, collided with a pickup truck on Route 126 near Mapleton in Lane County. The driver of the pickup was killed and Mr. LaFranchi's employee later pled guilty to criminally negligent homicide. The tanker, which was carrying 11,000 gallons of gasoline, went over an embankment and ruptured. Approximately 6,400 gallons of fuel was recovered and 4,600 gallons evaporated or discharged to surrounding soils. Monitoring of the site found that gasoline constituents from the spill entered the groundwater flow and reached Knowles Creek. Failure to recover the 4,600 gallons of lost fuel was due in part to government agencies rejecting Mr. LaFranchi's proposal to lift the damaged tankers onto the roadbed with a crane. Instead, the tankers were dragged up the embankment causing more rupturing and fuel spill.

In its appeal to the Commission, the Department took exception to the Hearing Officer's decision to reduce the civil penalty by \$1,200. The Hearing Officer based this reduction on his conclusion that as an individual, Mr. LaFranchi himself was not negligent and that the negligence of his employee could not be imputed to Mr. LaFranchi.

The Department argued in its appeal brief (Attachment D) that Mr. LaFranchi was individually negligent in his failure to adequately train and manage his employee, and that the employee's negligence should be imputed to Mr. LaFranchi as an employer. The Department argued that in determining the "R" factor for a civil penalty, the Department can consider the acts or omissions of an employer and/or employee. The Department based this argument on the legal principle of respondeat superior, which holds employers liable for the actions of their employees when those employees are acting within the scope of their employment.

Under this principle, the employee's mental state is also imputed to the employer.

In his response brief (Attachment C), Mr. LaFranchi argued that the Hearing Officer's decision regarding negligence should be upheld, but not for the reason cited by the Hearing Officer. Mr. LaFranchi agreed that respondeat superior did apply to this case and that the driver's negligence could be imputed to him. Mr. LaFranchi argued, however, that the driver's negligence did not cause the gasoline spill. Instead, according to Mr. LaFranchi, the spill was caused by the negligence of the federal on-scene coordinator who would not allow the ruptured tanker to be lifted over the embankment with a crane.

In the Department's reply to Mr. LaFranchi's brief (Attachment B), the Department argued that to avoid a finding of negligence, Mr. LaFranchi must prove that no gasoline spilled from the tanker before the tanker was moved from where it came to rest after the crash. The Department argued that at least some of the gasoline discharged to groundwater prior to the tanker being moved and that the cause of that discharge was Mr. LaFranchi's initial imputed negligence in causing the accident.

**EQC
Authority**

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

Alternatives

The Commission may:

1. As requested by the Department, find that Mr. LaFranchi's negligence caused the violation and restore the civil penalty to \$6,000, the amount originally assessed by the Department.
2. As requested by Mr. LaFranchi, uphold the Hearing Officer's decision, based on the reasoning offered by Mr. LaFranchi.
3. Uphold the Hearing Officer's decision but adopt different reasoning for finding that negligence did not cause the violation.
4. Uphold the Hearing Officer's Proposed Order.
5. Remand the case to the Hearing Officer for further proceedings.

In reviewing the proposed order, findings of fact and conclusions of law, the Commission may substitute its judgment for that of the Hearing Officer except as noted below.¹ The proposed order was issued under current statutes and rules governing the Hearing Officer Panel Pilot Project.² Under these statutes, the

¹ OAR 340-011-0132.

² Or Laws 1999 Chapter 849.

Department's contested case hearings must be conducted by a hearing officer appointed to the panel, and the Commission's authority to review and reverse the Hearing Officer's decision is limited by the statutes and the rules of the Department of Justice that implement the project.³

The most important limitations are as follows:

- (1) The Commission may not modify the form of the Hearing Officer's Proposed 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

The rules implementing these statutes also have more specific provisions addressing how Commissioners must declare and address any ex parte communications and potential or actual conflicts of interest.⁷

In addition, the Commission has established by rule a number of other procedural provisions, including:

- (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

³ *Id.* at § 5(2); § 9(6).

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).

- Attachments**
- A. Letter from Mikell O'Mealy, dated December 20, 2001
 - B. Department's Reply Brief, dated November 6, 2001
 - C. Appellee's Response Brief, dated October 24, 2001
 - D. Department's Exceptions and Brief, dated September 27, 2001
 - E. Letter from Mikell O'Mealy, dated August 29, 2001
 - F. Department's Petition for Commission Review, dated August 28, 2001
 - G. Proposed Order for Assessment of Civil Penalty, dated July 30, 2001
 - H. Department's Hearing Memorandum, dated April 6, 2001
 - I. Exhibits from Hearing of March 20, 2001
 - 1. Notices of Hearing
 - 2. a. Cover Letter to Notice of Assessment of Civil Penalty
 - b. Notice of Assessment of Civil Penalty, both dated April 21, 2000
 - 3. Respondent's Answer and Appeal, dated May 2, 2000
 - 4. Judgment filed in Lane County Circuit Court convicting Bruce Eugene Sampson, Jr., of criminally negligent homicide
 - 5. Oregon State Police Report, Incident No. 99-326071
 - 6. USGS Quad Sheet Map showing spill site and vicinity
 - 7. Hydrogeological Profile of spill site prepared by DEQ
 - 8. Groundwater elevation contour map of spill site prepared by IT Emcon.
 - 9. Groundwater analytical results for spill site prepared by Environmental Management Services
 - 10. Photographs of free product recovered, taken by DEQ
 - 11. Spill site map prepared by IT Emcon
 - 12. Summary of surface water monitoring data, prepared by Environmental Management Services
 - 13. Notice of Noncompliance issued by DEQ to Ron LaFranchi on February 3, 2000
 - 14. DEQ Enforcement Referral, prepared by Paul S. Rosenberg on January 19, 2000

Documents OAR Chapter 340, Division 11
Available ORS Chapter 468
Upon Request

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

Phone: (503) 229-5301



Oregon

John A. Kitzhaber, M.D., Governor

Attachment A

Department of Environmental Quality

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

December 20, 2001

Via Certified Mail

Ronald C. LaFranchi
580 N. Central St.
Coquille, OR 97423-1248

Frederick J. Carleton
301 Hwy. 101
Bandon, OR 97411

Jeffrey Bachman
Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204-1334

RE: Case No. WPM/SP-WR-00-009

The appeal in the above referenced matter has been set for the regularly scheduled Environmental Quality Commission meeting on Thursday, January 24, 2002. The matter will be heard in the regular course of the meeting. The meeting will be held at the World Trade Center, Plaza Conference Room (on street level), 121 SW Salmon Street in Portland, Oregon. Attached is the meeting agenda. As soon as the case record is available, I will forward it to you.

The Commission will hear oral arguments from each party at the meeting. Each party will be allowed five minutes for opening arguments, followed by five minutes of rebuttal and two minutes for closing arguments.

If you have any questions or need special accommodations for the meeting, please contact me at (503) 229-5301 or (800) 452-4011 ex. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy
Assistant to the Commission

cc: Lynne Perry, Assistant Attorney General



Environmental Quality Commission Meeting

January 24-25, 2002

World Trade Center, Plaza Conference Room (on street level)
121 SW Salmon Street, Portland, Oregon

On the January 24, prior to the regular meeting, the Commission will tour the DEQ Laboratory on the Portland State University Campus in downtown Portland.

Thursday, January 24 Beginning at 2:00 p.m.

- A. Contested Case No. WPM/SP-WR-00-009 regarding Ronald C. La Franchi dba
- B. Informational Item: Improvements in the Office of Compliance and Enforcement

Friday, January 25 Beginning at 8:30 a.m.

The Commission will hold an executive session at 8:00 a.m. to consult with counsel concerning legal rights and duties regarding current and potential litigation against the Department. 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.

- C. Approval of Minutes
- D. Consideration of Tax Credit Requests
- E. Director's Report
- F. †Rule Adoption: Amendment and Clarification of Asbestos Rules
- G. †Rule Adoption: Water Quality NPDES and WPCF Permit Fee Increase
- H. Action Item: Approve Department Plan for Methane Regulation
- I. Informational Item: Port Westward Energy Facilities
- J. Discussion Item: Development of Performance Appraisal Process for Director
- K. Commissioners' Reports

†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 the 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, January 25, 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 March 7-8, 2002.

Copies of staff reports for individual agenda items are available by contacting Emma Djodjic in the Director's Office of the Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204; telephone 503-229-5990, toll-free 1-800-452-4011, or 503-229-6993 (TTY). Please specify the agenda item letter when requesting reports. If special physical, language or other accommodations are needed for this meeting, please advise Emma Djodjic as soon as possible, but at least 48 hours in advance of the meeting.

Environmental Quality Commission Meeting

January 24-25, 2002

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HARDY MYERS
Attorney General



Attachment B

PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 6, 2001

Mikell O'Mealy
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Re: Hearing Officer Panel Case No. G60424

Dear Mikell:

Enclosed is the original of the Reply Brief of Department of Environmental Quality to be filed with the Environmental Quality Commission in the above-referenced case.

Sincerely,

Lynne Perry
Assistant Attorney General
Natural Resources Section

LAP:lan/GENA1184

Enclosure
cc: Jeffrey Bachman, DEQ
Frederick Carleton

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

3 In the Matter of the Assessment of a Civil
4 Penalty Against

5 Ronald C. LaFranchi dba
6 Ron's Oil Company

Hearing Officer Panel Case No. G60424
Agency Case No. WPM/SP-WR-00-009

REPLY BRIEF OF DEPARTMENT OF
ENVIRONMENTAL QUALITY

7 The Department of Environmental Quality (Department) understands the Response
8 Brief to say that, although the Department's briefing on *respondeat superior* is correct, "the
9 driver's negligence is not necessarily the cause of the gasoline going to Knowles Creek."
10 (Response Brief at 2.)

11 This implies that the issue of liability remains unresolved. That is not the case. As
12 the hearings officer concluded:

13 The respondent, without a permit, discharged waste into the waters of the state by
14 virtue of gasoline spilling from tankers owned by the respondent and traveling a
 natural course through the ground into Knowles Creek. (Proposed Order at 3.)

15 Respondent did not contest or take exception to this conclusion. The cause of, and
16 respondent's liability for, the spill are no longer at issue.

17 Moreover, even if they were at issue, respondent's argument is without support.
18 Respondent cites a finding to the effect that the amount of unrecovered gasoline (4,600
19 gallons) might have been smaller had a different method been used to retrieve the crumpled
20 tankers from the bottom of the 30-foot embankment. Liability under ORS 468B.050 is
21 triggered by a discharge to "waters of the state" in *any* amount. "Waters of the state" include
22 both surface water and groundwater. *See* ORS 468B.005(8). Thus, unless respondent could
23 also show that *no* gasoline reached either groundwater or Knowles Creek as a result of the
24 accident, the cited finding is irrelevant.

25 That showing has not been (and cannot be) made. In fact, the single finding
26 respondent cites in his brief indicates otherwise (See Hearing Officer's Findings of Fact,

1 Paragraph 3). The finding reflects that the manner in which the tankers were brought up the
2 embankment caused them "to rupture *further* and spill out *additional* gasoline." (Emphasis
3 added). What this means is that the tankers were already ruptured and gasoline already
4 spilled before any effort was made to retrieve them.¹ Whether some small portion of the
5 4,600 gallons spilled was released after the initial event is of no relevance here.

6 Again, liability for a discharge to waters of the state has already been established.
7 The only question before the Commission is whether the violation is more properly
8 characterized as caused by "an unavoidable accident" or "a negligent act of respondent" for
9 purposes of the penalty calculation. The incident leading to the spill was caused by
10 negligence for which respondent is responsible, either directly or by virtue of the doctrine of
11 *respondeat superior*.

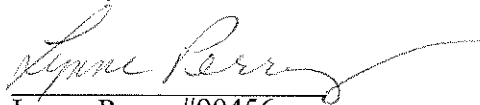
12 CONCLUSION

13 For the reasons outlined in the Department's opening brief, the hearings officer's
14 conclusions regarding respondent's negligence and the establishment of a penalty amount
15 based on an "R" value of zero should both be rejected and the full penalty imposed.

16 DATED this 6th day of November 2001.

17 Respectfully submitted,

18 HARDY MYERS
19 Attorney General

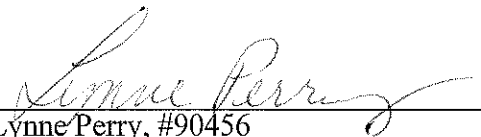
20 
21 Lynne Perry, #90456
22 Assistant Attorney General
23 Of Attorneys for DEQ

24
25 ¹ This also undermines respondent's apparent assertion that the driver's negligence was somehow limited to the
26 negligent homicide for which he was convicted. (Response Brief at 2.) It is quite evident that this negligence also
caused the tanker (1) to leave the road and roll down the embankment, (2) to rupture, and (3) to spill gasoline in a
location that allowed it to reach waters of the state. (See Proposed Order at 3 and 5 ("[t]he violation, a gasoline
spill, was caused by the admitted negligence of the respondent's driver."))

CERTIFICATE OF FILING/SERVICE

I certify that on November 6th, 2001, I filed the original of the REPLY BRIEF OF
DEPARTMENT OF ENVIRONMENTAL QUALITY with the Environmental Quality
Commission, c/o Mikell O'Mealy, DEQ, 811 SW Sixth Avenue, Portland, OR 97204, by first
class mail.

DATED this 6th day of November, 2001.


Lynne Perry, #90456
Assistant Attorney General
Of Attorneys for
Department of Environmental Quality

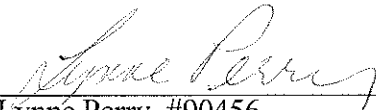
CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November, 2001, I served a true, exact and full copy of this REPLY BRIEF OF DEPARTMENT OF ENVIRONMENTAL QUALITY on the following parties:

Jeffrey Bachman (By First Class Mail)
Oregon Department of Environmental Quality
Enforcement Section
2020 SW 4th Ave., Suite 400
Portland, OR 97201

Frederick J. Carleton (By First Class Mail)
301 Highway 101
P. O. Box 38
Bandon, OR 97411

Dated this 6th day of November, 2001.


Lynne Perry, #90456
Assistant Attorney General
Of Attorneys for Department of Environmental
Quality

FREDERICK J. CARLETON – Attorney at Law

Attachment C

301 Hwy 101
P.O. Box 38
Bandon, OR 97411



Telephone
(541) 347-2468

October 24, 2001

Mikell O'Mealy
Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, OR 97204

Response Brief for Ronald C. La Franchi
No. WPM/SP-WR-00-009
Lane County

Dear Mr. O'Mealy,

Enclosed find the original Response Brief for Ronald C. La Franchi.

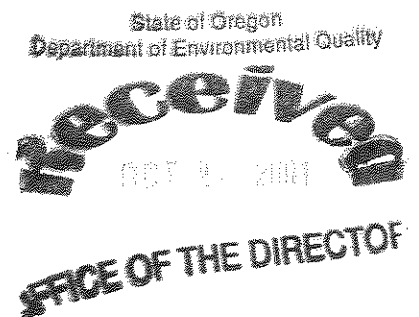
Very truly yours,

Fred Carleton
Frederick J. Carleton/

FJC:bdh

Encl.

cc: Lynne Perry
Ron La Franchi



1
2
3
4
5
6 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
7 OF THE STATE OF OREGON

8 In the Matter of the Assessment of a Civil) Hearing Officer Panel Case No. G60424
9 Penalty Against) Agency Case No. WPM/SP-WR-00-009
10 Ronald C. La Franchi dba) RESPONSE BRIEF FOR
11 Ron's Oil Company,) RONALD C. LA FRANCHI
12)

13 The following is submitted in response to the Department of Environmental Quality's
14 brief excepting to the hearing decision. DEQ's recitation of the law on Respondent's *superior* is
15 essentially accurate, however, for purpose of statutory construction the prohibition is against the
16 spill resulted from the employee driver's negligence is not necessarily the cause of the gasoline
17 going to Knowles Creek.

18 In DEQ's discussion the department misses the important points the hearing's officer
19 found. Mr. La Franchi recovered more than 4,600 gallons. In the hearing's officer finding of
20 fact No. 3 he states "in that as much as 4,600 gallons of gasoline went unrecovered was due in
21 part to the governmental agency's decision to disregard the respondent's proposal to lift the
22 tankers up to the highway with the crane. Instead, the crumpled takers [sic] were dragged up the
23 side of the embankment causing the aluminum tankers to rupture further and spill out additional
24 gasoline."
25

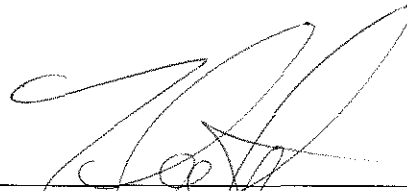
RESPONSE BRIEF FOR
RONALD C. LA FRANCHI - 1

Frederick J. Carleton
P.O. Box 38
Bandon, OR 97411
(541) 347-2468

1 It was the negligence of the governmental agencies that led to the abandonment of the
2 recovery of the additional gasoline. Frankly, it can be concluded that the governmental agencies
3 themselves in their negligent removal caused the gasoline to spill into the creek. The negligence
4 for which the driver was convicted was the negligence that caused the death of the other driver.

5 The hearing's officer made the correct conclusion in that Mr. La Franchi did not cause
6 the spill by any negligence. Therefore, the credit that he received should be upheld.

7 Dated this 24th day of October, 2001.



Frederick J. Carleton, OSB #77135
Attorney for Ronald C. La Franchi
P.O. Box 38
Bandon, OR 97411
(541) 347-2468


1
2
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4
5
6 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
7 OF THE STATE OF OREGON

8 In the Matter of the Assessment of a Civil) Hearing Officer Panel Case No. G60424
9 Penalty Against) Agency Case No. WPM/SP-WR-00-009
10 Ronald C. La Franchi dba) CERTIFICATION OF MAILING
11 Ron's Oil Company,)
12

13 I, Frederick J. Carleton, hereby certify that a copy of the Response Brief for Ronald C. La
14 Franchi was served on the 24th day of October, 2001, by depositing the same in the United
15 States Mail at Bandon, Oregon, enclosed in a sealed envelope, postage paid, and addressed to:

16
17 Mikell O'Mealy
18 Environmental Quality Commission
19 811 S.W. 6th Avenue
20 Portland, OR 97204

21 Lynne Perry
22 Assistant Attorney General
23 Department of Justice
24 1162 Court Street NE
25 Salem, OR 97301-4096



Frederick J. Carleton
Attorney for Ronald C. La Franchi

HARDY MYERS
Attorney General



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

September 27, 2001

Attachment D

PETER D. SHEPHERD
Deputy Attorney General

State of Oregon
Department of Environmental Quality
Receive
SEP 28 2001
OFFICE OF THE DIRECTOR

Mikell O'Mealy
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Re: Hearing Officer Panel No: G60424
DEQ Case No: WPM/SP-WR-00-009

Ms. O'Mealy:

Please find enclosed the Department of Environmental Quality's Brief, Exceptions, and Proposed Alternative Conclusions for filing with the Environmental Quality Commission in the above-referenced matter. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, reading "Lynne Perry".

Lynne Perry
Assistant Attorney General
Natural Resources Section

LAP:mew/GEN 97251
Enclosure
cc: Fredrick Carleton
Jeffrey Bachman

RECORDED
JUN 02 1999
OFFICE OF THE DIRECTOR

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of the Assessment of a Civil
Penalty Against

Ronald C. LaFranchi dba
Ron's Oil Company

Hearing Officer Panel Case No. G60424
Agency Case No. WPM/SP-WR-00-009

BRIEF, EXCEPTIONS, AND PROPOSED
ALTERNATIVE CONCLUSIONS OF
DEPARTMENT OF ENVIRONMENTAL
QUALITY

INTRODUCTION

The Department of Environmental Quality (Department) appeals the reduction of the penalty assessed by the Department in this case. The violation here, the unpermitted discharge of gasoline into waters of the state, was caused when a speeding tanker truck overturned near a creek. This was a wholly avoidable accident and the driver's negligence is beyond debate. The only question before the Commission is whether the violation is more properly characterized as caused by "an unavoidable accident" or "a negligent act of respondent" for purposes of the penalty calculation.

BACKGROUND ESTABLISHED BY RECORD

The violation at issue was caused by a negligent act. In particular, it was caused by the negligent operation of one of respondent's tanker trucks by one of respondent's employees. Respondent operates an oil company. On August 23, 1999, one of respondent's tanker trucks collided with a pickup truck while rounding a curve on Highway 126 in southern Oregon. The driver (respondent's employee) was speeding and crossed the center line. The tanker truck, carrying approximately 11,000 gallons of gasoline, then rolled down a 30 foot embankment and came to a stop near Knowles Creek. Over 4,000 gallons of gasoline was spilled. The driver of the pickup truck was killed. Respondent's employee has since pled guilty to negligent homicide for his part in the collision.

1 DEQ's Notice of Assessment of Civil Penalty assessed a civil penalty of \$6,000 for
2 discharging wastes into waters of the state without a permit under ORS 468B.050(1). *In the*
3 *Matter of Ronald C. LaFranchi*, No. WPM/SP-WR-00-009 (April 20, 2000). Respondent
4 appealed the notice and a contested case hearing was held on March 20, 2001.

5 The hearings officer found that:

- 6 • the tanker truck was owned by respondent;
- 7 • the truck's driver was employed by respondent;
- 8 • gasoline contaminants were found in Knowles Creek after the accident; and
- 9 • respondent did not have a permit to discharge gasoline to Knowles Creek.

10 (Proposed Order at 2.)

11 Consistent with these findings, the hearings officer concluded that respondent violated
12 ORS 468B.050(1) by discharging waste into the waters of the state without a permit. (Proposed
13 Order at 3 and 4.) However, the hearings officer also concluded that:

14 "The discharge of gasoline into Knowles Creek was not due to any negligence on the part
15 of the respondent.

16 "The agency's method of calculating the civil penalty was incorrect. Inasmuch as the
17 respondent was not negligent, the "R" value (whether the violation resulted from an
18 avoidable accident, or a negligent, intentional or flagrant act of the respondent) is zero
(0). Therefore, the civil penalty imposed upon the claimant is calculated to be
\$4,800.00." (Proposed Order at 3.)

19 DEPARTMENT'S APPEAL

20 The Department seeks review of the hearing officer's order with respect to the amount
21 (and calculation) of the civil penalty. The Department's penalty was calculated based on a
22 negligent act of respondent (or an "R" value of 2).¹ The hearings officer imposed a penalty of
23 \$4,800 based on an unavoidable accident (or an "R" value of zero). (Proposed Order at 5.)

24
25
26 ¹ The Department calculates civil penalties based on its penalty formula: $BP + [(1 \times BP) \times (P+H+O+R+C)] + EB$.
See OAR 340-012-0045 (1)(c).

Exception: The Department takes exception to the hearing officer's conclusion of law that the violation was not due to negligence on the part of the respondent, as well as the hearing officer's adjustment of the civil penalty assessed. This exception is two-fold. The Department takes exception to the conclusion that the respondent was not himself negligent. The Department also takes exception to the unstated conclusion that the respondent must himself commit a negligent act before a penalty based on an "R" value of 2 can be assessed (i.e. the negligence of respondent's employee is not imputed to respondent). (Proposed Order at 3 and 5.)

ARGUMENT

The hearings officer focused solely on respondent's own acts (i.e. whether respondent was directly liable) for purposes of evaluating the "R" value. He ultimately reduced the "R" value from two (negligent act) to zero (unavoidable accident). He justified this result as follows:

In this case, the violation, a gasoline spill, was caused by the admitted negligence of the respondent's driver. There is no evidence in the record that the respondent, Ronald C. La Franchi dba Ron's Oil Company, was negligent in any way. *In order for the respondent to be found negligent, there would have to be evidence established by a preponderance that the respondent failed to exercise the same standard of care that a reasonable and prudent person would have exercised if placed in the same situation.* For example, if the respondent had known that his truck driver was an alcoholic and permitted him to transport a tanker filled with gasoline, that would have been a negligent act. If the respondent had known that the tread on the tractor's tires was worn bald and permitted the tractor to be used to pull tankers filled with gasoline (or for any purpose), then the respondent would have acted negligently. However, *there is no evidence in the record that the respondent had knowledge of any problem, obstacle, deficiency or inadequacy either with his employee or his equipment that would have required him to employ a higher standard of care than he employed.* The respondent acted reasonably; therefore, pursuant to OAR 340-012-0045(1)(c)(D)(i), the value of (R) is zero (0)." (Proposed Order at 5, emphasis supplied.)

As explained below, the hearings officer improperly ignored the negligent acts of respondent's employee in assessing the penalty. But on this record, respondent could easily be found directly liable as well. An incident of this sort is not an "unavoidable accident." It is reasonably foreseeable given the hazardous nature of the cargo, the rural routes to be driven, and the natural tendencies of unsupervised personnel. The incident reflects a failure on respondent's part to properly train, supervise, and regularly reinforce safety considerations with his

1 employees. It is the responsibility of respondent, individually and as a company, to secure
2 compliance and safe operation of its vehicles. These are ongoing and affirmative obligations. It
3 is not enough for respondent to be unaware of a problem or deficiency with either the employee
4 or the equipment as the hearings officer concluded.²

5 But regardless of whether respondent is directly liable for the spill, respondent is
6 necessarily liable for the acts of his employee under the doctrine of *respondeat superior*. The
7 doctrine of *respondeat superior* renders an employer accountable for the acts of its employees if
8 the employees were acting within the scope of their employment, regardless of whether the
9 employer expressly authorized the specific act creating the liability. *Fearing v. Bucher*, 328 Or
10 367, 977 P2d 1163 (1999) (employer vicariously liable if acts within scope of employment
11 resulted in acts that led to injury. It is not necessary that the misconduct itself be of a kind that
12 employer hired employee to perform); *Lourim v. Swenson*, 328 Or 380, 977 P2d 1157 (1999)
13 (same). The doctrine is applicable to both intentional acts and negligent acts—such as the case
14 here.

15 But this is not new. In *DEQ v. Thatcher Company*, 1990 WL 283209 (Or. Env. Qual.
16 Comm. 1990), the issue was the liability of a trucking company for a discharge caused when one
17 of its tanker trucks, driven by one of its employees, skidded off a highway during a snow storm
18 and rolled into a river. Despite the respondent company's argument that it had acted neither
19 intentionally nor negligently, the hearings officer found the violation to have been negligent. In
20 doing so, the hearings officer focused on the acts of respondent's employee, whose acts she
21 deemed to have been negligent. *Id.* at *3. That negligence was imputed to the respondent
22 employer.

23 Here, it is undisputed that the cited violation was caused by the negligence of
24 respondent's employee while performing his job, namely, driving a tanker truck full of

25 ² “[T]here is no evidence in the record that the respondent had knowledge of any problem, obstacle, deficiency or
26 inadequacy either with his employee or his equipment that would have required him to employ a higher standard of
care than he employed.. The respondent acted reasonably...” (Proposed Order at 5.)

1 hazardous cargo on a given route for the benefit of respondent. On these facts, the employee's
2 negligence should be imputed to respondent under the doctrine of *respondeat superior*, whether
3 or not the Commission also determines that respondent is himself directly liable.

4 Not only is this correct as a matter of law, it makes good sense from a policy standpoint.
5 The proposed order encourages bad behavior. The hearings officer's analysis encourages
6 employers to "avoid" knowledge because the less they know about an employee or piece of
7 equipment (or perhaps the existence or adequacy of a training program or the details of a
8 regulation....) the better positioned they are under this analysis. Thus, although the goal is to
9 secure compliance and to encourage those in positions of responsibility to know (and do) what is
10 necessary to achieve that goal, the proposed order suggests that, if responsible personnel can
11 avoid certain types of knowledge, the resulting violations may be chocked up to "unavoidable
12 accidents."³

13 In sum, the civil penalty should be calculated using an "R" value of 2 for a negligent act
14 of respondent, as initially calculated by the Department.

15
16 DEPARTMENT'S PROPOSED ALTERNATIVE
CONCLUSIONS OF LAW

- 17 1. The discharge of gasoline into Knowles Creek was caused by the negligent act of
18 respondent.
19 2. The agency's method of calculating the civil penalty was correct. Therefore, the civil
20 penalty imposed upon the claimant is calculated to be \$6,000.00.
21
22
23

24 ³ The proposed order also raises a fairness issue: the Department retains its ability to assess penalties based on
25 negligent, intentional or flagrant violations ("R" values of 2, 6, 10) against individuals but impairs its ability to
26 assess the same penalty for the same violation against the corporations and companies for whom those employees
work. This is particularly awkward given that in most instances, this one included, the individual employee is acting
within the scope of his employment at the time of the violation.

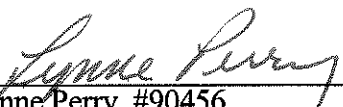
CONCLUSION

The hearings officer's findings and conclusions should be adopted by the Commission with the exception of the hearings officer's conclusions regarding respondent's negligence and the establishment of a penalty amount based on an "R" value of zero, which should both be rejected and the full penalty imposed.

DATED this 28th day of September 2001.

Respectfully submitted,

HARDY MYERS
Attorney General

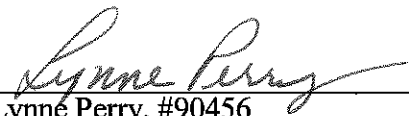


Lynne Perry, #90456
Assistant Attorney General
Of Attorneys for Department of Environmental
Quality

CERTIFICATE OF FILING/SERVICE

I certify that on September 28, 2001, I filed the original of BRIEF, EXCEPTIONS,
AND PROPOSED ALTERNATIVE CONCLUSIONS OF DEPARTMENT OF
ENVIRONMENTAL QUALITY with the Environmental Quality Commission, c/o Mikell
O'Mealy, DEQ, 811 SW Sixth Avenue, Portland, OR 97204, by hand delivery.

DATED this 28th day of September, 2001.


Lynne Perry, #90456
Assistant Attorney General
Of Attorneys for Department of Environmental
Quality


1 CERTIFICATE OF SERVICE

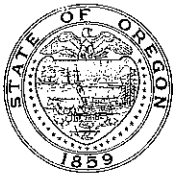
2 I hereby certify that on the 28th day of September, 2001, I served a true, exact and full
3 copy of this BRIEF, EXCEPTIONS, AND PROPOSED ALTERNATIVE CONCLUSIONS OF
4 DEPARTMENT OF ENVIRONMENTAL QUALITY on the following parties.

5 Jeffrey Bachman (By Hand Delivery)
6 Oregon Department of Environmental Quality
7 Enforcement Section
8 2020 SW 4th Ave., Suite 400
9 Portland, OR 97201

10 Frederick J. Carleton (By First Class Mail)
11 301 Highway 101
12 P. O. Box 38
13 Bandon, OR 97411

14 Dated this 28th day of September, 2001.

15 
16 Lynne Perry, #90456
17 Assistant Attorney General
18 Of Attorneys for Department of Environmental
19 Quality
20
21
22
23
24
25
26



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

Attachment E

Department of Environmental Quality

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

August 29, 2001

Via Certified Mail

Jeffrey Bachman
Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204-1334

RE: Case No. WPM/SP-WR-00-009

Dear Mr. Bachman:

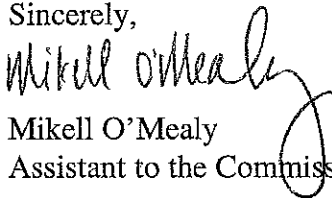
On August 28, 2001, the Environmental Quality Commission received your timely request for Commission review of the Proposed Order for the above referenced case.

The hearing decision for this case outlined appeal procedures, including filing of exceptions and briefs. As stated in the hearing decision and pursuant to OAR 340-011-0132, you must file exceptions and brief within thirty days from the filing of the request. The exceptions should specify those findings and conclusions that you object to and include alternative proposed findings. Once your exceptions have been received, or, if no exceptions have been received by September 28, 2001, the Respondent will file an answer brief within 30 days. I have enclosed a copy of the applicable administrative rules.

To file exceptions and briefs, please send to Mikell O'Mealy, on behalf of the Environmental Quality Commission, at 811 S.W. 6th Avenue, Portland, Oregon, 97204, with copies to Ronald C. La Franchi, 580 N. Central Street, Coquille, Oregon, 97423-1248.

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 about this process, or need additional time to file exceptions and briefs, please call me at 229-5301 or (800) 452-4011 ext. 5301 within the state of Oregon.

Sincerely,



Mikell O'Mealy
Assistant to the Commission

cc: Ronald C. La Franchi

Oregon Administrative Rules 340-011-0132

Alternative Procedure for Entry of a Final Order in Contested Cases Resulting from Appeal of Civil Penalty Assessments

- (1) Commencement of Review by the Commission:
 - (a) Copies of the hearing officer's Order will be served on each of the participants in accordance with OAR 340-011-0097. The hearing officer's Order will be the final order of the Commission unless within 30 days from the date of service, a participant or a member of the Commission files with the Commission and serves upon each participant a Petition for Commission Review. A proof of service should also be filed, but failure to file a proof of service will not be a ground for dismissal of the Petition.
 - (b) The timely filing of a Petition is a jurisdictional requirement and cannot be waived.
 - (c) The timely filing of a Petition will automatically stay the effect of the hearing officer's Order.
 - (d) In any case where more than one participant timely serves and files a Petition, the first to file will be the Petitioner and the latter the Respondent.
- (2) Contents of the Petition for Commission Review. A Petition must be in writing and need only state the participant's or a Commissioner's intent that the Commission review the hearing officer's Order.
- (3) Procedures on Review:
 - (a) Petitioner's Exceptions and Brief: Within 30 days from the filing of the Petition, the Petitioner must file with the Commission and serve upon each participant written exceptions, brief and proof of service. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the Petitioner relies. Matters not raised before the hearing officer will not be considered except when necessary to prevent manifest injustice.
 - (b) Respondent's Brief: Each participant will have 30 days from the date of filing of the Petitioner's exceptions and brief, in which to file with the Commission and serve upon each participant an answering brief and proof of service. If multiple Petitions have been filed, the Respondent must also file exceptions as required in (3)(a) at this time.
 - (c) Reply Brief: Each participant will have 20 days from the date of filing of a Respondent's brief, in which to file with the Commission and serve upon each participant a reply brief and proof of service.
 - (d) Briefing on Commission Invoked Review: When one or more members of the Commission wish to review a hearing officer's Order, and no participant has timely filed a Petition, the Chairman will promptly notify the participants of the issue that the Commission desires the participants to brief. The Chairman will also establish the schedule for filing of briefs. The participants must limit their briefs to those issues. When the Commission wishes to review a hearing officer's Order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.
 - (e) Extensions: The Chairman or the Director, may extend any of the time limits contained in this rule except for the filing of a Petition under subsection (1) of this rule. Each extension request must be in writing and be served upon each participant. Any request for an extension may be granted or denied in whole or in part.

- (f) Dismissal: The Commission may dismiss any Petition if the Petitioner fails to timely file and serve any exceptions or brief required by this rule.
- (g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the Chairman will schedule the appeal for oral argument before the Commission.
- (4) Additional Evidence: A request to present additional evidence will be submitted by motion and be accompanied by a statement specifying the reason for the failure to present the evidence to the hearing officer. If the Commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to a hearing officer for further proceedings.
- (5) Scope of Review: The Commission may substitute its judgment for that of the hearing officer in making any particular finding of fact, conclusion of law, or order except as limited by OAR 137-003-0665.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.430 & ORS 183.435

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00

Received
AUG 28 2001

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
RONALD C. LAFRANCHI

PETITION FOR COMMISSION
REVIEW OF HEARING
OFFICER'S PROPOSED ORDER
FOR ASSESSMENT OF CIVIL
PENALTY

No. WPM/SP-WR-00-009
LANE COUNTY

Pursuant to Oregon Administrative Rule 340-011-0132, the Department of
Environmental Quality hereby provides notice that the Department intends that the Oregon
Environmental Quality Commission review the Hearing Officer's Proposed Order for Assessment
of Civil Penalty in Case No. WPM/SP-WR-00-009.

DATED this 28th Day of August, 2001


Jeffrey Bachman
Environmental Law Specialist
Department of Environmental Quality
Representative for Petitioner

Ref No.: G60424
Case No: 01-GAP-00054
Case Type: DEQ

STATE OF OREGON
Before the Hearing Officer Panel
For the
DEPT OF ENVIRONMENTAL QUALITY
875 Union Street NE
Salem, Oregon 97311

Attachment G
Dec Mailed: 07/30/01
Mailed by: LMV

HEARING DECISION

RONALD C. LA FRANCHI
580 N CENTRAL ST

COQUILLE OR 97423 1248

FREDERICK J. CARLETON
PO BOX 38

BANDON OR 97411 0038

DEPT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE

PORTLAND OR 97204 1334

JEFF BACHMAN
DEQ ENFORCEMENT SECTION
811 SW 6TH AVE
PORTLAND OR 97204 1334

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

**BEFORE THE HEARING OFFICER PANEL
for the
DEPARTMENT OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF THE ASSESSMENT	)	PROPOSED ORDER
OF A CIVIL PENALTY AGAINST)	
RONALD C. LA FRANCHI dba)	
RON'S OIL COMPANY	)	Hearing Officer Panel Case No. G60424
	)	Agency Case No. WPMSPWR00009

HISTORY OF THE CASE

On April 20, 2000, the Department of Environmental Quality ("DEQ" or "department") issued Ronald C. La Franchi ("La Franchi" or "respondent") a Notice of Assessment of Civil Penalty (exhibit 2(b)) assessing a penalty in the amount of \$6,000.00. The notice informed the respondent of an opportunity to discuss the assessment with the department informally. It also notified the respondent of his right to appeal the notice by requesting a hearing.

In "Respondent's Answer and Appeal to Notice of Assessment of Civil Penalty; Request For Hearing" (exhibit 3) dated May 2, 2000, the respondent requested a contested case hearing.

On October 18, 2000, the Hearing Officer Panel received the department's referral of agency Case No. WPMSPWR00009. The Hearing Officer Panel notified the parties of a hearing scheduled for January 30, 2001. The hearing scheduled for January 30, 2001 was postponed. The Hearing Officer Panel notified the parties of a hearing scheduled for February 13, 2001. The hearing scheduled for February 13, 2001 was postponed. The Hearing Officer Panel notified the parties of a hearing scheduled for March 20, 2001.

On March 20, 2001, Steven F. Bear, an Administrative Law Judge for the Hearing Officer Panel, conducted a contested case hearing in the matter of the assessment of a civil penalty against Ronald C. La Franchi, Case No. G60424 in Coos Bay, Oregon. The respondent appeared in person and was represented by his attorney, Frederick Carleton. The department appeared at the hearing through its representative Jeff Bachman. The record of the hearing closed the same day, with the exception of providing the parties an opportunity to submit written closing arguments. The department submitted a Hearing Memorandum dated April 6, 2001. As of July 9, 2001, the respondent had submitted closing arguments. On that date, the record of the hearing, as it related to the submission of closing arguments, closed.

On July 3, 2001, Vance Bybee, an Administrative Law Judge for the Hearing Office Panel was assigned to review the entire record of Case No. G60424, including all documents and testimony admitted, and to issue a Proposed Order. Also on July 3, 2001, the Hearing Officer Panel notified the parties of the reassignment of Case No. G60424 and invited them to file any objection to the reassignment no later than close of business on July 6, 2001. At the close of business of July 6, 2001, neither party had submitted an objection to the reassignment.

ISSUES

Whether the Department's assessment of a civil penalty in the amount of \$6,000.00 against the respondent for discharging wastes into waters of the state without a permit is correct pursuant to ORS 468.126 through ORS 468.140, ORS 468B.005(8), ORS 468B.050(1)(a), and OAR Ch. 340 Divisions 11 and 12.

EVIDENTIARY RULING

On March 20, 2001, Judge Bear admitted exhibits 1 – 14 into the record without objection from either party. The respondent testified on his own behalf. Chris Field and Paul Rosenberg testified on behalf of the department.

FINDINGS OF FACT

1. On August 23, 1999 a tractor with trailers owned by the respondent was hauling an 11,000 gallon load of gasoline on Oregon Highway 126. At approximately 5:00 p.m., the respondent's truck driven by an employee was rounding a sharp curve approximately 8 to 10 miles outside of Mapleton, Oregon. The truck pulling the tankers of gasoline collided with a pickup. The tankers of gasoline left the highway, rolled down a 30 foot embankment, and stopped approximately 150 feet away from Knowles Creek.
2. Eventually, the driver of the respondent's truck pled guilty to criminally negligent homicide for his part in the collision of August 23, 1999.
3. Of the 11,000 gallons of gasoline being carried, 6,400 gallons were recovered by pumping out the wrecked tankers. Of the 4,600 gallons unrecovered through the pumping process: some gasoline remained on the highway, some evaporated, some seeped into the soil that was later removed and hauled away, and some entered groundwater flow and was carried into Knowles Creek. That no more than 4,600 gallons of gasoline went unrecovered was due in great part to the rapid and effective response to the spill from the respondent and his agents. That as much as 4,600 gallons of gasoline went unrecovered was due in part to the governmental agencies' decision to disregard the respondent's proposal to lift the tankers up to the highway with a crane. Instead, the crumpled tankers were dragged up the side of the embankment causing the aluminum tankers to rupture further and spill out additional gasoline.
4. After the accident and the resultant spill of gasoline, tests indicated that gasoline contaminants were present in Knowles Creek. The contamination level in the creek peaked approximately one month after the accident and the resultant gasoline spill. Although the entire amount of gasoline and gasoline related contaminants that entered the creek are unknown, according to standards set by the National Marine Fish Service, the amount of gasoline related contaminants in Knowles Creek never exceeded safe levels for fish.
5. Knowles Creek is a spawning bed for Chinook, Coastal Coho (listed as an endangered species), Cutthroat, and Stealhead. At the time of the accident on August 23, 1999, juvenile Cutthroat and Stealhead were present in Knowles Creek. At the time of the spawning season that immediately followed the gasoline spill, there was no indication of aversion by fish to the spawning beds in Knowles Creek or of illness due to gasoline contamination.

ULTIMATE FINDING OF FACT

1. The respondent did not have a permit to discharge gasoline into Knowles Creek.

CONCLUSIONS OF LAW

The respondent, without a permit, discharged waste into the waters of the state by virtue of gasoline spilling from tankers owned by the respondent and traveling a natural course through the ground into Knowles Creek.

The discharge of gasoline into Knowles Creek was not due to any negligence on the part of the respondent.

The agency's method of calculating the civil penalty was incorrect. Inasmuch as the respondent was not negligent, the "R" value (whether the violation resulted from an avoidable accident, or a negligent, intentional or flagrant act of the respondent) is zero (0). Therefore, the civil penalty imposed upon the claimant is calculated to be \$4,800.00.

OPINION

Discharging Waste into Waters of the State

ORS 468B.050(1) states,

Except as provided in ORS 468B.053 or 468B.215, without first obtaining a permit from the Director of the Department of Environmental Quality, which permit shall specify applicable effluent limitations, no person shall: (a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

ORS 468B.005(7) provides,

"Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.

ORS 468B.005(8) describes "the waters of the state" as:

lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

On August 23, 1999 tankers that were owned by the respondent and filled with gasoline spilled approximately 4,600 gallons of gasoline within 150 feet of Knowles Creek. Eventually an undetermined amount of gasoline seeped into the soil, entered groundwater flow, and was carried into the creek. Since the spill was unplanned and unintentional, the respondent did not (nor would any reasonable person ever) apply for or obtain a permit to discharge gasoline from wrecked tankers into a creek.

Knowles Creek is found near Mapleton, a town located in Oregon's coastal range; therefore, it is considered to be "waters of the state". When gasoline enters a creek, it may cause pollution. Therefore, the gasoline from the respondent's truck that entered Knowles Creek was waste. On August 23, 1999 the respondent did not have a permit to discharge waste into waters of the state. As a result, the respondent violated the provisions of ORS 468B.050(1) when, in the absence of a permit, gasoline from the respondent's tankers eventually entered Knowles Creek.

Imposition of a Civil Penalty

Pursuant to ORS 468.140(3)(b), civil penalties not to exceed \$10,000.00 for each day of a violation may be assessed for violating any law, rule, order or standard found in ORS Chapter 468B. On or a short time after August 23, 1999, the respondent violated the provisions of ORS 468B.050(1). Therefore, pursuant to ORS 468.140(3)(b), he is subject to the imposition of a civil penalty.

Civil penalties imposed for violating provisions of ORS Chapter 468B are calculated by working through the civil penalty formula found in OAR 340-012-0045. That formula is:

$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$. OAR 340-012-0045(1)(c).

BP = base penalty. OAR 340-012-0045(1)(b)

P = prior significant actions. OAR 340-012-0045(1)(c)(A).

H = history of correcting prior significant actions. OAR 340-012-0045(1)(c)(B).

O = whether the violation was repeated or continuous. OAR 340-012-0045(1)(c)(C).

R = whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act. OAR 340-012-0045(1)(c)(D).

C = the respondent's level of cooperativeness. OAR 340-012-0045(1)(c)(E).

EB = economic benefit the respondent gained by noncompliance. OAR 340-012-0045(1)(c)(F).

OAR 340-012-0055 provides that discharging waste into waters of the state without a waste discharge permit is a Class One violation. Pursuant to OAR 340-012-0045(1)(a), such a violation is of moderate magnitude. The base penalty for a Class One violation of moderate magnitude is \$3,000.00 according to OAR 340-012-0042(1). Additionally, OAR 340-012-0042(2) provides that when violations involve discharging oil into waters of the state, the base penalty is doubled. In this case, the respondent's waste discharged into the waters of the state was gasoline, an oil product. Therefore, the base penalty (BP) value applied to the respondent's violation of ORS 468B.050(1) is \$6,000.00.

The record reflects that the respondent had not committed any significant actions prior to the spill of August 23, 1999. Therefore, pursuant to OAR 340-012-0045(1)(c)(A)(i), the value assigned to (P) is zero (0).

Furthermore, since the respondent had no prior significant actions, there is no history of the respondent ever correcting significant actions. Therefore, the (H) value is zero (0). OAR 340-012-0045(1)(c)(B)(ii).

Inasmuch as the respondent's violation was a single incident that occurred on a single day, OAR 340-012-0045(1)(c)(C)(i) provides that the (O) value is zero (0).

In this case, the violation, a gasoline spill, was caused by the admitted negligence of the respondent's driver. There is no evidence in the record that the respondent, Ronald C. La Franchi dba Ron's Oil Company, was negligent in any way. In order for the respondent to be found negligent, there would have to be evidence established by a preponderance that the respondent failed to exercise the same standard of care that a reasonable and prudent person would have exercised if placed in the same situation. For example: if the respondent had known that his truck driver was an alcoholic and permitted him to transport a tanker filled with gasoline, that would have been a negligent act. If the respondent had known that the tread on the tractor's tires was worn bald and permitted the tractor to be used to pull tankers filled with gasoline (or for any purpose), then the respondent would have acted negligently. However, there is no evidence in the record that the respondent had knowledge of any problem, obstacle, deficiency or inadequacy either with his employee or his equipment that would have required him to employ a higher standard of care than he employed. The respondent acted reasonably; therefore, pursuant to OAR 340-012-0045(1)(c)(D)(i), the value of (R) is zero (0).

When addressing the cleanup of the gasoline spill, the respondent's response was both rapid and effective. Since the respondent demonstrated a substantial effort to correct the violation, the value of (C) is -2. OAR 340-012-0045(1)(c)(E)(i).

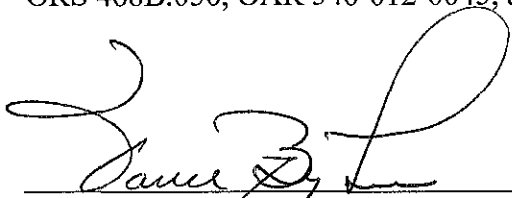
The respondent did not benefit economically as a result of the gasoline spill. Therefore, OAR 340-012-0045(1)(c)(D)(i) establishes the value of (EB) to be zero (0).

Using the values established above, the calculation of the civil penalty imposed upon the respondent is:

$$\begin{aligned} \$6,000.00 + [(0.1 \times \$6,000.00) \times (0 + 0 + 0 + 0 + (-2))] + 0 &= \$4,800.00. \\ \$6,000.00 + (\$600.00 \times (-2)) &= \$4,800.00. \\ \$6,000.00 - \$1,200.00 &= \$4,800.00. \end{aligned}$$

PROPOSED ORDER

It is hereby proposed that: the respondent pay the sum of \$4,800.00 in civil penalties for violation of ORS 468B.050(1) pursuant to the provisions of: ORS 468.126 – ORS 468.140, ORS 468B.005, ORS 468B.050, OAR 340-012-0045, and OAR 340-012-0055.



Vance Bybee, Administrative Law Judge
Hearing Officer Panel

APPEAL PROCEDURE

If you are not satisfied with this decision, you have the right to have the decision reviewed by the Oregon Environmental Quality Commission. To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date this order is served on you as provided in Oregon Administrative Rule (OAR) 340-011-0132(1) and (2). The Petition for Review must be filed with:

Environmental Quality Commission
c/o Stephanie Hallock, Director, DEQ
811 SW Sixth Avenue
Portland, OR 97204.

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as in provided in OAR 340-011-0132(3). If the petition, exceptions and brief are filed in a timely manner, the Commission will set the matter for oral argument and notify you of the time and place of the Commission's meeting. The requirements for filing a petition, exceptions and briefs are set out in OAR 340-011-0132.

Unless you timely and appropriately file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Environmental Quality Commission 30 days from the date of service on you of this Proposed Order. If you wish to appeal the Final Order, you have 60 days from the date the Proposed Order becomes the Final Order to file a petition for review with the Oregon Court of Appeals. See ORS 183.400 et. seq.

Ref No.: G60424
Case No: 01-GAP-00054
Case Type: DEQ

STATE OF OREGON
Before the Hearing Officer Panel
For the
DEPT OF ENVIRONMENTAL QUALITY
875 Union Street NE
Salem, Oregon 97311

Dec Mailed: 07/30/01
Mailed by: LMV

HEARING DECISION

RONALD C. LA FRANCHI
580 N CENTRAL ST

COQUILLE OR 97423 1248

FREDERICK J. CARLETON
PO BOX 38

BANDON OR 97411 0038

DEPT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE

PORTLAND OR 97204 1334

JEFF BACHMAN
DEQ ENFORCEMENT SECTION
811 SW 6TH AVE
PORTLAND OR 97204 1334

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

Certificate of Service

County of Marion)

State of Oregon)

I certify that on July 30, 2001 a true copy of the above Proposed Order was served on each of the parties by depositing the same in the United States Mail in Salem, Oregon, postage paid and certified, and sent to the addresses appearing on the Notice of Hearing unless otherwise noted below.



Laurel Van Fleet
Hearing Officer Panel



Oregon

John A. Kitzhaber, M.D., Governor

Attachment H

Department of Environmental Quality

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

April 6, 2001

Steven Bear, ✓
Administrative Law Judge
875 Union Street NE
Salem, OR 97311
(541) 338-0071

RECEIVED
APR 10 2001
Employment Hearings

Frederick J. Carleton
P.O. Box 38
Bandon, OR 97411
(541) 347-6198

By Facsimile and Regular Mail

Re: In the Matter of:
Ronald C. LaFranchi
No. WPM/SP-WR-00-009
Lane County

Dear Sirs:

Please find enclosed the Department's Hearing Memorandum in the referenced case.
If you have any questions, please contact me at (503) 229-5950.

Sincerely,

Jeff Bachman
Environmental Law Specialist

cc: Waste Prevention and Management Division
Max Rosenberg, Western Region, Eugene Office, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
RONALD C. LAFRANCHI

HEARING MEMORANDUM

No. WPM/SP-WR-00-009
LANE COUNTY

This Hearing Memorandum is offered in support of Notice of Assessment of Civil Penalty (Notice) No. WPM/SP-WR-00-009, issued April 20, 2000, to Ronald C. LaFranchi by the Department of Environmental Quality (the Department or DEQ).

I. APPLICABLE STATUTES AND ADMINISTRATIVE RULES

The Department issued the Notice pursuant to Oregon Revised Statutes (ORS) Chapters 468 and 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12. The Department alleges that Mr. LaFranchi violated a substantive provision of ORS 468B.

II. ISSUES

1. Did Mr. LaFranchi violate ORS 468B.050(1)(a) by discharging wastes to waters of the state without a permit authorizing such discharge?

2. If so, did the Department correctly calculate the penalty assessed in the Notice?

III. FACTS

The evidence entered into the record by the Department and Mr. LaFranchi establishes the following facts. In the early morning of August 23, 1999, a gasoline tanker truck carrying 11,000 gallons of gasoline collided with a pickup truck on Oregon Highway 126, near Mapleton, Lane County. Mr. LaFranchi owned the tanker truck and the truck was driven by Mr. LaFranchi's employee, Bruce E. Sampson, Jr. The driver of the pickup truck, Cynthia Leamon, was killed in the accident. The Oregon State Police investigated the accident and concluded that it occurred because Mr. LaFranchi's truck crossed the center line of the highway and entered Ms. Leamon's lane. On February 15, 2001, Mr. Sampson pled guilty in Lane County Circuit Court to a charge of criminally negligent homicide stemming from Ms. Leamon's death in the accident.

1 After the collision, the tanker and pup trailer being hauled by Mr. Sampson rolled off the
2 highway and down an embankment coming to rest in a wooded area about 150 feet from
3 Knowles Creek. In the accident, storage compartments in the tanker and pup trailer ruptured and
4 leaked gasoline. Approximately 5,600 gallons of gasoline were recovered from the tanker and
5 pup trailer, leaving 4,400 gallons of gasoline unaccounted for.

6 After the accident, an incident command was established by the state police and local fire
7 departments to respond to human life and health, and environmental concerns. The incident
8 commander, a fire official, maintained control of the site directing operations aimed at protecting
9 human life and health until approximately 4 a.m. on August 24, 1999. At that time control was
10 shifted to Christopher Field, an On-Scene Coordinator for the federal Environmental Protection
11 Agency.

12 On the afternoon and the evening of August 23, Mr. Field held several conversations with
13 Mr. LaFranchi and Mr. LaFranchi's insurer. The result of these conversations was that Mr. Field
14 gave Mr. LaFranchi the go ahead to do an initial assessment and cleanup of the spill, instead of
15 mobilizing federal resources to conduct the assessment and clean up. Mr. Field understood that
16 Mr. LaFranchi would be hiring Foss Environmental, Inc., an environmental clean up contractor,
17 to perform the work. Mr. Field and Mr. LaFranchi agreed to meet at the site at 6 a.m., August
18 24, at which time they expected Mr. Field would have control of the site. EPA policy prefers that
19 responsible parties, such as Mr. LaFranchi, conduct clean ups because the responsible party can
20 usually do so more expeditiously and economically than federal contractors. In the event that a
21 state or federal contractor is used, the cost is billed back to the responsible party.

22 Mr. Field met Mr. LaFranchi and a representative from Foss at 6 a.m. on August 24. At
23 that time, Mr. LaFranchi told Mr. Field that he intended to do the clean up using his employees
24 and equipment and utilizing the Foss representative only as advisor. Mr. Field gave the go ahead
25 after Mr. LaFranchi assured him that his employees had undergone the requisite training to work
26 in a contaminated area. Mr. LaFranchi's employees and equipment arrived late that morning.
27 Shortly after 1 p.m., inspectors from the Occupational Health and Safety Administration (OSHA)

1 arrived and halted the work being done by Mr. LaFranchi and his employees. The OSHA
2 inspectors determined that Mr. LaFranchi's employees had not undergone required safety
3 training and prohibited them from conducting further work in the area of contamination. At that
4 point, Mr. LaFranchi's insurer hired Foss to conduct the assessment and cleanup of the spill.

5 After Foss completed the initial assessment and cleanup of soil contamination, Mr.
6 LaFranchi's insurer hired Emcon, later Environmental Management Services (EMS), to
7 determine the extent of ground-water contamination. This investigation found high levels of
8 gasoline constituents in ground water drawn from monitoring wells installed in the spill area and
9 downgradient of the spill area adjacent to Knowles Creek (See DEQ Exhibit 6, Groundwater
10 Analytical Results). The investigation also discovered gasoline floating on top of the water table
11 towards, and eventually seeping into, Knowles Creek. Surface water sampling conducted by
12 EMS found that gasoline constituents from the spill reached Knowles Creek. (See DEQ Exhibit
13 9, Summary of Surface Water Monitoring Data).

14 IV. DEFINITIONS

15 ORS 468B.050(1) states in pertinent part that: "[W]ithout first obtaining a permit ... no
16 person shall: (a) discharge any wastes into the waters of the state from any industrial or
17 commercial establishment or activity or any disposal system."

18 OAR 340-045-0010(4) defined "discharge or disposal" as "placement of wastes into
19 public waters, on land, or otherwise into the environment in a manner that does or may
tend to affect the quality of public waters.

20 ORS 468B.005(7) defines "wastes" as "sewage, industrial wastes and all other liquid,
21 gaseous, solid, radioactive or other substances which will or may cause pollution or tend
to cause pollution of any waters of the state."

22 ORS 468B.005(3) defines "pollution" as "alteration of the physical, chemical or
23 biological properties of any waters of the state, including changes in temperature, taste,
24 color, turbidity, silt, or odor, of the waters, or such discharge of any liquid, gaseous, solid
25 or radioactive or other substance into any waters of the state, which will or tends to by,
26 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
27 health, safety or welfare, or to domestic, commercial, industrial agricultural, recreational
or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic habitat
thereof.

1 ORS 468B.005(8) defines "waters of the state" as "...all ... bodies of surface and
2 underground waters, natural or artificial, ... which are wholly or partially within or
3 bordering the state or within its jurisdiction.

4 V. ARGUMENT

5 1. The Gasoline Spill Constituted an Unpermitted Discharge of Wastes to Waters of the State in 6 Violation of ORS 468B.050(1)(a)

7 The spill of gasoline from Mr. LaFranchi's tanker truck constitutes a "discharge" under
8 OAR 340-012-0010(4). Because of its potential to cause "pollution" as that term is defined in
9 ORS 468B.005(3), the spilled gasoline was a "waste" pursuant to ORS 468B.005(7). The
10 ground water underlying the spill site and Knowles Creek are "waters of the state," as defined in
11 ORS 468B.005(8). The high concentrations of gasoline constituents found in ground water at the
12 spill site and the lesser concentrations found in Knowles Creek prove that gasoline from the spill
13 reached waters of the state. As the owner of the tanker, and because the driver was in his
14 employ, Mr. LaFranchi discharged wastes to waters of the state without a permit authorizing
15 such discharge in violation of ORS 468B.050(1)(a).

16 Mr. LaFranchi may argue that he cannot be held to have violated ORS 468B.050(1)(a)
17 because the collision which led to the spill was not the fault of his driver. Even if that were true,
18 it would not relieve Mr. LaFranchi of liability because liability for violations of Oregon's
19 environmental laws is strict. The legislature's intent to make violations of the state water quality
20 statute and administrative rules strict liability offenses is evidenced in ORS 468.130(2)(f) and
21 468.140(1)(b). ORS 468.130(f) provides that the nature of causation, whether an unavoidable
22 accident, negligent act or omission, intentional act, or flagrant act, is a factor to be considered in
23 determining the amount of the civil penalty for an environmental violation, and is therefore not an
24 element of a violation.

25 Mr. LaFranchi may also argue that but for the actions of other parties, he could have
26 cleaned up the spill before any of the gasoline reached ground water. This argument fails in the
27 face of the facts entered into the record. The Department entered into evidence an Oregon State
Police report that concluded that the collision which caused the spill was the fault of Mr.
LaFranchi's driver, Mr. Sampson, who allowed the truck and trailer to cross the highway center

1 where it collided with Ms. Leamon's vehicle. Mr. Sampson was convicted for criminally negligent
2 homicide in the death of Ms. Leamon, an offense to which he pled guilty. The only evidence Mr.
3 LaFranchi offered to support his contention that Ms. Leamon was at fault was the hearsay opinion
4 of an alleged expert he hired to investigate the cause of the accident. In comparing the relative
5 weight of the evidence offered on the cause of the accident, the Department meets its burden of
6 proving that Mr. Sampson's negligence caused the accident.

7 Because Mr. LaFranchi's employee was at fault for the accident and the spill, even if there
8 were intervening negligence by other parties that prevented him from cleaning up the gasoline
9 before it reached ground water, he violated ORS 468B.050(1)(a). The record, however, provides
10 no evidence, that the act or omission of any other party, unlawfully or negligently prevented Mr.
11 LaFranchi from commencing clean up. There is no evidence that the fire department delayed in
12 completing the human health and safety response phase before turning control of the site to Mr.
13 Field to initiate the environmental response phase. Mr. Field did not prevent Mr. LaFranchi from
14 initiating clean up activities, but in fact gave Mr. LaFranchi the benefit of the doubt when Mr.
15 LaFranchi assured Mr. Field that he had the resources to complete the clean up. The fact that his
16 employees were called off the job by OSHA inspectors who determined the employees did not have
17 the required safety training is Mr. LaFranchi's fault, not OSHA's. In short, there is no evidence
18 that anyone but Mr. Field is at fault for the spilled gasoline reaching ground water and Knowles
19 Creek.

20 V. CIVIL PENALTY CALCULATION

21 Exhibit 1 of the Notice sets forth the calculation of Mr. LaFranchi's civil penalty pursuant
22 to OAR 340-012-0045. Unpermitted discharge of waste to waters of the state is a Class I
23 violation pursuant to OAR 340-012-0055(1)(d). The Department determined the magnitude of
24 the violation to be moderate pursuant to OAR 340-012-0045(1)(a)(B). There are no selected
25 magnitudes for unpermitted discharge of wastes to waters of the state in OAR 340-012-0090.
26 The violation caused adverse environmental impact because high levels of gasoline constituents
27 were found in ground water and lesser concentrations in Knowles Creek. Therefore the

1 magnitude cannot be minor. Furthermore, there is not sufficient evidence demonstrating
2 significant environmental harm to support a finding of major magnitude. The base penalty for a
3 Class I, moderate magnitude water quality violation is \$3,000 pursuant to OAR 340-012-
4 0042(1)(b)(B). Because the violation consisted of a negligent discharge of oil to waters of the
5 state, the Department doubled the base penalty to \$6,000. ORS 466.605(8) defines "oil" to
6 include gasoline.

7 Mr. LaFranchi's penalty was aggravated for one factor and mitigated for one factor. The
8 Department assigned a value of 2 for the "R" or the causation factor pursuant to OAR 340-012-
9 0045(1)(c)(D)(ii) because the cause of the violation was Mr. LaFranchi's negligent conduct.
10 OAR 340-012-0030(11) defines negligence as "failure to take reasonable care to avoid the
11 foreseeable risk of committing the act or omission that constitutes the violation." By causing or
12 allowing the tanker truck to cross the center line, Mr. LaFranchi's employee, Mr. Sampson, failed
13 to take reasonable care to avoid the foreseeable risk of the accident which caused the violation.

14 The Department assigned a value of -2 for the "C" or cooperativeness factor because Mr.
15 LaFranchi was cooperative and made reasonable efforts to minimize the adverse effects of the
16 violation.

17 VII. CONCLUSION

18 The facts in evidence prove that Mr. LaFranchi violated ORS 468B.050(1)(a) by
19 discharging wastes to waters of the state. Specifically, gasoline from a tanker truck owned by Mr.
20 LaFranchi, and operated by his employee, discharged gasoline to ground water and Knowles Creek.
21 The Department requests the Hearing Officer to issue a Proposed Order upholding the civil penalty
22 assessed by the Department.

23
24
25 4/6/01
26 Date

27


Jeff Bachman
Environmental Law Specialist
Department of Environmental Quality

CERTIFICATE OF SERVICE

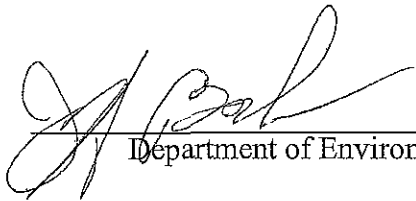
I hereby certify that I served the within HEARING MEMORANDUM on the

6th day of April, 2001 upon

Steven Bear,
Administrative Law Judge
875 Union Street NE
Salem, OR 97311
(541) 338-0071

Frederick J. Carleton
P.O. Box 38
Bandon, OR 97411
(541) 347-6198

by facsimile and by mailing a true copy of the above by placing it in a sealed envelope,
with postage prepaid at the U.S. Post Office in Portland, Oregon, on April 6, 2001



Department of Environmental Quality

RefNo: G60424
Case Type: DEQ
Agency Case No: WPMSPWR00009
Issued By EUGENE

STATE OF OREGON
Before the Hearing Officer Panel
For the
DEPT OF ENVIRONMENTAL QUALITY
875 Union Street NE
Salem, Oregon 97311

Attachment I1

Date Mailed: 02/27/01

Mailed By: LMV

EXHIBIT

CHANGE IN NOTICE OF HEARING

RONALD C. LA FRANCHI
580 N CENTRAL ST
COQUILLE OR 97423 1248

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

FREDERICK J. CARLETON
PO BOX 38

BANDON OR 97411 0038

JEFF BACHMAN
DEQ ENFORCEMENT SECTION
811 SW 6TH AVE
PORTLAND OR 97204 1334

THE HEARING SCHEDULED FOR:

ADMINISTRATIVE LAW JUDGE: BEAR
DATE: TUESDAY, FEBRUARY 13, 2001
TIME: 10:00 AM PT
PLACE OF HEARING: DEPT OF ENVIRONMENTAL QUALITY
340 N FRONT
COOS BAY OR

HAS BEEN CHANGED TO:

ADMINISTRATIVE LAW JUDGE: BEAR
DATE: TUESDAY, MARCH 20, 2001
TIME: 10:00 AM PT
PLACE OF HEARING: DEPT OF ENVIRONMENTAL QUALITY
340 N FRONT
COOS BAY OR

If you have questions prior your hearing, call: 1-888-577-2422.

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: 1-800-311-3394.

RefNo: G60424
Agency Case No: WPMSPWR00009
Case Type: DEQ

STATE OF OREGON
Before the Hearing Officer Panel
For the
DEPT OF ENVIRONMENTAL QUALITY
875 Union Street NE
Salem, Oregon 97311

Date Mailed: 12/01/00
Mailed By: LMV

NOTICE OF HEARING

RONALD C. LA FRANCHI
580 N CENTRAL ST
COQUILLE OR 97423 1248

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

FREDERICK J. CARLETON
PO BOX 38

BANDON OR 97411 0038

JEFF BACHMAN
DEQ ENFORCEMENT SECTION
2020 SW 4TH AVE STE 400
PORTLAND OR 97201 4959

HEARING DATE AND TIME

TUESDAY, FEBRUARY 13, 2001
9:30 AM PT

HEARING PLACE

DEPT OF ENVIRONMENTAL QUALITY
340 N FRONT
COOS BAY OREGON

ADMINISTRATIVE LAW JUDGE

BEAR

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:

SHALL THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S NOTICE OF ASSESSMENT OF CIVIL PENALTY DATED APRIL 20, 2000 BE AFFIRMED, MODIFIED OR VACATED?

RefNo: G60424
Agency Case No: WPMSPWR00009
Case Type: DEQ

STATE OF OREGON
Before the Hearing Officer Panel
For the
DEPT OF ENVIRONMENTAL QUALITY
875 Union Street NE
Salem, Oregon 97311

Date Mailed: 11/22/00
Mailed By: LMV

NOTICE OF HEARING

RONALD C. LA FRANCHI
580 N CENTRAL ST
COQUILLE OR 97423 1248

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

WE NEED YOUR PH #-CALL 1-888-577-2422

503-229-5263

FREDERICK J. CARLETON
PO BOX 38

BANDON OR 97411 0038

JEFF BACHMAN
DEQ ENFORCEMENT SECTION
2020 SW 4TH AVE STE 400
PORTLAND OR 97201 4959

541-347-2468

503-229-5950

HEARING DATE AND TIME

HEARING PLACE

ADMINISTRATIVE LAW JUDGE

TUESDAY, JANUARY 30, 2001
9:30 AM PT

TELEPHONE

BEAR

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.

ANY CALL BLOCKING FEATURE ON YOUR PHONE MUST BE ENTIRELY DISABLED PRIOR TO THE TIME OF YOUR HEARING. IT IS POSSIBLE THAT YOU HAVE CALL BLOCKING AND ARE UNAWARE OF IT. CHECK WITH YOUR PHONE COMPANY.

ON THE DATE OF YOUR HEARING WE WILL CALL YOU AT THE TELEPHONE NUMBER LISTED BELOW YOUR ADDRESS. IF YOU NEED TO GIVE A DIFFERENT NUMBER FOR THE HEARING OR IF YOU ARE NOT CALLED WITHIN 10 MINUTES AFTER THE TIME SET FOR HEARING, CALL 1-800-311-3394 IMMEDIATELY.

The issue(s) to be considered are:

This is a pre-hearing conference to discuss the issues, evidence (including witnesses and exhibits), stipulations, length of hearing, and a briefing schedule.



Oregon

John A. Kitzhaber, M.D., Governor

EXHIBIT
2a

Department of Environmental Quality

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

April 20, 2000

CERTIFIED MAIL Z 440 760 632

Ronald C. La Franchi
(abn Ron's Oil Company)
580 N. Central
Coquille, OR 97423

Re: Notice of Assessment of
Civil Penalty
No. WPM/SP-WR-00-009
Lane County

Dear Mr. La Franchi:

On August 23, 1999, a fuel tanker truck owned by you and driven by your employee, Bruce E. Sampson, Jr., was involved in an accident on Oregon Highway 126 near Mapleton. The truck released approximately 4,500 gallons of gasoline to the soil and ground water. While your insurer has done a commendable job in minimizing the environmental harm caused by the release, gasoline constituents from the spill did reach ground water and Knowles Creek. The release constitutes a discharge of wastes to waters of the state without a permit and is a Class I violation of Oregon water quality law.

According to the Oregon State Police, the accident occurred because Mr. Sampson was speeding and the truck crossed the center line, colliding head on with another vehicle. Therefore, the spill and discharge occurred as a result of Mr. Sampson's negligence. You are liable for the discharge violation because Mr. Sampson was in your employ and operating your truck.

Because of the rapid and effective response to the spill, only small amounts of gasoline constituents reached Knowles Creek. The spill, however, posed a substantial risk of egregious environmental harm. Knowles Creek is a spawning stream for coho salmon listed under the federal Endangered Species Act. Shortly after the spill, coho began entering the stream for their fall spawning run. If gasoline constituents in greater concentrations had reached the creek, the fall run could have been disrupted, further imperiling this already threatened species.

You are liable for a civil penalty assessment because you violated Oregon environmental law. In the enclosed Notice, I have assessed a civil penalty of \$6,000. In determining the amount of the penalty, I used the procedures set forth in Oregon Administrative Rule (OAR) 340-012-0045. The Department's findings and civil penalty determination are attached to the Notice as Exhibit 1.


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

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

I look forward to your cooperation in complying with Oregon environmental law in the future. However, if any additional violations occur, you may be assessed additional civil penalties. Copies of referenced rules are enclosed. Also enclosed is a copy of the Department's internal management directive regarding civil penalty mitigation for Supplemental Environmental Projects (SEPs). If you are interested in having a portion of the civil penalty fund an SEP, you should review the enclosed SEP directive. Exceptional pollution prevention could result in partial penalty mitigation.

If you have any questions about this action, please contact Jeff Bachman with the Department's Enforcement Section in Portland at (503) 229-5950 or toll-free at 1-800-452-4011, enforcement extension 5950.

Sincerely,



Langdon Marsh
Director

e:\winword\letters\ronsltr.doc

Enclosures

cc: Max Rosenberg, Western Region, Eugene Office, DEQ
Waste Prevention and Management Division, DEQ
Department of Justice
Environmental Protection Agency
Environmental Quality Commission
Lane County District Attorney

NOTICE OF ASSESSMENT
OF CIVIL PENALTY
No. WPM/SP-WR-00-009
LANE COUNTY

This Notice of Assessment of Civil Penalty (Notice) is issued to Respondent, Ronald C. La Franchi (abn Ron's Oil Company), by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS Chapter 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

On or about August 23, 1999, Respondent violated ORS 468B.050(1)(a) by discharging wastes to waters of the state without a permit authorizing such discharge. Specifically, a gasoline tanker truck operated by Respondent's employee spilled some 4,500 gallons of gasoline. The gasoline discharged to ground water and eventually reached Knowles Creek, waters of the state pursuant to ORS 468B.005(8). These are Class I violations pursuant to OAR 340-012-0055(1)(d).

The Department imposes a civil penalty of \$6,000 for the violation in Section II, above.

The findings and determination of Respondent's civil penalty, pursuant to OAR 340-012-0045, are attached and incorporated as Exhibit 1.

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**

1 **Notice, and must be accompanied by a written "Answer" to the charges contained in this**
2 **Notice.**

3 In the written Answer, Respondent shall admit or deny each allegation of fact contained in
4 this Notice, and shall affirmatively allege any and all affirmative claims or defenses to the
5 assessment of this civil penalty that Respondent may have and the reasoning in support thereof.

6 Except for good cause shown:

- 7 1. Factual matters not controverted shall be presumed admitted;
- 8 2. Failure to raise a claim or defense shall be presumed to be a waiver of such claim or
9 defense;
- 10 3. New matters alleged in the Answer shall be presumed to be denied unless admitted
11 in subsequent pleading or stipulation by the Department or Commission.

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

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

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

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

21 V. OPPORTUNITY FOR INFORMAL DISCUSSION

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

25 VI. PAYMENT OF CIVIL PENALTY

26 The civil penalty is due and payable ten (10) days after an Order imposing the civil penalty
27 becomes final by operation of law or on appeal. Respondent may pay the penalty before that time.

1 Respondent's check or money order in the amount of \$6,000 should be made payable to "State
2 Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental**
3 **Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

4
5 4/20/00
6 Date


Langdon Marsh, Director

EXHIBIT

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION:** Discharging wastes to waters of the state without a permit authorizing such discharge in violation of Oregon Revised Statute 468B.050(1)(a).
- CLASSIFICATION:** This is a Class I violation pursuant to OAR 340-012-0055(1)(d).
- MAGNITUDE:** The magnitude of the violation is moderate. Pursuant to OAR 340-012-0045(1)(a) the magnitude is moderate as there is no selected magnitude for the violation in listed OAR 340-012-0090.
- 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. The base penalty for a Class I, moderate magnitude violation is \$3,000 pursuant to 340-012-0042(1). Because this violation involved a negligent discharge of oil to waters of the state, Respondent's base penalty is doubled to \$6,000 pursuant to OAR 340-012-0042(2).
- "P" is Respondent's prior significant action(s) and receives a value of 0 as Respondent has no prior significant actions.
- "H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of 0 as Respondent has no prior significant actions.
- "O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 as the violation occurred on a single day.
- "R" is the cause of the violation and receives a value of 2 as the violation was the result of Respondent's negligent conduct. The discharge occurred as a result of Respondent's employee's negligence in operating a tanker truck owned. The spill occurred as a result of an accident caused by Respondent's employee's speeding and crossing of the highway center line.
- "C" is Respondent's cooperativeness in correcting the violation and receives a value of -2 as Respondent was cooperative and took reasonable efforts to correct the effects of 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 Respondent received no economic benefit.

PENALTY CALCULATION:

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

EXHIBIT**3**

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
RONALD C. LA FRANCHI

Respondent.

)
) RESPONDENT'S ANSWER AND APPEAL
) TO NOTICE OF ASSESSMENT OF CIVIL
) PENALTY; REQUEST FOR HEARING
No. WPM/SP-WR-00-009
LANE COUNTY

Respondent, through the undersigned, in answer to the department's notice of assessment of civil penalty dated April 20, 2000 alleges as follows:

I.

Admits paragraph 1 as to the department's authority and as to the issuance of the notice of assessment of civil penalty.

II.

Denies the allegations of paragraph II except that Respondent admits that an accident did occur involving Respondent's truck on August 23, 1999 in the vicinity of Hwy 126 east of Mapleton, Oregon.

III.

Respondent admits that the department is imposing a penalty of \$6,000 but denies that Respondent should have that penalty assessed against him in that amount. Specifically, Respondent denies the finding and determination of the department chiefly for the reason that the department's allegation of the negligence of the employee of Respondent is not proven and is not a fact; further, Respondent's cooperativeness may be entitled to more of a factor than the department is determining in Exhibit A.

IV.

There are no other factual allegations that are apparent in the notice of penalty that requires Respondent's answer; however, Respondent denies each and every allegation not

specifically denied above in the balance of the notice if that allegation is supporting an alleged factor that purports to find Respondent at fault for the discharge complained of in the notice.

AFFIRMATIVE DEFENSES

V.

Respondent alleges that the accident complained of was not the fault of Respondent's employee; In fact, the accident was the result of attempted evasive action after a third party crossed the line going east bound and struck Respondent's truck causing the vehicle to leave the highway and go over the bank at or near the Knowles Creek area.

VI.

Respondent assisted and attempted to perform cleanup of whatever fuel had been discharged in the vicinity of the resting place of Respondent's truck after the accident above-noted; Respondent's actions were thwarted in part by agencies who in asserting the purported authority of the respective agencies did not enable Respondent to perform as expeditiously as Respondent would have been able to clean up what was necessary; the result of which may have lead to discharge into Knowles Creek of the gasoline complained of in the notice.

VII.

Respondent denies that the determination of the magnitude of the violation should be considered major.

VIII.

WHEREFORE Respondent Ronald C. La Franchi having answered the department's notice requests a contested case hearing.

Dated this 2 day of May, 2000.



Frederick J. Carleton
Attorney for Respondent

EXHIBIT 4



Attachment 14

FILED
AT FW O'CLOCK PM

FEB 15 2001

Circuit Court
For Lane County, Oregon
By [Signature]

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY
THE STATE OF OREGON,

Plaintiff,

Case No. 20-00-12806

vs.

JUDGMENT

BRUCE EUGENE SAMPSON, JR.,

Defendant.

THIS MATTER came on to be heard on February 15, 2001. Defendant having previously been indicted for the crimes of MANSLAUGHTER IN THE FIRST DEGREE (Count 1) and RECKLESS DRIVING (Counts 2 and 3) and said defendant having previously been found guilty of the lesser included crime of CRIMINALLY NEGLIGENT HOMICIDE (Count 1) by a guilty plea, and the Court having accepted such plea or verdict;

IT IS HEREBY ADJUDGED AND ORDERED that the defendant is convicted of **CRIMINALLY NEGLIGENT HOMICIDE (Count 1)**, committed on or about August 23, 1999, and this being the time fixed for sentence, the State appearing by David Vill, Assistant District Attorney, the defendant appearing in person, and by attorney, David A. Hill, and on behalf of the victim, the Court having heard from Carrie Peterson and Brad Morrow; these proceedings having been reported by Eileen McCornack³, and the Court being fully advised;

IT IS HEREBY ORDERED that defendant shall pay to the Clerk of the Circuit Court, Lane County Courthouse, Eugene, Oregon, 97401, the amounts set forth in the Money Judgment section which follows and in the manner specified, which section is hereby made a part of this judgment. Case Number to be placed on check.

IT IS FURTHER ORDERED that the defendant is sentenced to the Supervisory Authority for Lane County for the crime of CRIMINALLY NEGLIGENT HOMICIDE for

JUDGMENT - PAGE 1

IBC 1754722 ✓ ~

FTR 28943 ^{WP}

FEB 22 2001

a period of twelve (12) months, with credit for time served, the first six months to be served in the jail without programs, and the remaining six (6) months to be served on electronic surveillance. If electronic surveillance is not available to the defendant, the Court will bench parole the defendant and impose 150 hours of community service to be completed within six (6) months of his date of release. The Defendant is hereby remanded to the custody of the Lane County Sheriff. The defendant shall pay all fees assessed by the Lane County Sheriff when defendant participates in programs as an inmate.

For the reasons stated on the record, pursuant to ORS 137.750, the Court finds substantial and compelling reasons to order that the defendant not be considered for any reduction in sentence or other form of early release (ORS 137.750(1)). The Court has no objection to defendant participating in any or all other programs for which he is eligible, and in fact encouraged defendant to seek out such programs. This applies only to the first six months of defendant's sentence.

The length of post-prison supervision shall be thirty-six (36) months. If defendant violates the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment provided by law.

Oregon Motor Vehicles Division is directed to suspend driving privileges of defendant (License No. 4222212); address: 725 Bluff Street, Bandon, OR, 97411; DOB: 10/22/60; incident date: 8/23/99; pursuant to the statute for the conviction of CRIMINALLY NEGLIGENT HOMICIDE.

IT IS FURTHER ORDERED AND ADJUDGED that upon previous negotiations with the State, Counts 2 and 3 (RECKLESS DRIVING) are hereby dismissed.

Thereupon the Court advised the defendant of the rights of appeal.

MONEY JUDGMENT

State of Oregon is the judgment creditor.

Bruce Eugene Sampson, Jr. is the judgment debtor, whose date of birth is 10/22/60.

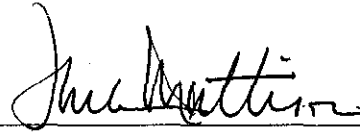
\$105.00 is the total amount of the Money Judgment.

The following shall be paid in the manner indicated as part of the Money Judgment.

Unitary Assessment	\$105.00
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Any security on deposit with the Court shall be applied to any fines, fees, costs, and restitution owing under this Judgment.

SIGNED: February 15, 2001



JACK MATTISON
CIRCUIT JUDGE

CERTIFIED TO BE A TRUE COPY OF THE
ORIGINAL DOCUMENT CONSISTING OF
3 PAGES, WHICH IS FILED IN
THE OFFICE AND OF WHICH I AM THE
LEGAL CUSTODIAN.

DATED 3-6-01

Circuit Court


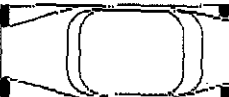
Lane County, Oregon

By Marilyn Mark

DMV

OREGON POLICE TRAFFIC CRASH REPORT

Attachment T5

POLICE INCIDENT / CASE NUMBER 99-326071		CRASH DATE 082399		M T W T F S S M T W T F S S		CRASH TIME 05:00		POLICE NOTIFIED 05:35 AM PM		POLICE ARRIVAL AM PM		DMV FILE NUMBER EXHIBIT 5	
COUNTY Lane		ROAD ON WHICH CRASH OCCURRED Hwy 126								MILE POST 18		DMV CODE	
HIN _____ FEET N S OF NEAREST INTERSECTING ROAD NEAR 3 MILES E W E. Mapleton Rd						WITHIN _____ FEET N S OF NEAREST CITY / TOWN NEAR 18 MILES E W Florence							
<input checked="" type="checkbox"/> PROPERTY DAMAGE <input checked="" type="checkbox"/> PUBLIC PROPERTY DAMAGE <input checked="" type="checkbox"/> INJURY <input checked="" type="checkbox"/> FATAL <input checked="" type="checkbox"/> HAZARDOUS MATERIALS <input type="checkbox"/> HIT AND RUN <input type="checkbox"/> PHOTOS TAKEN <input type="checkbox"/> TRAIN R/R <input type="checkbox"/> TRUCK / BUS													
UNIT # 1		NAME (LAST, FIRST, MIDDLE) Leaming, Cynthia L.				DRIVER LICENSE NUMBER 1579754		STATE SEX RACE OR F W		DOB 03-30-53			
PED ADDRESS 1361 S St. Springfield OR. 97477		HOME PHONE ()											
PRK VEHICLE OWNER PRP <input type="checkbox"/> SAME		WORK PHONE ()											
INSURANCE COMPANY <input type="checkbox"/> NONE						INSURANCE POLICY NUMBER							
FIRE Y N		STD SPD		PST SPD		EJECTED Y P N		EXTRACTD Y N		VEHICLE IDENTIFICATION NUMBER (VIN) 2GTEK14H2E1529693		LICENSE PLATE NUMBER / STATE / YEAR / MAKE / MODEL / STYLE / COLOR 118AGV OR 84 GMC P/U White	
VEHICLE TOWED: Y N		BY: Siuslaw Towing		TO: County Lot		DRIVER TAKEN: Y N		BY: Medical Examiner		TO: Eugene		UNKNOWN	
VEHICLE DAMAGE FRONT				DAMAGE ESTIMATE <input type="checkbox"/> ROLLOVER <input type="checkbox"/> NONE <input type="checkbox"/> UNDERCAR <input type="checkbox"/> UNDER \$1000 <input checked="" type="checkbox"/> TOTALED <input type="checkbox"/> OVER \$1000 <input type="checkbox"/> UNKNOWN		INJURY: <input type="checkbox"/> NONE <input type="checkbox"/> POSSIBLE <input type="checkbox"/> MINOR <input type="checkbox"/> SERIOUS <input checked="" type="checkbox"/> FATAL		EQUIPMENT: <input type="checkbox"/> NO EQP USED <input checked="" type="checkbox"/> LAP ONLY <input type="checkbox"/> LAP / SHLDR <input type="checkbox"/> CHLD RST-PRP <input type="checkbox"/> ABAG-DEPLYD <input type="checkbox"/> NONE INSTLD <input type="checkbox"/> UNKNOWN <input type="checkbox"/> SHLDR ONLY <input type="checkbox"/> HELMET <input type="checkbox"/> CHLD RST-IMPR <input type="checkbox"/> ABAG-NOT DP		ACTION / ARREST / CITES			
SUSPECT NAME		AKA								IN CUSTODY Y N			
ADDRESS		OTHER INFORMATION:											
SEX RACE DOB		HT		WT		HAIR		EYES		LOCAL ID			
UNIT # 2		NAME (LAST, FIRST, MIDDLE) Sampson Jr, Bruce Eugene				DRIVER LICENSE NUMBER 4222212		STATE SEX RACE OR M W		DOB 10-22-60			
ADDRESS 96 9th St SW Bndn Bandon OR 97411		HOME PHONE ()											
PRK VEHICLE OWNER PRP <input type="checkbox"/> SAME Ron's Oil Company		WORK PHONE ()											
INSURANCE COMPANY <input type="checkbox"/> NONE						INSURANCE POLICY NUMBER							
FIRE Y N		STD SPD		PST SPD		EJECTED Y P N		EXTRACTD Y N		VEHICLE IDENTIFICATION NUMBER (VIN) 1XP6DB9X8VD610012		LICENSE PLATE NUMBER / STATE / YEAR / MAKE / MODEL / STYLE / COLOR YCBS009 OR 97 petbt blue	
VEHICLE TOWED: Y N		BY: Big Johns		TO: County Lot		DRIVER TAKEN: Y N		BY: Western Lane Amb.		TO: PHH		UNKNOWN	
VEHICLE DAMAGE FRONT				DAMAGE ESTIMATE <input type="checkbox"/> ROLLOVER <input type="checkbox"/> NONE <input type="checkbox"/> UNDERCAR <input type="checkbox"/> UNDER \$1000 <input type="checkbox"/> TOTALED <input type="checkbox"/> OVER \$1000 <input type="checkbox"/> UNKNOWN		INJURY: <input type="checkbox"/> NONE <input type="checkbox"/> POSSIBLE <input type="checkbox"/> MINOR <input checked="" type="checkbox"/> SERIOUS <input type="checkbox"/> FATAL		EQUIPMENT: <input type="checkbox"/> NO EQP USED <input type="checkbox"/> LAP ONLY <input checked="" type="checkbox"/> LAP / SHLDR <input type="checkbox"/> CHLD RST-PRP <input type="checkbox"/> ABAG-DEPLYD <input type="checkbox"/> NONE INSTLD <input type="checkbox"/> UNKNOWN <input type="checkbox"/> SHLDR ONLY <input type="checkbox"/> HELMET <input type="checkbox"/> CHLD RST-IMPR <input type="checkbox"/> ABAG-NOT DP		ACTION / ARREST / CITES			
UNIT # 3		PASSENGER NAME <input type="checkbox"/> WITNESS				ADDRESS		INJURY <input type="checkbox"/> POSSIBLE <input type="checkbox"/> SERIOUS <input type="checkbox"/> FATAL		LOCATION LF OF RF LR CR RR		EJECTED EXTRACTD Y P N Y N	
SEX RACE DOB		HOME PHONE ()		WORK PHONE ()		EQUIPMENT <input type="checkbox"/> NO EQP USED <input type="checkbox"/> LAP ONLY <input type="checkbox"/> LAP / SHLDR <input type="checkbox"/> CHLD RST-PRP <input type="checkbox"/> ABAG-DEPLYD <input type="checkbox"/> NONE INSTLD <input type="checkbox"/> UNKNOWN <input type="checkbox"/> SHLDR ONLY <input type="checkbox"/> HELMET <input type="checkbox"/> CHLD RST-IMPR <input type="checkbox"/> ABAG-NOT DP		ACTION / ARREST / CITES		PASSENGER TAKEN: Y N		BY: UNKNOWN TO:	
UNIT # 4		PASSENGER NAME <input type="checkbox"/> WITNESS				ADDRESS		INJURY <input type="checkbox"/> POSSIBLE <input type="checkbox"/> SERIOUS <input type="checkbox"/> FATAL		LOCATION LF OF RF LR CR RR		EJECTED EXTRACTD Y P N Y N	
SEX RACE DOB		HOME PHONE ()		WORK PHONE ()		EQUIPMENT <input type="checkbox"/> NO EQP USED <input type="checkbox"/> LAP ONLY <input type="checkbox"/> LAP / SHLDR <input type="checkbox"/> CHLD RST-PRP <input type="checkbox"/> ABAG-DEPLYD <input type="checkbox"/> NONE INSTLD <input type="checkbox"/> UNKNOWN <input type="checkbox"/> SHLDR ONLY <input type="checkbox"/> HELMET <input type="checkbox"/> CHLD RST-IMPR <input type="checkbox"/> ABAG-NOT DP		ACTION / ARREST / CITES		PASSENGER TAKEN: Y N		BY: UNKNOWN TO:	
UNIT # 5		PASSENGER NAME <input type="checkbox"/> WITNESS				ADDRESS		INJURY <input type="checkbox"/> POSSIBLE <input type="checkbox"/> SERIOUS <input type="checkbox"/> FATAL		LOCATION LF OF RF LR CR RR		EJECTED EXTRACTD Y P N Y N	
SEX RACE DOB		HOME PHONE ()		WORK PHONE ()		EQUIPMENT <input type="checkbox"/> NO EQP USED <input type="checkbox"/> LAP ONLY <input type="checkbox"/> LAP / SHLDR <input type="checkbox"/> CHLD RST-PRP <input type="checkbox"/> ABAG-DEPLYD <input type="checkbox"/> NONE INSTLD <input type="checkbox"/> UNKNOWN <input type="checkbox"/> SHLDR ONLY <input type="checkbox"/> HELMET <input type="checkbox"/> CHLD RST-IMPR <input type="checkbox"/> ABAG-NOT DP		ACTION / ARREST / CITES		PASSENGER TAKEN: Y N		BY: UNKNOWN TO:	
DISTRIBUTION													
OFFICER NAME / NUMBER Michael J. Bennett 1416-29						DATE		AGENCY OSP		APPROVED BY			
733-46A (12-97)						AGENCY COPY						STK# 300018	

ALICE INCIDENT / CASE NUMBER 19-324071

Check ONE box in all categories. Check ALL boxes that apply in categories with (+).

FIRST HAZARDOUS EVENT	WEATHER	ROAD CHARACTER	VEH RELATED FACTORS	TRUCK CONFIGURATION	PEDESTRIAN TYPE
LISSON <input type="checkbox"/> RETURN <input type="checkbox"/> FIRE / EXPLOSION <input type="checkbox"/> IMMERISION <input type="checkbox"/> GAS INHALATION <input type="checkbox"/> OTHER NON COLLISION <input type="checkbox"/> MEDICAL (Explain)	<input type="checkbox"/> CLEAR <input type="checkbox"/> CLOUDY (OVERCAST) <input type="checkbox"/> RAIN <input type="checkbox"/> SNOW <input type="checkbox"/> SLEET / HAIL / ETC <input type="checkbox"/> FOG / SMOG <input type="checkbox"/> SMOKE <input type="checkbox"/> BLOWING SAND / DIRT <input type="checkbox"/> SEVERE CROSSWIND <input type="checkbox"/> OTHER / UNKNOWN	<input type="checkbox"/> 01 <input type="checkbox"/> 02 STRAIGHT and LEVEL <input type="checkbox"/> STRAIGHT w GRADE <input type="checkbox"/> CURVED and LEVEL <input checked="" type="checkbox"/> CURVED w GRADE VEH #1 — NUMBER OF LANES VEH #2 — NUMBER OF LANES TOTAL NUMBER OF LANES ROAD FLOW DIVIDED MEDIAN <input type="checkbox"/> 01 <input type="checkbox"/> 02 UNPAVED <input type="checkbox"/> BARRIER <input type="checkbox"/> PAVED <input type="checkbox"/> CONT LEFT TURN <input type="checkbox"/> ONE WAY TRAFFIC <input checked="" type="checkbox"/> NOT PHYSLY DIVIDED	<input type="checkbox"/> 01 <input type="checkbox"/> 02 NONE <input type="checkbox"/> BRAKES <input type="checkbox"/> STEERING <input type="checkbox"/> POWER PLANT <input type="checkbox"/> SUSPENSION <input type="checkbox"/> TIRES <input type="checkbox"/> EXHAUST <input type="checkbox"/> LIGHTS <input type="checkbox"/> SIGNALS <input type="checkbox"/> WINDOWS / WINDSHLD <input type="checkbox"/> RESTRAINT SYSTEM <input type="checkbox"/> WHEELS <input type="checkbox"/> COUPLING <input type="checkbox"/> CARGO <input type="checkbox"/> OTHER VEHICLE MOVEMENT <input type="checkbox"/> 01 <input type="checkbox"/> 02 BACKING <input type="checkbox"/> STOPPED <input type="checkbox"/> STRAIGHT AHEAD <input type="checkbox"/> TURNING RIGHT <input type="checkbox"/> TURNING LEFT <input type="checkbox"/> MAKING U-TURN <input type="checkbox"/> ENTER TRAFFIC LANE <input type="checkbox"/> LEAVE TRAFFIC LANE <input type="checkbox"/> OVERTAKING <input type="checkbox"/> CHANGING LANES <input type="checkbox"/> AVOIDING MANUEVER <input type="checkbox"/> MERGING <input type="checkbox"/> PARKING <input checked="" type="checkbox"/> NEGOTIATING A CURVE <input type="checkbox"/> OTHER TRAILER TYPE <input type="checkbox"/> 01 <input type="checkbox"/> 02 LOG BUNK <input type="checkbox"/> SEMITRAILER <input type="checkbox"/> POLE TRAILER <input type="checkbox"/> FULL TRAILER <input type="checkbox"/> MOBILE HOME <input type="checkbox"/> UTILITY TRAILER <input type="checkbox"/> TRAVEL TRAILER <input type="checkbox"/> BOAT TRAILER <input type="checkbox"/> FARM EQUIPMENT <input type="checkbox"/> HORSE TRAILER <input type="checkbox"/> VEHICLE IN TOW <input type="checkbox"/> OTHER / UNKNOWN	<input type="checkbox"/> 01 <input type="checkbox"/> 02 TRUCK (2 or 3 AXLE) <input type="checkbox"/> TRUCK / TRACTOR-SEMI <input type="checkbox"/> TRUCK and TRAILER <input checked="" type="checkbox"/> DOUBLE TRAILERS <input type="checkbox"/> TRIPLE TRAILERS <input type="checkbox"/> DROMEDARY and SEMI <input type="checkbox"/> HEAVY HAUL CONFIG <input type="checkbox"/> BUS <input type="checkbox"/> OTHER PASSENGER FACTORS PASS UNIT #1 <input type="checkbox"/> 01 <input type="checkbox"/> 02 NONE <input type="checkbox"/> INTERFERED w DRIVER <input type="checkbox"/> UNDER INFL - DRUGS <input type="checkbox"/> UNDER INFL - ALCOHOL <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER (Explain) PASS UNIT #2 <input type="checkbox"/> 01 <input type="checkbox"/> 02 NONE <input type="checkbox"/> INTERFERED w DRIVER <input type="checkbox"/> UNDER INFL - DRUGS <input type="checkbox"/> UNDER INFL - ALCOHOL <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER (Explain)	<input checked="" type="checkbox"/> NONE <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> BICYCLIST <input type="checkbox"/> CONVEYANCE <input type="checkbox"/> WHEELCHAIR <input type="checkbox"/> ANIMAL RIDER <input type="checkbox"/> RIDER of ANIM DRAWN VEH <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER (Explain) PEDESTRIAN ACTION <input type="checkbox"/> ENTER / CROSS ROAD <input type="checkbox"/> WALK / RIDE w TRAFF <input type="checkbox"/> WALK / RIDE AGAINST <input type="checkbox"/> STEP ON / OFF VEHICLE <input type="checkbox"/> STEP ON / OFF SCH BUS <input type="checkbox"/> APPROCH / LEAVE SC BUS <input type="checkbox"/> APPROACH / LEAVE VEH <input type="checkbox"/> WORK / PUSHING VEHICLE <input type="checkbox"/> OTHER WORKING <input type="checkbox"/> PLAYING <input type="checkbox"/> STANDING <input type="checkbox"/> LYING DOWN <input type="checkbox"/> UNKNOWN PEDESTRIAN VISIBILITY CLOTHING <input type="checkbox"/> NO CONTRAST w BKGRND <input type="checkbox"/> CONTRASTED w BKGRND <input type="checkbox"/> REFLECTIVE <input type="checkbox"/> OTHER <input type="checkbox"/> OTHER LIGHT SOURCE <input type="checkbox"/> UNKNOWN PEDESTRIAN LOCATION IN ROAD <input type="checkbox"/> IN X-WALK <input type="checkbox"/> NOT IN X-WALK <input type="checkbox"/> NO X-WALK AVAILABLE INTERSECTION <input type="checkbox"/> IN X-WALK <input type="checkbox"/> NOT IN X-WALK <input type="checkbox"/> NO X-WALK AVAILABLE OTHER <input type="checkbox"/> NOT IN ROADWAY <input type="checkbox"/> SHOULDER <input type="checkbox"/> MEDIAN <input type="checkbox"/> BIKE LANE <input type="checkbox"/> UNKNOWN PEDESTRIAN FACTORS <input type="checkbox"/> NONE <input type="checkbox"/> FAILED TO YIELD ROW <input type="checkbox"/> DISREGARD TRAFFIC SIGN <input type="checkbox"/> ILLEGALLY IN ROAD <input type="checkbox"/> EQUIPMENT VIOLATION <input type="checkbox"/> CLOTHING NOT VISIBLE <input type="checkbox"/> UNDER INFL - DRUGS <input type="checkbox"/> UNDER INFL - ALCOHOL <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER (Explain)
COLLISION WITH <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> PARKED MOTOR VEHICLE <input type="checkbox"/> RAILWAY TRAIN <input type="checkbox"/> BICYCLIST CRASH TYPE <input checked="" type="checkbox"/> HEAD ON <input type="checkbox"/> REAR END <input type="checkbox"/> ANGLE <input type="checkbox"/> SIDESWIPE <input type="checkbox"/> MANNER UNKNOWN FIXED OBJECT <input type="checkbox"/> BARRICADE <input type="checkbox"/> BOULDER / ROCK <input type="checkbox"/> BRIDGE OPASS or RAILING <input type="checkbox"/> BUILDING <input type="checkbox"/> CULVERT HEADWALL <input type="checkbox"/> CURBING <input type="checkbox"/> DITCH <input type="checkbox"/> DIVIDER - CONCRT or STEEL <input type="checkbox"/> FENCE - NOT MEDIAN <input type="checkbox"/> FIRE HYDRANT <input type="checkbox"/> HIGHWAY GUARDRAIL <input type="checkbox"/> HIGHWAY SIGN <input type="checkbox"/> IMPACT ABSORBER <input type="checkbox"/> LIGHT STANDARD <input type="checkbox"/> MAIL BOX <input type="checkbox"/> OVERHEAD SIGN POST <input type="checkbox"/> OVERHEAD STRUCTURE <input type="checkbox"/> PIER or COLUMN <input type="checkbox"/> RETAINING WALL <input type="checkbox"/> SLOPE EARTH <input type="checkbox"/> SLOPE ROCK or STONE <input type="checkbox"/> TRAFFIC SIGNAL POST <input type="checkbox"/> TREE <input type="checkbox"/> UNDERPASS TUNNEL <input type="checkbox"/> UTILITY POLE <input type="checkbox"/> OTHER FIXED (Explain)	SURFACE CONDITION <input type="checkbox"/> 01 <input type="checkbox"/> 02 DRY <input type="checkbox"/> WET <input type="checkbox"/> SNOW / SLUSH <input type="checkbox"/> IGY <input type="checkbox"/> MUDDY <input type="checkbox"/> DEBRIS <input type="checkbox"/> RUTS / HOLES / BUMPS <input type="checkbox"/> WORN / POLISHED <input type="checkbox"/> LOW / SOFT SHOULDER <input type="checkbox"/> OTHER / UNKNOWN SURFACE TYPE <input type="checkbox"/> 01 <input type="checkbox"/> 02 CONCRETE <input checked="" type="checkbox"/> BLACKTOP / ASPHALT <input type="checkbox"/> GRAVEL <input type="checkbox"/> DIRT <input type="checkbox"/> OTHER LIGHT <input type="checkbox"/> FULL DAYLIGHT <input type="checkbox"/> DAWN <input type="checkbox"/> DUSK <input type="checkbox"/> DARK - LIGHTED WAY <input type="checkbox"/> DARK - NOT LIGHTED <input type="checkbox"/> UNKNOWN TRAFFIC CONTROL TYPE <input type="checkbox"/> 01 <input type="checkbox"/> 02 NONE <input type="checkbox"/> SCHOOL BUS LIGHTS <input type="checkbox"/> OFFICER / CROSSING <input type="checkbox"/> GUARD or FLAGGER <input type="checkbox"/> TRAFFIC SIGNAL w <input type="checkbox"/> PEDESTRIAN CONTROL <input type="checkbox"/> TRAFFIC SIGNAL <input type="checkbox"/> FLASHING BEACON <input type="checkbox"/> STOP SIGN <input type="checkbox"/> YIELD SIGN <input type="checkbox"/> RR CROSSING GATES <input type="checkbox"/> RR CROSSING BUCKS <input type="checkbox"/> RR FLASHING SIGNAL <input type="checkbox"/> RR CROSSING w <input type="checkbox"/> PAVEMENT MARKINGS <input type="checkbox"/> LANE CONTRLS / LINES <input type="checkbox"/> / STRIPES / DEVICES <input type="checkbox"/> SCHOOL SIGNAL <input type="checkbox"/> OTHER REG SIGN <input type="checkbox"/> UNKNOWN TRAFFIC CONTROL DEVICE CONDITION <input type="checkbox"/> 01 <input type="checkbox"/> 02 NO MALFUNCTION <input type="checkbox"/> DOWN / MISSING <input type="checkbox"/> TURNED FROM <input type="checkbox"/> PROPER POSITION <input type="checkbox"/> OBSCURED BY <input type="checkbox"/> OTHER SIGNS <input type="checkbox"/> OBSCURED BY <input type="checkbox"/> PARKED VEHICLE <input type="checkbox"/> OBSCURED BY <input type="checkbox"/> VEGETATION <input type="checkbox"/> LIGHTS MALFUNCTION <input type="checkbox"/> LIGHTS STUCK <input type="checkbox"/> GATES INOPERATIVE <input type="checkbox"/> GATE ARM MISSING <input type="checkbox"/> OTHER RR MALFUNCTION <input type="checkbox"/> OTHER IMPAIRMENT <input type="checkbox"/> UNKNOWN	DRIVER FACTORS DRIVER <input type="checkbox"/> 01 <input type="checkbox"/> 02 NONE <input type="checkbox"/> CELL PHONE USE <input type="checkbox"/> OBSTRUCTED VIEW <input type="checkbox"/> FAILED TO YIELD ROW <input type="checkbox"/> DISREGD TRAF SIGN <input type="checkbox"/> TOO FAST FOR COND <input type="checkbox"/> MADE IMPROPER TURN <input type="checkbox"/> WRONG SIDEWAY <input type="checkbox"/> FOLLOW TOO CLOSELY <input type="checkbox"/> IMPROPER LANE CHNG <input type="checkbox"/> IMPROPER BACKING <input type="checkbox"/> IMPROPER PASSING <input type="checkbox"/> IMPROPER SIGNAL <input type="checkbox"/> IMPROPER PARKING <input type="checkbox"/> FATIGUE / DROWSY <input type="checkbox"/> RL / BLACKOUT <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER IMPAIRMENT DRIVER <input type="checkbox"/> 01 <input type="checkbox"/> 02 NONE <input type="checkbox"/> UNDER INFL - DRUGS <input type="checkbox"/> UNDER INFL - ALCOHOL <input type="checkbox"/> UNDER INFL - MEDS <input type="checkbox"/> UNKNOWN DETERMINED BY: <input type="checkbox"/> INTOXLYZER TEST <input checked="" type="checkbox"/> BLOOD OR URINE TEST <input type="checkbox"/> FIELD SOB TEST <input type="checkbox"/> OBSERVED SPEECH <input type="checkbox"/> ODOR, ETC. <input type="checkbox"/> DRE EVALUATION <input type="checkbox"/> STATEMENTS <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER RESULTS OF TEST: <input type="checkbox"/> 01 _____% 02 _____% <input type="checkbox"/> NO TEST GIVEN <input type="checkbox"/> TEST REFUSED <input type="checkbox"/> TESTED FOR DRUGS <input type="checkbox"/> RESULTS NOT AVAILABLE	SKETCH & NARRATIVE UNIT 1 2 SKID MARKS TO (FEET) _____ DISTANCE AFTER (FEET) _____ Scale 1/4" = 10'		
OTHER OBJECT (NOT FIXED) <input type="checkbox"/> ANIMAL <input type="checkbox"/> THROWN / FALLING OBJECT <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER OBJECT (Explain)	EVENT LOCATION ON ROADWAY <input checked="" type="checkbox"/> NON-INTERSECTION <input type="checkbox"/> INTERSECTION <input type="checkbox"/> INTERSECTION RELATED <input type="checkbox"/> DRIVEWAY ACCESS <input type="checkbox"/> INTERCHANGE AREA <input type="checkbox"/> RAILROAD CROSSING <input type="checkbox"/> BRIDGE <input type="checkbox"/> TUNNEL <input type="checkbox"/> OTHER ON-ROAD AREA OFF ROADWAY <input type="checkbox"/> SHOULDER <input type="checkbox"/> TURNOUT <input type="checkbox"/> ROADSIDE <input type="checkbox"/> BEYOND RIGHT OF WAY <input type="checkbox"/> MEDIAN <input type="checkbox"/> DRIVEWAY <input type="checkbox"/> PRIVATE DRIVE <input type="checkbox"/> RAILROAD CROSSING <input type="checkbox"/> OTHER OFF ROAD <input type="checkbox"/> PARKING LOT <input type="checkbox"/> UNKNOWN SPECIAL NOTE <input checked="" type="checkbox"/> NONE <input type="checkbox"/> CONSTRUCTION <input type="checkbox"/> MAINTENANCE <input type="checkbox"/> UTILITY <input type="checkbox"/> SNOW <input type="checkbox"/> SCHOOL <input type="checkbox"/> UNKNOWN WORK <input type="checkbox"/> OTHER				

DMV

OREGON POLICE TRAFFIC CRASH REPORT

0037554243 P. 04

PAGE OF

CRASH INCIDENT / CASE NUMBER	CRASH DATE	MTWTFSS	CRASH TIME	AM PM	POLICE NOTIFIED	AM PM	POLICE ARRIVAL	AM PM	DMV FILE NUMBER
ROAD ON WHICH CRASH OCCURRED							MILE POST	DMV CODE	

<input type="checkbox"/> WITHIN _____ FEET N S OF NEAREST INTERSECTING ROAD	<input type="checkbox"/> WITHIN _____ FEET N S OF NEAREST CITY / TOWN
<input type="checkbox"/> NEAR _____ MILES E W	<input type="checkbox"/> NEAR _____ MILES E W


☐ PROPERTY DAMAGE
 ☐ PUBLIC PROPERTY DAMAGE
 ☐ INJURY
 ☐ FATAL
 ☐ HAZARDOUS MATERIALS
 ☐ HIT AND RUN
 ☐ PHOTOS TAKEN
 ☐ TRAIN / RTR
 ☐ TRUCK / BUS

UNIT #	NAME (LAST, FIRST, MIDDLE)	DRIVER LICENSE NUMBER	STATE	SEX	RACE	DOB
2A						
PED	ADDRESS	HOME PHONE				
BIC		()				
PRK	VEHICLE OWNER	WORK PHONE				
PRP	<input type="checkbox"/> SAME Ron's Oil Company	()				

INSURANCE COMPANY	INSURANCE POLICY NUMBER
<input type="checkbox"/> NONE	

FIN Y N	STD SPD	PST SPD	EJECTD Y N	EXTRCTD Y N	VEHICLE IDENTIFICATION NUMBER (VIN)	LICENSE PLATE NUMBER	STATE	YEAR	MAKE	MODEL / STYLE	COLOR
					1BN2T4020WP028351	HR39976	OR	98	Beall	TT	silver

VEHICLE TOWED: Y N	<input type="checkbox"/> UNKNOWN	DRIVER TAKEN: Y N	<input type="checkbox"/> UNKNOWN
BY: <u>Ron Johns</u>	TO: <u>County Lot</u>	BY:	TO:

VEHICLE DAMAGE	FRONT		DAMAGE ESTIMATE	<input type="checkbox"/> ROLLOVER	INJURY:	<input type="checkbox"/> NONE	<input type="checkbox"/> POSSIBLE	<input type="checkbox"/> MINOR	<input type="checkbox"/> SERIOUS	<input type="checkbox"/> FATAL			
			<input type="checkbox"/> NONE	<input type="checkbox"/> UNDER \$1000	<input type="checkbox"/> UNDER \$5000	<input type="checkbox"/> TOTALLED	<input type="checkbox"/> UNKNOWN	EQUIPMENT:	<input type="checkbox"/> NO EOP USED	<input type="checkbox"/> LAP ONLY	<input type="checkbox"/> LAP / SHLDR	<input type="checkbox"/> CHILD RST-PPR	<input type="checkbox"/> AIRBAG-DEPLYD
			<input type="checkbox"/> OVER \$1000	<input type="checkbox"/> UNKNOWN	<input type="checkbox"/> NONE INSTLD	<input type="checkbox"/> UNKNOWN	<input type="checkbox"/> SHLDR ONLY	<input type="checkbox"/> HELMET	<input type="checkbox"/> CHILD RST-MPH	<input type="checkbox"/> AIRBAG-NOT DP			


SUSPECT NAME	ADDRESS							AKA	IN CUSTODY Y N
	SEX RACE DOB HT WT HAIR EYES LOCAL ID							OTHER INFORMATION:	

UNIT #	NAME (LAST, FIRST, MIDDLE)	DRIVER LICENSE NUMBER	STATE	SEX	RACE	DOB
B						
PED	ADDRESS	HOME PHONE				
BIC		()				
PRK	VEHICLE OWNER	WORK PHONE				
PRP	<input type="checkbox"/> SAME Ron's Oil Company	()				

INSURANCE COMPANY	INSURANCE POLICY NUMBER
<input type="checkbox"/> NONE	

FIN Y N	STD SPD	PST SPD	EJECTD Y N	EXTRCTD Y N	VEHICLE IDENTIFICATION NUMBER (VIN)	LICENSE PLATE NUMBER	STATE	YEAR	MAKE	MODEL / STYLE	COLOR
					1BN1T2337WP028352	HR39977	OR	98	Beall	TT	Silver

VEHICLE TOWED: Y N	<input type="checkbox"/> UNKNOWN	DRIVER TAKEN: Y N	<input type="checkbox"/> UNKNOWN
BY:	TO:	BY:	TO:

VEHICLE DAMAGE	FRONT		DAMAGE ESTIMATE	<input type="checkbox"/> ROLLOVER	INJURY:	<input type="checkbox"/> NONE	<input type="checkbox"/> POSSIBLE	<input type="checkbox"/> MINOR	<input type="checkbox"/> SERIOUS	<input type="checkbox"/> FATAL			
			<input type="checkbox"/> NONE	<input type="checkbox"/> UNDER \$1000	<input type="checkbox"/> UNDER \$5000	<input type="checkbox"/> TOTALLED	<input type="checkbox"/> UNKNOWN	EQUIPMENT:	<input type="checkbox"/> NO EOP USED	<input type="checkbox"/> LAP ONLY	<input type="checkbox"/> LAP / SHLDR	<input type="checkbox"/> CHILD RST-PPR	<input type="checkbox"/> AIRBAG-DEPLYD
			<input type="checkbox"/> OVER \$1000	<input type="checkbox"/> UNKNOWN	<input type="checkbox"/> NONE INSTLD	<input type="checkbox"/> UNKNOWN	<input type="checkbox"/> SHLDR ONLY	<input type="checkbox"/> HELMET	<input type="checkbox"/> CHILD RST-MPH	<input type="checkbox"/> AIRBAG-NOT DP			

UNIT #	<input type="checkbox"/> PASSENGER NAME	ADDRESS									
	<input type="checkbox"/> WITNESS										
SEX	RACE	DOB	HOME PHONE	WORK PHONE	INJURY	<input type="checkbox"/> POSSIBLE	<input type="checkbox"/> SERIOUS	LOCATION	OTHER	EJECTD	EXTRCTD
			()	()	<input type="checkbox"/> NONE	<input type="checkbox"/> MINOR	<input type="checkbox"/> FATAL	LF	CF	RF	Y N

PASSENGER TAKEN: Y N	<input type="checkbox"/> UNKNOWN	EQUIPMENT:	<input type="checkbox"/> NO EOP USED	<input type="checkbox"/> LAP ONLY	<input type="checkbox"/> LAP / SHLDR	<input type="checkbox"/> CHILD RST-PPR	<input type="checkbox"/> AIRBAG-DEPLYD
BY:	TO:	<input type="checkbox"/> NONE INSTLD	<input type="checkbox"/> UNKNOWN	<input type="checkbox"/> SHLDR ONLY	<input type="checkbox"/> HELMET	<input type="checkbox"/> CHILD RST-MPH	<input type="checkbox"/> AIRBAG-NOT DP

UNIT #	<input type="checkbox"/> PASSENGER NAME	ADDRESS									
	<input type="checkbox"/> WITNESS										
SEX	RACE	DOB	HOME PHONE	WORK PHONE	INJURY	<input type="checkbox"/> POSSIBLE	<input type="checkbox"/> SERIOUS	LOCATION	OTHER	EJECTD	EXTRCTD
			()	()	<input type="checkbox"/> NONE	<input type="checkbox"/> MINOR	<input type="checkbox"/> FATAL	LF	CF	RF	Y N

PASSENGER TAKEN: Y N	<input type="checkbox"/> UNKNOWN	EQUIPMENT:	<input type="checkbox"/> NO EOP USED	<input type="checkbox"/> LAP ONLY	<input type="checkbox"/> LAP / SHLDR	<input type="checkbox"/> CHILD RST-PPR	<input type="checkbox"/> AIRBAG-DEPLYD
BY:	TO:	<input type="checkbox"/> NONE INSTLD	<input type="checkbox"/> UNKNOWN	<input type="checkbox"/> SHLDR ONLY	<input type="checkbox"/> HELMET	<input type="checkbox"/> CHILD RST-MPH	<input type="checkbox"/> AIRBAG-NOT DP

UNIT #	<input type="checkbox"/> PASSENGER NAME	ADDRESS									
	<input type="checkbox"/> WITNESS										
SEX	RACE	DOB	HOME PHONE	WORK PHONE	INJURY	<input type="checkbox"/> POSSIBLE	<input type="checkbox"/> SERIOUS	LOCATION	OTHER	EJECTD	EXTRCTD
			()	()	<input type="checkbox"/> NONE	<input type="checkbox"/> MINOR	<input type="checkbox"/> FATAL	LF	CF	RF	Y N

PASSENGER TAKEN: Y N	<input type="checkbox"/> UNKNOWN	EQUIPMENT:	<input type="checkbox"/> NO EOP USED	<input type="checkbox"/> LAP ONLY	<input type="checkbox"/> LAP / SHLDR	<input type="checkbox"/> CHILD RST-PPR	<input type="checkbox"/> AIRBAG-DEPLYD
BY:	TO:	<input type="checkbox"/> NONE INSTLD	<input type="checkbox"/> UNKNOWN	<input type="checkbox"/> SHLDR ONLY	<input type="checkbox"/> HELMET	<input type="checkbox"/> CHILD RST-MPH	<input type="checkbox"/> AIRBAG-NOT DP

DISTRIBUTION											
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OFFICER NAME / NUMBER	DATE	AGENCY	APPROVED BY
<u>LT J. J. [Signature]</u>	<u>11/16-29</u>	<u>OSP</u>	

STAR 300013

INCIDENT: #99-326071

SUBJECT OF THIS REPORT: Fatal motor vehicle crash.

NARRATIVE: On August 23, 1999 I responded to a fatal motor vehicle crash at Hwy 126 near MP 18. A semi with a trailer and pup trailer traveling westbound on Hwy 126 crossed the solid double yellow center lines and impacted a GMC pickup truck traveling eastbound head on. The operator of the GMC was deceased at the scene. The semi operator suffered serious injuries.

ACTION TAKEN: On August 23, 1999 I responded to a fatal motor vehicle collision on Hwy 126 near MP 18.

Collision reconstructionist FRED TESTA was called to the scene to assist. Photos were taken of the scene and of both involved vehicles.

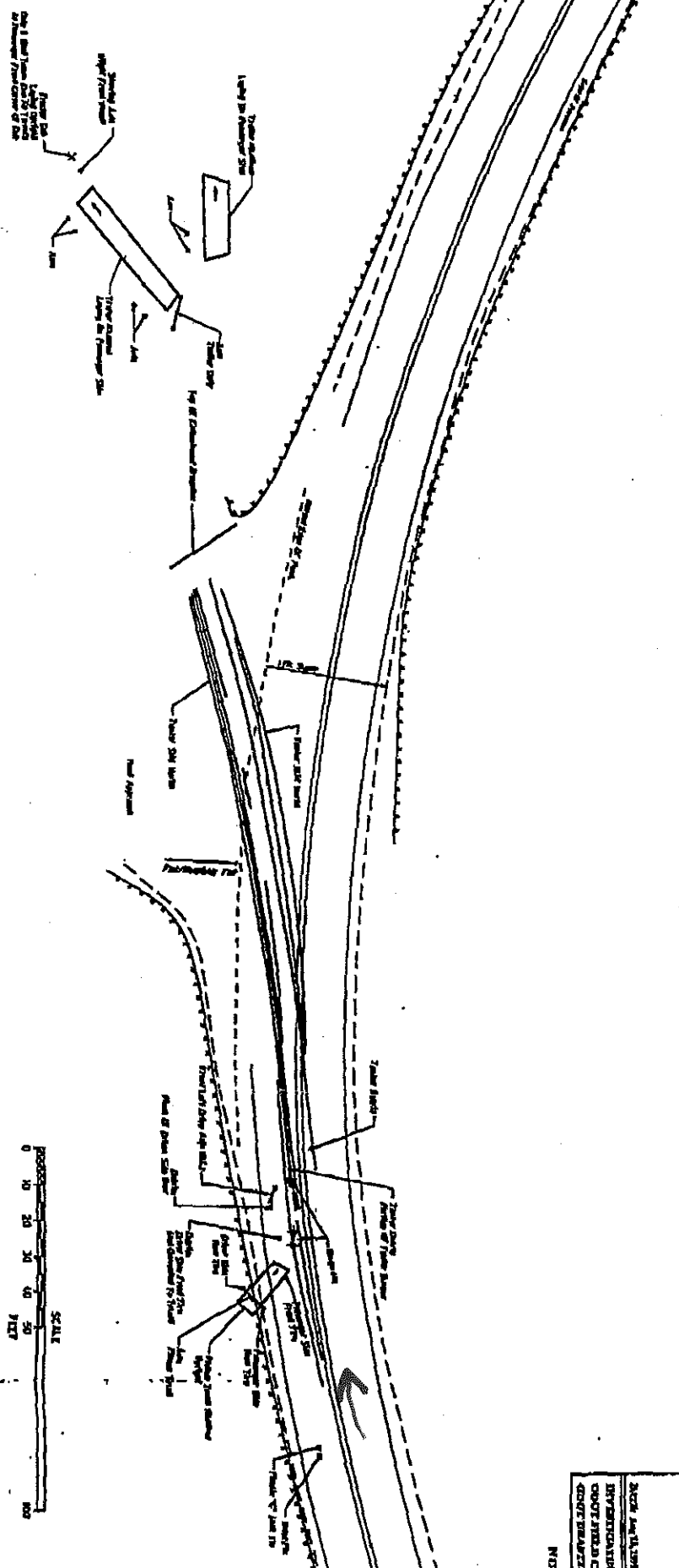
ODOT responded and prepared a scale diagram of the scene.

Motor carrier enforcement was called to the scene to inspect vehicle #2, 2A and 2B.

All vehicles involved were removed from the scene and impounded at the Lane County Shops in Florence.

A full reconstruction of the collision will be conducted.

CASE STATUS: Open/Act.



0086 08 1/99 15:35 (43TD)

0008 FLD DR0SP2900 08/24/99 15:35 (41XY)

SP HQ SALEM

SP DISTRICT II HQ

MTR VEH DIV

ODOT ACCID DATA UNIT

SP ISS - SPVR OFC

COPY OF RECORD SHOWN ON OREGON
DMV COMPUTER FILE. FOR OFFICIAL
USE ONLY. PLEASE DESTROY OR
SECURE COPY AFTER USE.

FATAL CRASH INFORMATION

DATE: 08-23-99 TIME: 5:15AM

COUNTY: LANE

HWY & MP: HWY 126 MILEPOST 18.4

NAME: LEARNING, CYNTHIA LEIGH

DOB: 033053

ADDRESS: 1361 S STREET, SPRINGFIELD, OREGON

SEAT BELT USAGE: YES

HELMET USAGE: N/A

TYPE OF CRASH: HEAD ON/ANGLED COLLISION

SURVIVING DRIVER(S) NAME(S): SAMPSON, BRUCE EUGENE

DOB(S): 102260

ADDRESS(S): 725 BLUFF STREET, BANDON OREGON 97411

EMERGENCY MEDICAL SERVICES (EMS) INFORMATION:

EMS 1ST CONTACTED, TIME: 5:20AM EMS 1ST ARRIVED SCENE, TIME: 5:30AM

COMMENTS: DECEASED WAS EASTBOUND ON AT ABOVE LOCATION OPERATING A PICKUP TRUCK WHEN STRUCK HEAD ON/ANGLE BY A WESTBOUND TANKER LOADED WITH 11,100 GALLONS OF GASOLINE. THE DECEASED WAS KILLED INSTANTLY, NO FIRE INVOLVED HOWEVER HAZARDOUS MATERIAL RESPONSE NEEDED DUE TO GASOLINE LEAK.

OFFICER: LT. R.W. MADSEN

AGENCY: OREGON STATE POLICE

FLORENCE PATROL OFFICE

EOT *** **

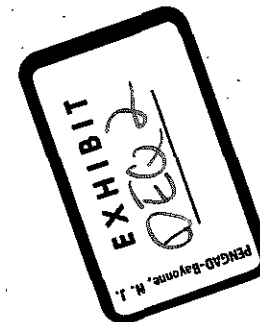
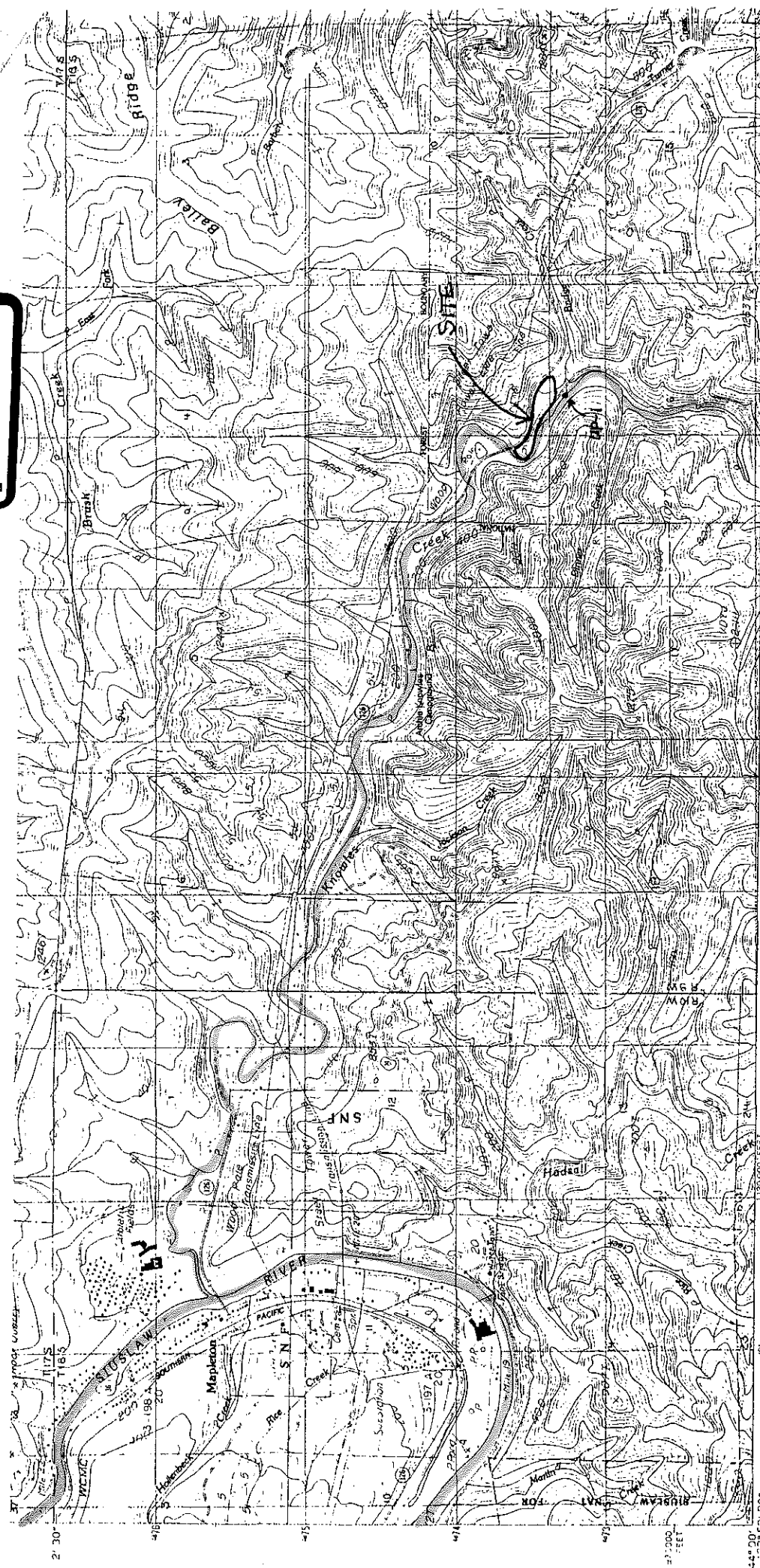


EXHIBIT
DEQ 3



PRODUCED BY THE UNITED STATES GEOLOGICAL SURVEY
CONTROLS FROM Aerial Photographs (1971, 1974, 1975, 1976)
FIELD CHECKED: 1980 MAP LAMBERT CONFORMAL CONIC
PROJECTION: 100-METER UNIVERSAL TRANSVERSE MERCATOR ZONE 18
GRID: 100-METER STATE GRID TICS UTM 18N 30N
UTM GRID DECLINATION: 1983 NORTH AMERICAN DATUM
HORIZONTAL DATUM: 1983 NORTH AMERICAN DATUM
VERTICAL DATUM: 1983 NORTH AMERICAN DATUM
To place on the predicted North American Datum of 1983,
move the projection lines as shown by dashed corner ticks
(23 meters north, 97 meters east)
There may be private inholdings within the boundaries of any
Federal and State Reservations shown on this map

PROVISIONAL MAP
Produced from original
manuscript drawings. Infor-
mation shown as of date of
field check.

SCALE 1:24 000
1000 500 0 500 1000
METERS
1000 500 0 500 1000
FEET
1000 500 0 500 1000
MILES

CONTOUR INTERVAL 40 FEET
SUPPLEMENTARY CONTOUR INTERVAL 20 FEET
CONTROL ELEVATIONS SHOWN TO THE NEAREST 0.1 FOOT
OTHER ELEVATIONS SHOWN TO THE NEAREST FOOT
To convert meters to feet multiply by 2.2046
To convert feet to meters multiply by 0.3048

ADJOINING 7.5 QUADRANGLE NAMES							
1	2	3	4	5	6	7	8
Cummins Peak	Herman Creek	Whitely Peak	Greenleaf	Goodwin Peak	Baldy Mt.	Roman Nose Mtn.	

ROAD LEGEND
Improved Road
Unimproved Road
Trail

INTEREST ROUTE
U.S. Route
State Route

MAPLETON, OREGON
PROVISIONAL EDITION 1984
44123-47-1

Attachment I6

DEQ NO. WMCSR-WR-99-15
Attachment A -- Vicinity Map

FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR RESTON, VIRGINIA 22092

EXHIBIT

Attachment I7

PSR 3/16/01

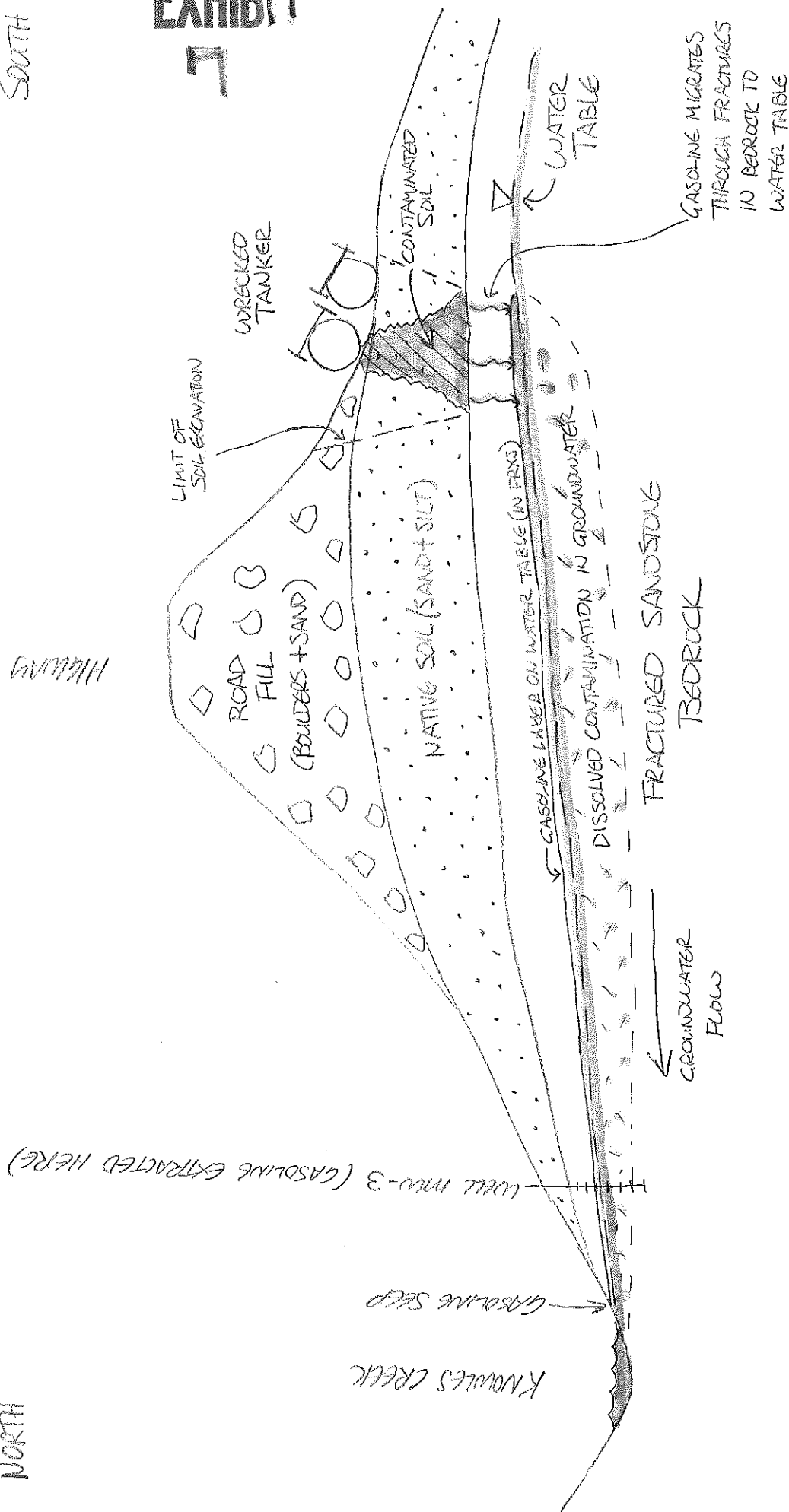


TRON'S OIL
CONCEPTUAL SITE MODEL

A' SOUTH

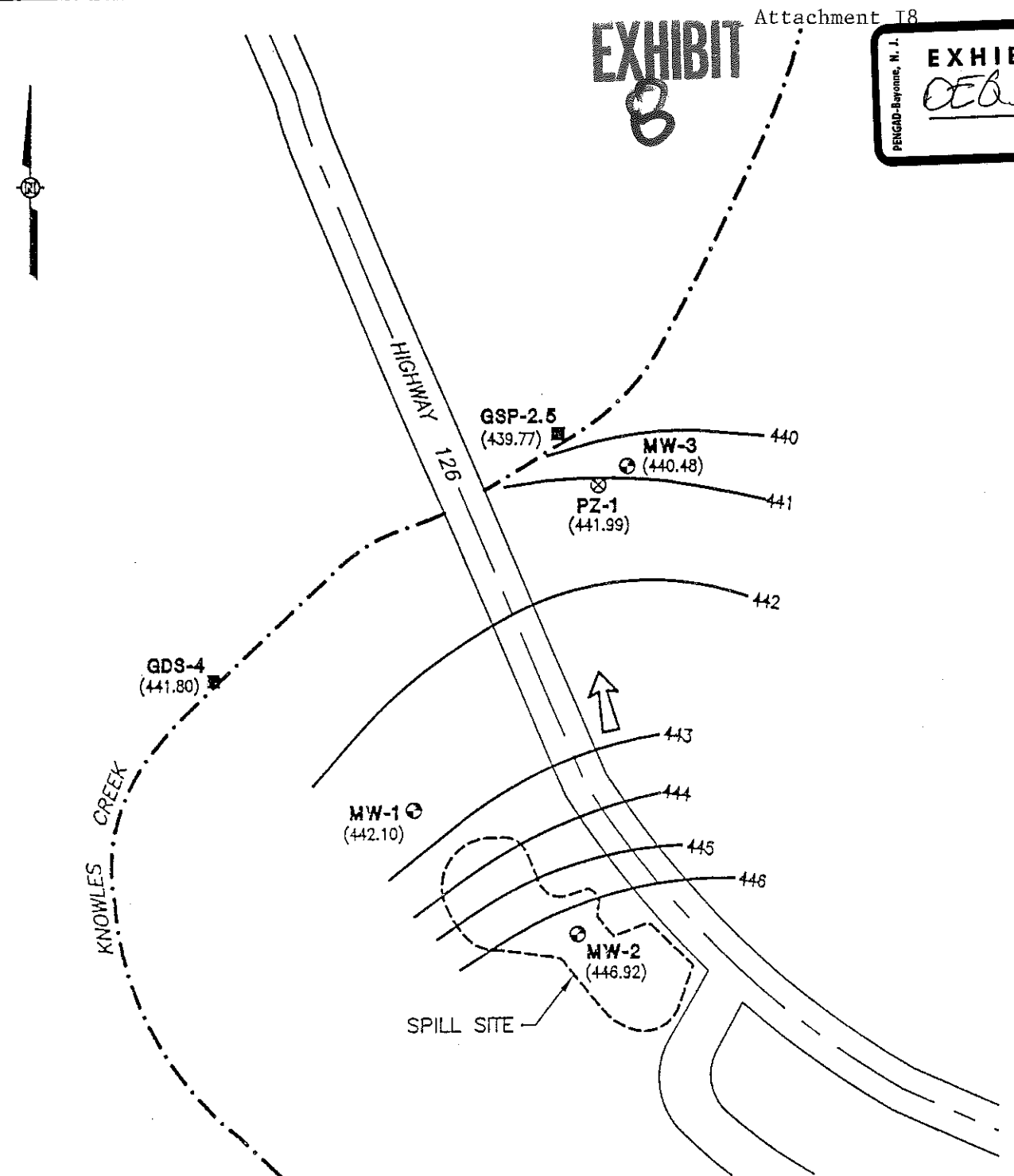
HILWING 126

A NORTH

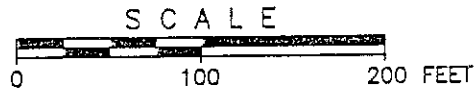



XREF Files: <No Xref>
17.DWG Mon, 13/Sep/99 10:19am mportacio
/ N:\DWG\ Solidisk Proj... \SDSK\PROJ\<none>
Dinacole: 0 Liscalle: 0.3 Palscale: 1

OFFICE	DRAW	CHECKED BY	APPROVED BY	DRAWING NUMBER
BOTHELL	mportacio			79 52



- LEGEND:**
- MW-1 ☉ Monitoring Well and Relative Groundwater Elevation (442.10)
 - PZ-1 ⊗ Piezometer and Relative Groundwater Elevation (441.99)
 - GSP-4 ■ Steam Level Gauge and Relative Elevation (441.80)
 - 441— Groundwater Elevation Contour
 - ➔ Groundwater Flow Direction
 - - - Approximate Excavation Boundary





13912 North Creek Parkway, Suite 200
Bothell, Washington 98011-3016
(425) 485-5000 Fax: (425) 486-9768

FIGURE 3
GROUNDWATER ELEVATION CONTOUR MAP
OCTOBER 27, 1999
RON'S OIL RELEASE
HIGHWAY 126
MAPLETON, OREGON

EXHIBIT 8

Attachment T8

PENGAD-Bayonne, N. J.

EXHIBIT

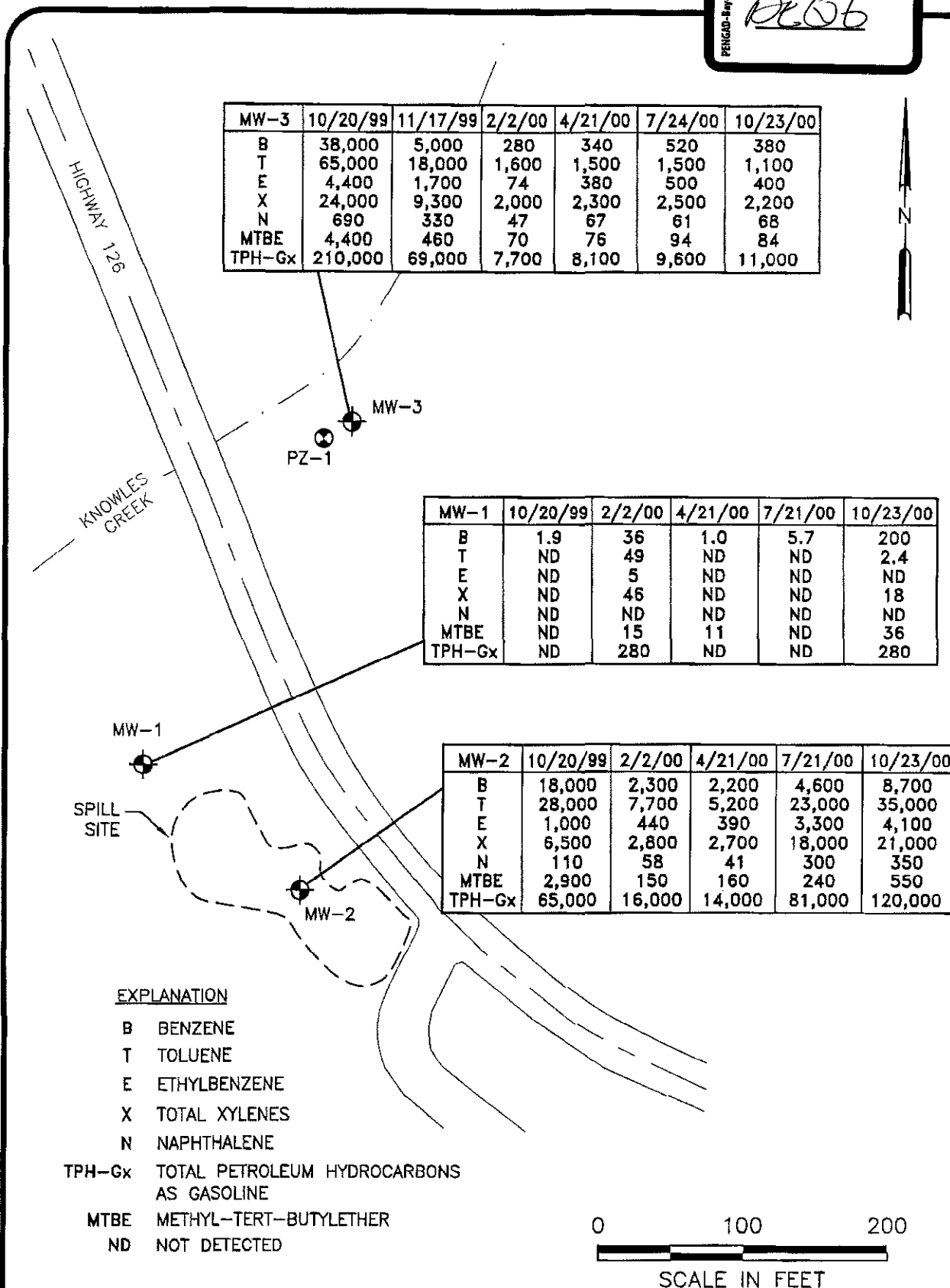
CEB5

EXHIBIT 9

PENGAD-Bayonne, N. J.

EXHIBIT

DEB6



e: 10/31/00 Operator: SMCORAY
 i: MEDFORD C:\DWG\2102002.001\13_1000results.DWG



**environmental
 management
 services**

DATE 10/31/00
 DWN SRM
 APP _____
 REV _____
 PROJECT NO.
 2102-002.001

FIGURE 3
 RON'S OIL RELEASE
 HIGHWAY 126
 MAPLETON, OREGON
 GROUNDWATER ANALYTICAL RESULTS





DEQ 8



EXHIBIT 12

Table 1
Summary of Surface Water Monitoring Data

Sample Identification	Date Sampled	USEPA Method 8260B and USEPA Method 8021B						DEQ Method
		Benzene (µg/L)	Toluene (µg/L)	Ethylbenzene (µg/L)	Total Xylenes (µg/L)	Naphthalene (µg/L)	MTBE (µg/L)	NWTPH-Gx (µg/L)
AKC-090999-1	09/09/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	NA
AKC-091799	09/17/99	< 0.5	< 0.5	< 0.5	< 0.5	< 2.0	< 1.0	NA
AKC-092399	09/23/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	NA
	09/27/99	NS	NS	NS	NS	NS	NS	NS
AKC-093099	09/30/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	<150
	10/04/99	NS	NS	NS	NS	NS	NS	NS
**	10/07/99	NS	NS	NS	NS	NS	NS	NS
**	10/11/99	NS	NS	NS	NS	NS	NS	NS
***	10/14/99	NS	NS	NS	NS	NS	NS	NS
	10/20/99	NS	NS	NS	NS	NS	NS	NS
AKC-102799	10/27/99	< 1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
	11/02/99	NS	NS	NS	NS	NS	NS	NS
	11/09/99	NS	NS	NS	NS	NS	NS	NS
	11/17/99	NS	NS	NS	NS	NS	NS	NS
AKC-112399	11/23/99	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
	11/30/99	NS	NS	NS	NS	NS	NS	NS
	12/09/99	NS	NS	NS	NS	NS	NS	NS
	12/14/99	NS	NS	NS	NS	NS	NS	NS
AKC-122099	12/20/99	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
	01/06/00	NS	NS	NS	NS	NS	NS	NS
AKC-012600	01/26/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
AKC-022300	02/23/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
AKC-032800	03/28/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
AKC-042100	04/21/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
AKC-053100	05/31/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
AKC-062900	06/29/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
AKC-072100	07/21/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
AKC-082800	08/28/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
AKC-092600	09/26/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
AKC-102300	10/23/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
AKC-112000	11/20/00	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<10	<150
(at Siuslaw)	09/09/99	NS	NS	NS	NS	NS	NS	NS
	09/17/99	NS	NS	NS	NS	NS	NS	NS
	09/23/99	NS	NS	NS	NS	NS	NS	NS
	09/27/99	NS	NS	NS	NS	NS	NS	NS
	09/30/99	NS	NS	NS	NS	NS	NS	NS
DS-0-100499	10/04/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	<150
DS-0-100799	10/07/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	<150
	10/11/99	NS	NS	NS	NS	NS	NS	NS
DS-0-101499	10/14/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	<150
DS-0-102099	10/20/99	1.8	5.5	<1.0	3.8	<10	<10	<150
DS-0-102799	10/27/99	< 1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
DS-0-110299	11/02/99	< 1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
DS-0-110999	11/09/99	1.2	2.0	< 1.0	1.0	< 10	< 10	<150
DS-0-111799	11/17/99	< 1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
	11/23/99	NS	NS	NS	NS	NS	NS	NS
	11/30/99	NS	NS	NS	NS	NS	NS	NS
	12/09/99	NS	NS	NS	NS	NS	NS	NS
	12/14/99	NS	NS	NS	NS	NS	NS	NS
	12/20/99	NS	NS	NS	NS	NS	NS	NS
	01/06/00	NS	NS	NS	NS	NS	NS	NS
	01/26/00	NS	NS	NS	NS	NS	NS	NS
	02/23/00	NS	NS	NS	NS	NS	NS	NS
	03/28/00	NS	NS	NS	NS	NS	NS	NS
	04/21/00	NS	NS	NS	NS	NS	NS	NS
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	06/29/00	NS	NS	NS	NS	NS	NS	NS
	07/21/00	NS	NS	NS	NS	NS	NS	NS
	08/28/00	NS	NS	NS	NS	NS	NS	NS
	09/26/00	NS	NS	NS	NS	NS	NS	NS
	10/23/00	NS	NS	NS	NS	NS	NS	NS
	11/20/00	NS	NS	NS	NS	NS	NS	NS

ESTIGAD-Bayonne, N. J.

EXHIBIT

DEQ 9

Table 1
Summary of Surface Water Monitoring Data

Sample Identification	Date Sampled	USEPA Method 8260B and USEPA Method 8021B						DEQ Method NWT PH-Gx (µg/L)
		Benzene (µg/L)	Toluene (µg/L)	Ethylbenzene (µg/L)	Total Xylenes (µg/L)	Naphthalene (µg/L)	MTBE (µg/L)	
DS-1-090999	09/09/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	NA
DS-1-091799	09/17/99	< 0.5	< 0.5	< 0.5	< 0.5	< 2.0	< 1.0	NA
DS-1-092399	09/23/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	1.2	NA
	09/27/99	NS	NS	NS	NS	NS	NS	NS
DS-1-093099	09/30/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	1.4	<150
DS-1-100499	10/04/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	1.0	<150
DS-1-100799	10/07/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	1.0	<150
DS-1-101199	10/11/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	<150
DS-1-101499	10/14/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	<150
DS-1-102099	10/20/99	<1.0	1.8	<1.0	1.2	<10	<10	<150
DS-1-102799	10/27/99	< 1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
DS-1-110299	11/02/99	3.7	6.8	<1.0	3.7	< 10	< 10	<150
DS-1-110999	11/09/99	1.5	3	<1.0	1.3	< 10	< 10	<150
DS-1-111799	11/17/99	<1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
DS-1-112399	11/23/99	<1.0	1.2	< 1.0	< 1.0	< 10	< 10	<150
DS-1-113099	11/30/99	1	1.9	<1.0	1.2	<10	<10	<150
DS-1-120999	12/09/99	<1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
DS-1-2-120999 (DS-1 dup)	12/09/99	<1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
DS-1-121499	12/14/99	3.6	5.2	<1.0	2.8	<10	<10	<150
DS-1-122099	12/20/99	<1.0	1	< 1.0	< 1.0	< 10	< 10	<150
DS-1-010600	01/06/00	<1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
DS-1-012600	01/26/00	<1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
DS-1-022300	02/23/00	<1.0	< 1.0	< 1.0	< 1.0	< 10	< 10	<150
	03/28/00	NS	NS	NS	NS	NS	NS	NS
	04/21/00	NS	NS	NS	NS	NS	NS	NS
	05/31/00	NS	NS	NS	NS	NS	NS	NS
	06/29/00	NS	NS	NS	NS	NS	NS	NS
	07/21/00	NS	NS	NS	NS	NS	NS	NS
	08/28/00	NS	NS	NS	NS	NS	NS	NS
	09/26/00	NS	NS	NS	NS	NS	NS	NS
	10/23/00	NS	NS	NS	NS	NS	NS	NS
	11/20/00	NS	NS	NS	NS	NS	NS	NS
DS-1.5-093099 DS-1.5-100499 DS-1.5-2-100499 (DS1.5 dup) DS-1.5-100799 DS-1.5-101199 DS-1.5-101499 DS-1.5-102099 DS-1.5-102799 DS-1.5-110299 DS-1.5-110999 DS-1.5-111799 DS-1.5-112399 DS-1.5-113099 DS-1.5-120999 DS-1.5-121499 DS-1.5-122099 DS-1.5-010600 DS-1.5-012600 DS-1.5-022300 DS-1.5-053100 DS-1.5-2-053100 (DS-1.5 dup) DS-1.5-082800	09/09/99	NS	NS	NS	NS	NS	NS	NS
	09/17/99	NS	NS	NS	NS	NS	NS	NS
	09/23/99	NS	NS	NS	NS	NS	NS	NS
	09/27/99	NS	NS	NS	NS	NS	NS	NS
	09/30/99	12	20	1.6	11	< 1.0	5.7	<150
	10/04/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	4.8	<150
	10/04/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	4.5	<150
	10/07/99	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	2.2	<150
	10/11/99	< 1.0	1.4	< 1.0	< 1.0	< 1.0	2.8	<150
	10/14/99	5.4	7.9	<1.0	4.3	<1.0	3.6	<150
	10/20/99	2.1	3.5	<1.0	1.7	<10	<10	<150
	10/27/99	4.1	8.5	<1.0	4.3	<10	<10	<150
	11/02/99	7.3	17	1.2	6.7	<10	<10	<150
	11/09/99	1.9	4.3	<1.0	2.3	<10	<10	<150
	11/17/99	1.2	2	<1.0	1.3	<10	<10	<150
	11/23/99	1.2	1.5	<1.0	<1.0	<10	<10	<150
	11/30/99	1.3	3	<1.0	1.7	<10	<10	<150
	12/09/99	< 1.0	< 1.0	< 1.0	< 1.0	<10	<10	<150
	12/14/99	< 1.0	< 1.0	< 1.0	< 1.0	<10	<10	<150
	12/20/99	< 1.0	1.2	< 1.0	< 1.0	<10	<10	<150
	01/06/00	< 1.0	< 1.0	< 1.0	< 1.0	<10	<10	<150
	01/26/00	< 1.0	< 1.0	< 1.0	< 1.0	<10	<10	<150
	02/23/00	< 1.0	< 1.0	< 1.0	< 1.0	<10	<10	<150
	03/28/00	NS	NS	NS	NS	NS	NS	NS
	04/21/00	NS	NS	NS	NS	NS	NS	NS
	05/31/00	< 1.0	1.1	< 1.0	1.3	<10	<10	<150
	05/31/00	< 1.0	< 1.0	< 1.0	1.0	<10	<10	<150
	06/29/00	NS	NS	NS	NS	NS	NS	NS
	07/21/00	NS	NS	NS	NS	NS	NS	NS
	08/28/00	< 1.0	< 1.0	< 1.0	< 1.0	<10	<10	<150

Table 1
Summary of Surface Water Monitoring Data

Sample Identification	Date Sampled	USEPA Method 8260B and USEPA Method 8021B						DEQ Method NWTPH-Gx (µg/L)
		Benzene (µg/L)	Toluene (µg/L)	Ethylbenzene (µg/L)	Total Xylenes (µg/L)	Naphthalene (µg/L)	MTBE (µg/L)	
DS-1.5-092600	09/26/00	< 1.0	< 1.0	< 1.0	< 1.0	<10	<10	<150
BL-092600 (DS-1.5 dup)	09/26/00	< 1.0	< 1.0	< 1.0	< 1.0	<10	<10	<150
DS-1.5-102300	10/23/00	< 1.0	< 1.0	< 1.0	< 1.0	<10	<10	<150
DS-1.5-112000	11/20/00	< 1.0	1.2	< 1.0	1.2	<10	<10	<150
DS-2-090999	09/09/99	22	28	< 1.0	8.9	< 1.0	12	NA
DS-2-091799	09/17/99	27.3	39.8	4.4	35	5.8	11	NA
DS-2-092399	09/23/99	28	48	3.2	22	2.6	8.6	NA
DS-2-2-092399 (DS-2 dup)	09/23/99	26	50	3.8	25	2.6	6.7	NA
DS-2-092799	09/27/99	34	45	2.8	20	1.5	7.3	210
DS-2-093099	09/30/99	20	30	1.8	14	< 1.0	6.4	<150
DS-2-100499	10/04/99	20	35	2.1	16	< 1.0	5.2	<150
DS-2-100799	10/07/99	18	35	2.2	15	< 1.0	3.5	<150
DS-2-101199	10/11/99	17	34	2.1	15	< 1.0	2.9	<150
DS-2-2-101199 (DS-2 dup)	10/11/99	17	33	2.2	15	< 1.0	2.7	<150
DS-2-101499	10/14/99	37	64	3.7	24	< 1.0	5.4	190
DS-2-2-101499 (DS-2 dup)	10/14/99	33	57	3.3	22	< 1.0	5.1	210
DS-2-102099	10/20/99	23	46	2.6	17	< 1.0	< 10	0.16
DS-2-102799	10/27/99	11	25	2.0	15	< 1.0	< 10	<150
DS-2-2-102799 (DS-2 dup)	10/27/99	12	26	1.9	15	< 1.0	< 10	<150
DS-2-110299	11/02/99	11	27	1.7	11	< 1.0	< 10	<150
DS-2-2-110299 (DS-2 dup)	11/02/99	11	27	1.7	11	< 1.0	< 10	<150
DS-2-110999	11/09/99	3	8.6	< 1.0	5.5	< 1.0	< 10	<150
DS-2-111799	11/17/99	1.4	2.7	< 1.0	1.8	< 1.0	< 10	<150
DS-2-2-111799 (DS-2 dup)	11/17/99	1.2	3.3	< 1.0	2.1	< 1.0	< 10	<150
DS-2-112399	11/23/99	2	4	< 1.0	2.7	< 1.0	< 10	<150
DS-2-113099	11/30/99	2.9	7.3	< 1.0	4.9	< 1.0	< 10	<150
DS-2-2-113099 (DS-2 dup)	11/30/99	2.9	7.1	< 1.0	4.7	< 1.0	< 10	<150
DS-2-120999	12/09/99	1.7	2.5	< 1.0	2.2	< 1.0	< 10	<150
DS-2-121499	12/14/99	1	1.8	< 1.0	< 1.0	< 1.0	< 10	<150
DS-2-2-121499 (DS-2 dup)	12/14/99	1	1.9	< 1.0	1.3	< 1.0	< 10	<150
DS-2-122099	12/20/99	2	5.2	< 1.0	3.4	< 1.0	< 10	<150
DS-2-2-122099 (DS-2 dup)	12/20/99	1.9	5.1	< 1.0	3.4	< 1.0	< 10	<150
DS-2-010600	01/06/00	< 1.0	1.7	< 1.0	1.2	< 1.0	< 10	<150
DS-2-2-010600 (DS-2 dup)	01/06/00	< 1.0	1.7	< 1.0	1.2	< 1.0	< 10	<150
DS-2-012600	01/26/00	1.4	2.1	< 1.0	2.5	< 1.0	< 10	<150
DS-2-022300	02/23/00	1.1	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<150
DS-2-032800	03/28/00	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<150
DS-2-2-032800 (DS-2 dup)	03/28/00	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<150
DS-2-042100	04/21/00	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<150
DS-2-053100	05/31/00	< 1.0	< 1.0	< 1.0	< 1.0	< 1.0	< 10	<150
DS-2-062900	06/29/00	< 1.0	1.7	< 1.0	1.8	< 1.0	< 10	<150
DS-2-072100	07/21/00	1.8	3.8	1.3	5.5	< 1.0	< 10	<150
DS-2-082800	08/28/00	1.8	2.3	< 1.0	2.9	< 1.0	< 10	<150
BL-082800 (DS-2 dup)	08/28/00	1.8	2.3	< 1.0	3.3	< 1.0	< 10	<150
DS-2-092600	09/26/00	< 1.0	1.1	< 1.0	2.0	< 1.0	< 10	<150
DS-2-102300	10/23/00	< 1.0	1.1	< 1.0	< 1.0	< 1.0	< 10	<150
DS-2-112000	11/20/00	1.4	1.8	< 1.0	1.8	< 1.0	< 10	<150
BL-112000 (DS-2 dup)	11/20/00	1.2	1.9	< 1.0	1.6	< 1.0	< 10	<150
(Seep)	09/09/99	NS	NS	NS	NS	NS	NS	NS
SP-2.5-091799	09/17/99	99	240	48	400	80	NA	NA
	09/23/99	NS	NS	NS	NS	NS	NS	NS
	09/27/99	NS	NS	NS	NS	NS	NS	NS
SP-2.5-093099	09/30/99	42	240	100	720	280	7.3	1,300
SP-2.5-100499	10/04/99	430	1,500	290	1,700	400	75	1,500
SEEP-100799	10/07/99	15	31	2.4	15	< 1.0	2.4	<150
SEEP-101199	10/11/99	23	54	6.6	39	< 1.0	3.6	300
SEEP-101499	10/14/99	83	130	9	49	1.4	11	430
SP-2.5-102099	10/20/99	170	740	25	210	< 1.0	24	1,400
SP-2.5-102799	10/27/99	81	200	20	130	< 1.0	< 10	890
SP-2.5-110299	11/02/99	51	120	10	64	< 1.0	< 10	470
SP-2.5-110999	11/09/99	120	600	31	280	82	< 10	3,800
SP-2.5-111799	11/17/99	100	320	21	200	< 1.0	< 10	1,300
SP-2.5-112399	11/23/99	18	65	5	46	< 1.0	< 10	360
SP-2.5-113099	11/30/99	23	78	6.3	62	< 1.0	< 10	400

Table 1
Summary of Surface Water Monitoring Data

Sample Identification	Date Sampled	USEPA Method 8260B and USEPA Method 8021B						DEQ Method
		Benzene (µg/L)	Toluene (µg/L)	Ethylbenzene (µg/L)	Total Xylenes (µg/L)	Naphthalene (µg/L)	MTBE (µg/L)	NWTPH-Gx (µg/L)
SP-2.5-120999	12/09/99	2	5.3	<1.0	4.6	<10	<10	400
SP-2.5-121499	12/14/99	1.1	2.3	<1.0	1.5	<10	<10	<150
SP-2.5-122099	12/20/99	4.3	13.0	<1.0	9.6	<10	<10	<150
SP-2.5-010600	01/06/00	1.5	4.6	<1.0	3.9	<10	<10	<150
SP-2.5-012600	01/26/00	1.4	4.8	<1.0	3.6	<10	<10	<150
SP-2.5-022300	02/23/00	1.5	5.7	<1.0	5.4	<10	<10	<150
BL-022300 (SP-2.5 dup)	02/23/00	1.8	5.7	<1.0	4.6	<10	<10	<150
	03/28/00	NS	NS	NS	NS	NS	NS	NS
	04/21/00	NS	NS	NS	NS	NS	NS	NS
	05/31/00	NS	NS	NS	NS	NS	NS	NS
	06/29/00	NS	NS	NS	NS	NS	NS	NS
	07/21/00	NS	NS	NS	NS	NS	NS	NS
	08/28/00	NS	NS	NS	NS	NS	NS	NS
	09/26/00	NS	NS	NS	NS	NS	NS	NS
	10/23/00	NS	NS	NS	NS	NS	NS	NS
	10/20/00	NS	NS	NS	NS	NS	NS	NS
DS-3-090999	09/09/99	23	31	<1.0	7.4	<1.0	7.9	NA
DS-3-091799	09/17/99	24.7	41.3	2.1	20.7	3.1	<1.0	NA
DS-3-092399	09/23/99	20	28	1.7	15	2.9	5.3	NA
DS-3-092799	09/27/99	23	29	1.6	14	1.2	5.5	<150
DS-3-093099	09/30/99	17	27	1.4	13	<1.0	4.2	<150
DS-3-2-093099 (DS-3 dup)	09/30/99	18	28	1.4	12	<1.0	5.4	<150
DS-3-100499	10/04/99	17	28	1.5	12	<1.0	3.5	210
DS-3-100799	10/07/99	9.3	15	<1.0	7.0	<1.0	2.9	<150
DS-3-2-100799 (DS-3 dup)	10/07/99	9.5	15	<1.0	6.6	<1.0	3.0	<150
DS-3-101199	10/11/99	13	23	<1.0	10	<1.0	2.3	<150
DS-3-101499	10/14/99	17	28	1.8	13	<1.0	3.2	<150
DS-3-102099	10/20/99	15	30	1.6	10	<10	<10	<150
DS-3-2-102099 (DS-3 dup)	10/20/99	15	29	1.5	10	<10	<10	<150
DS-3-102799	10/27/99	4.3	13	1.4	10	<10	<10	<150
DS-3-110299	11/02/99	2.9	5.9	<1.0	2.2	<10	<10	<150
DS-3-110999	11/09/99	<1.0	1.7	<1.0	<1.0	<10	<10	<150
DS-3-2-110999 (DS-3 dup)	11/09/99	<1.0	14	<1.0	<1.0	<10	<10	<150
DS-3-111799	11/17/99	<1.0	1.6	<1.0	1	<10	<10	<150
DS-3-112399	11/23/99	<1.0	1.6	<1.0	<1.0	<10	<10	<150
DS-3-2-112399 (DS-3 dup)	11/23/99	<1.0	1.6	<1.0	<1.0	<10	<10	<150
	11/30/99	NS	NS	NS	NS	NS	NS	NS
	12/09/99	NS	NS	NS	NS	NS	NS	NS
	12/14/99	NS	NS	NS	NS	NS	NS	NS
DS-3-122099	12/20/99	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
	01/06/00	NS	NS	NS	NS	NS	NS	NS
DS-3-012600	01/26/00	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
DS-3-2-012600 (DS-3 dup)	01/26/00	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
DS-3-022300	02/23/00	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
DS-3-032800	03/28/00	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
DS-3-042100	04/21/00	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
DS-3-053100	05/31/00	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
DS-3-062900	06/29/00	<1.0	1.8	<1.0	2.3	<10	<10	<150
BL-062900 (DS-3 dup)	06/29/00	7.0	17	2.1	16	<10	<10	<150
DS-3-072100	07/21/00	1.3	3.3	<1.0	3.6	<10	<10	<150
DS-3-082800	08/28/00	1.3	2.1	<1.0	2.2	<10	<10	<150
DS-3-092600	09/26/00	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
DS-3-102300	10/23/00	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
DS-3-112000	11/20/00	<1.0	1.1	<1.0	1.3	<10	<10	<150
DS-4-090999	09/09/99	4.4	6.1	<1.0	1.4	<1.0	1.3	NA
DS-4-2-090999 (DS-4 dup)	09/09/99	4.1	5.8	<1.0	1.4	<1.0	1.2	NA
DS-4-091799	09/17/99	8.7	17.1	1.5	10.9	3.0	<1.0	NA
DS-4-2-091799 (DS-4 dup)	09/17/99	8.9	17.5	1.6	11.6	3.4	<1.0	NA
DS-4-092399	09/23/99	4.0	7.1	1.0	6.9	2.6	<1.0	NA
DS-4-092799	09/27/99	6.6	5.3	<1.0	3.7	<1.0	<1.0	<150
DS-4-093099	09/30/99	5.5	5.6	<1.0	3.7	<1.0	<1.0	<150
DS-4-100499	10/04/99	2.5	4.5	<1.0	2.3	<1.0	<1.0	<150
DS-4-100799	10/07/99	2.1	3.9	<1.0	2.3	<1.0	<1.0	<150
DS-4-101199	10/11/99	2.0	4.5	<1.0	2.4	<1.0	<1.0	<150
DS-4-101499	10/14/99	2.6	5.2	<1.0	3.2	<1.0	<1.0	<150

Table 1
Summary of Surface Water Monitoring Data

Sample Identification	Date Sampled	USEPA Method 8260B and USEPA Method 8021B						DEQ Method
		Benzene (µg/L)	Toluene (µg/L)	Ethylbenzene (µg/L)	Total Xylenes (µg/L)	Naphthalene (µg/L)	MTBE (µg/L)	NWTPH-Gx (µg/L)
DS-4-102099	10/20/99	1.9	4.0	<1.0	2	<10	<10	<150
DS-4-102799	10/27/99	3.6	12	1.6	10	<10	<10	<150
DS-4-110299	11/02/99	2.3	2	<1.0	1.4	<10	<10	<150
DS-4-110999	11/09/99	<1.0	1.7	<1.0	<1.0	<10	<10	<150
DS-4-111799	11/17/99	<1.0	1.5	<1.0	<1.0	<10	<10	<150
DS-4-112399	11/23/99	<1.0	1.2	<1.0	<1.0	<10	<10	<150
	11/30/99	NS	NS	NS	NS	NS	NS	NS
	12/09/99	NS	NS	NS	NS	NS	NS	NS
	12/14/99	NS	NS	NS	NS	NS	NS	NS
DS-4-122099	12/20/99	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
	01/06/00	NS	NS	NS	NS	NS	NS	NS
DS-4-012600	01/26/00	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
DS-4-022300	02/23/00	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
	03/28/00	NS	NS	NS	NS	NS	NS	NS
	04/21/00	NS	NS	NS	NS	NS	NS	NS
	05/31/00	NS	NS	NS	NS	NS	NS	NS
	06/29/00	NS	NS	NS	NS	NS	NS	NS
	07/21/00	NS	NS	NS	NS	NS	NS	NS
	08/28/00	NS	NS	NS	NS	NS	NS	NS
	09/26/00	NS	NS	NS	NS	NS	NS	NS
	10/23/00	NS	NS	NS	NS	NS	NS	NS
	11/20/00	NS	NS	NS	NS	NS	NS	NS
UPS-1-090999	09/09/99	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	NA
UPS-1-091799	09/17/99	<0.5	<0.5	<0.5	<0.5	<2.0	<1.0	NA
UPS-1-092399	09/23/99	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	NA
	09/27/99	NS	NS	NS	NS	NS	NS	NS
UPS-1-093099	09/30/99	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<150
	10/04/99	NS	NS	NS	NS	NS	NS	NS
UPS-100799	10/07/99	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<150
	10/11/99	NS	NS	NS	NS	NS	NS	NS
UPS-101499	10/14/99	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<150
UPS-1-102099	10/20/99	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
UPS-1-102799	10/27/99	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
UPS-1-110299	11/09/99	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
UPS-1-110999	11/02/99	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
UPS-1-111799	11/17/99	<1.0	<1.0	<1.0	<1.0	<10	<10	<150
	11/23/99	NS	NS	NS	NS	NS	NS	NS
	11/30/99	NS	NS	NS	NS	NS	NS	NS
	12/09/99	NS	NS	NS	NS	NS	NS	NS
	12/14/99	NS	NS	NS	NS	NS	NS	NS
	12/20/99	NS	NS	NS	NS	NS	NS	NS
	01/06/00	NS	NS	NS	NS	NS	NS	NS
	01/26/00	NS	NS	NS	NS	NS	NS	NS
	02/23/00	NS	NS	NS	NS	NS	NS	NS
	03/28/00	NS	NS	NS	NS	NS	NS	NS
	04/21/00	NS	NS	NS	NS	NS	NS	NS
	05/31/00	NS	NS	NS	NS	NS	NS	NS
	06/29/00	NS	NS	NS	NS	NS	NS	NS
	07/21/00	NS	NS	NS	NS	NS	NS	NS
	08/28/00	NS	NS	NS	NS	NS	NS	NS
	09/26/00	NS	NS	NS	NS	NS	NS	NS
	10/23/00	NS	NS	NS	NS	NS	NS	NS
	11/20/00	NS	NS	NS	NS	NS	NS	NS
NOAA Toxicity Levels - Spawning ¹		183	94	112	145	55	NE	160
NOAA Toxicity Levels - Non-spawning ¹		731	375	449	592	220	NE	641
DEQ Level II Screening Benchmark Values ^D		130	9.8	7.3	13	620	NE	NE

Notes:

USEPA = United States Environmental Protection Agency

DEQ = Oregon Department of Environmental Quality

r = Samples Collected prior to 10/20/99 were analyzed using USEPA 8260. Subsequent samples were analyzed using USEPA Method 8020

µg/L = Micrograms per liter (parts per billion)

MTBE = Methyl-tert-butylether

NOAA = National Oceanic and Atmospheric Administration

^D = DEQ Guidance for Ecological Risk Assessments, Surface Water - Fresh, Aquatic

* = Sample collected adjacent to seepage area

** = A sample was not collected due to the pump house being shutdown for the season.

*** = Sample collection at this location will be performed on a monthly basis.

¹ = NOAA toxicity levels based on fresh water steelhead toxicity studies, Bellingham, WA

NE = Not established

NA = Not analyzed

NS = Not sampled



Oregon

John A. Kitzhaber, M.D., Governor

Attachment I13

Department of Environmental Quality

EXHIBIT

Western Region

1102 Lincoln

Suite 210

Eugene, OR 97401

(541) 686-7838

February 3, 2000

13

Mr. Ron La Franchi
Ron's Oil Company
580 North Central Street
Coquille, Oregon 97423

Re: NOTICE OF NONCOMPLIANCE
ENF-WRE-WQ-2000-001

CERTIFIED: Z 212 744 610

Dear Mr. La Franchi:

On August 23, 1999, a Ron's Oil Company tanker truck carrying 11,000 gallons of gasoline was involved in a collision on Oregon Highway 126 near milepost 19. The tanker truck ran off an embankment and landed approximately 150 feet from Knowles Creek. Approximately 4,500 gallons of gasoline was released to soil at the spill site. In early September, 1999, gasoline constituents began to be detected in Knowles Creek. Beginning on September 17, 1999, gasoline was observed to be seeping into Knowles Creek.

A violation of Oregon Statutes (ORS) pertaining to water quality occurred as a result of the gasoline spill, as follows:

Violation [Class One]

Except as provided in ORS 468B.050, no person shall cause pollution of the waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means (ORS 468B.025(1)(a)).

This is a Class One violation and is considered to be a serious violation of Oregon environmental law. Therefore, we are referring this violation to the Department's Enforcement Section with a recommendation to initiate a formal enforcement action. A formal enforcement action may include a civil penalty assessment in an amount up to \$10,000 for each day of violation.

You should take all necessary actions, such as improved maintenance, review of company policy, training of employees, etc., to prevent another spill of hazardous substances and pollution of the waters of the state.

If you have any questions concerning this matter, please contact me at 541-686-7838 x 228.

Sincerely,

Paul S. Rosenberg
Paul S. (Max) Rosenberg, R.G.
Project Manager/Hydrogeologist

PSR:psr
Ronsnon.doc

Cc: Keith Andersen, WRE/DEQ
Mike Szerlog, USEPA
Jeff Bachman, Enforcement Section, NWR/D

Post-it* Fax Note	7671	Date	3/24/00	# of pages	1
To	JBFF BAHMAX		From	MAX ROSENBERG	
Co./Dept.			Co.		
Phone #			Phone #	541-686-7838 x 228	
Fax #	503-229-6945		Fax #		

EXHIBIT

14

R E C E I V E D
JAN 26 2000

To: DEQ ENFORCEMENT SECTION

Enforcement Referral for violations of open burning, on-site sewage disposal, and AQ, WQ, SW violators who are not permittees.

STATEWIDE ENFORCEMENT SECTION
DEPARTMENT OF ENVIRONMENTAL QUALITYViolator: ^{dba} Ron's Oil Company L.L.C. Franchising Ronald C.County: LaneProgram: WQRegion: WRRecommended Enforcement Action: CPAttachments:

<input checked="" type="checkbox"/> NON	<input type="checkbox"/> Diagrams	<input checked="" type="checkbox"/> Inspection Reports
<input type="checkbox"/> Permit	<input type="checkbox"/> Addendum's	<input type="checkbox"/> Witness Statements
<input type="checkbox"/> Letters	<input checked="" type="checkbox"/> Sample Results	<input type="checkbox"/> Smoke Certification
<input type="checkbox"/> Memos	<input type="checkbox"/> Original Photos	<input type="checkbox"/> Chain of Custody Form
<input type="checkbox"/> E-mails	<input type="checkbox"/> Complaint Forms	

CLEARANCES:

Paul S. (Max) Rosenberg

Prepared by

1/19/2000

Date

Keith Andersen

Manager

1/24/00

Date

Neil Mullane

Administrator

Date

ENFORCEMENT SECTION USE ONLYCase Number: WPM/SP-AWR-00-009Review By & Date: Carbough 2/15/00Assigned to & Date: Bachman 2/16/00Investigation Completion Date: 1/4/00

NON Date: _____

Violation(s): water pollutionLocation: MapletonComments: 1) Get a copy of the NON 2) allege the mental state for 340-012-0042(2).

INVESTIGATION DETAILS:

1. Who is the responsible party? If the violator is a corporation list the registered agent's name and address. If the violator is an assumed business name list all parties of interest and their addresses. If the violator is an individual give complete name and address.

Ron La Franchi, Ron's Oil Company, 580 North Central Street, Coquille, Oregon
97423

2. In general, what are the violations?

Discharge of waste to waters of the state without a permit

3. What did you observe?

See attached EPA "Progress Polrep" dated August 26, 1999 for information on spill scene (EPA was in the lead for the emergency response phase of the cleanup). I personally observed gasoline-contaminated soils at the spill site, and gasoline seepage into nearby Knowles creek.

4. When did the violation(s) occur?

August 23, 1999

5. Where did the violation(s) occur?

Oregon Highway 126 near milepost 19, about three and one-half miles east of
Mapleton, Oregon, at the Knowles Creek bridge

6. Where did the violation occur on the property?

See attached Vicinity Map and Site Map

7. Why did the violation(s) occur?

A Ron's Oil tanker truck carrying 11,000 gallons of gasoline was involved in a
collision. The tanker truck ran off an embankment and landed approximately 150 feet
from Knowles Creek, spilling approximately 4,500 gallons of gasoline. The cause of
the accident is discussed in the attached Oregon State Police accident report (Case
Number 99-326071

8. List the primary statutes and OARs that were violated.

ORS 468B.025(1)(a)

9. List and briefly describe the evidence in support of the above violations.

See attached EPA Progress Polrep and Oregon State Police report. See also attached laboratory results from a sample of contaminated soil at the spill site, and a table summarizing gasoline constituent concentrations detected in Knowles Creek

10. What were the impacts of the violation(s) on people, the environment, property, or wildlife. Describe the amounts of the materials involved, toxicity of the materials, duration of the violation(s), opacity, etc.

The primary immediate concern was the potential for acute contamination of Knowles Creek. Threatened and/or endangered fish species (salmonids) are known to inhabit Knowles Creek in the vicinity of the spill site. However, no acute affects were observed (e.g., no dead or sick fish or aquatic life), likely due to the effectiveness of the emergency response actions, which included removal of approximately 3,000 cubic yards of contaminated soil. However, the soil removal did not prevent gasoline from reaching and contaminating groundwater and surface water in Knowles Creek. The primary concern related to the contamination in Knowles Creek was that it might interfere with or prevent the migration and/or spawning of salmonids in the creek. However, it appears at this time that the contaminant concentration in Knowles Creek were not sufficiently high to affect salmonid migration or spawning.

Human health risks are considered minimal due to the remote location of the spill. A low likelihood exists that downgradient groundwater wells could be impacted.

At the time of the spill, the impacted property was owned by Hancock Timber Resource Group (1800 Cooper Point Road SW, Building No. 12, Olympia, WA 98502, Att: John Davis, Wester Regional Manager), but Hancock was marketing the property for sale. In addition to the physical disruptions at the site (removal of trees, excavation of soil, presence of residual contamination in soil and groundwater), the spill may have caused some complications concerning the sale of the site. It is my understanding, however, that the property has now been sold.

11. Did you interview the violator or one of its employees? Describe your interview and the violator's statements. Did the violator admit to the violations?

No

12. Was the violator cooperative in correcting or trying to correct the violation(s)? Explain.

Initial confusion as to whether Ron's Oil, or Ron's Oil insurance carrier, would be in charge of the cleanup may have caused some delays in mobilizing resources to conduct spill response (see EPA Polrep). However, once it was determined that the insurance

company would be responsible to manage the cleanup, the response was and continues to be excellent.

13. Has the violation(s) been corrected? Explain which violations have and which have not been corrected.

Yes. The spill cleanup has been successful in protecting ecological receptors in Knowles Creek. The residual contamination is unlikely to cause significant future harm to public health, safety, welfare and the environment. Long-term response actions continue in an attempt to minimize ongoing discharges of contaminated groundwater to Knowles Creek, to reduce levels of groundwater contamination, and assure contaminant concentrations remain below levels of concern.

14. Did the violator gain an economic benefit as a result of the violation(s)? If yes, state how much and show in detail how you determined that amount.

I don't think so.

15. Do you have any information concerning the economic condition (hardship) of the violator?

No

16. Is there any specific compliance request you want to have stated in the cover letter? If this action includes an Order, list what you want ordered and give the time frames within which you would like submissions and/or compliance from the date the Order is issued.

The spill response has been and continues to be excellent. It is possible that the limit of the policy will be reached before the response has been completed. At that point we will have to go to Ron's Oil directly to fund the ongoing response. I don't know how this might affect the response. In general, I think it would be good for the cover letter to request Ron's Oil to take all necessary actions, such as improved maintenance, review of company policy, training of employees or increase staffing, etc., to prevent another accident and spill.

17. Has there been any previous civil penalties or orders issued to this violator?

No

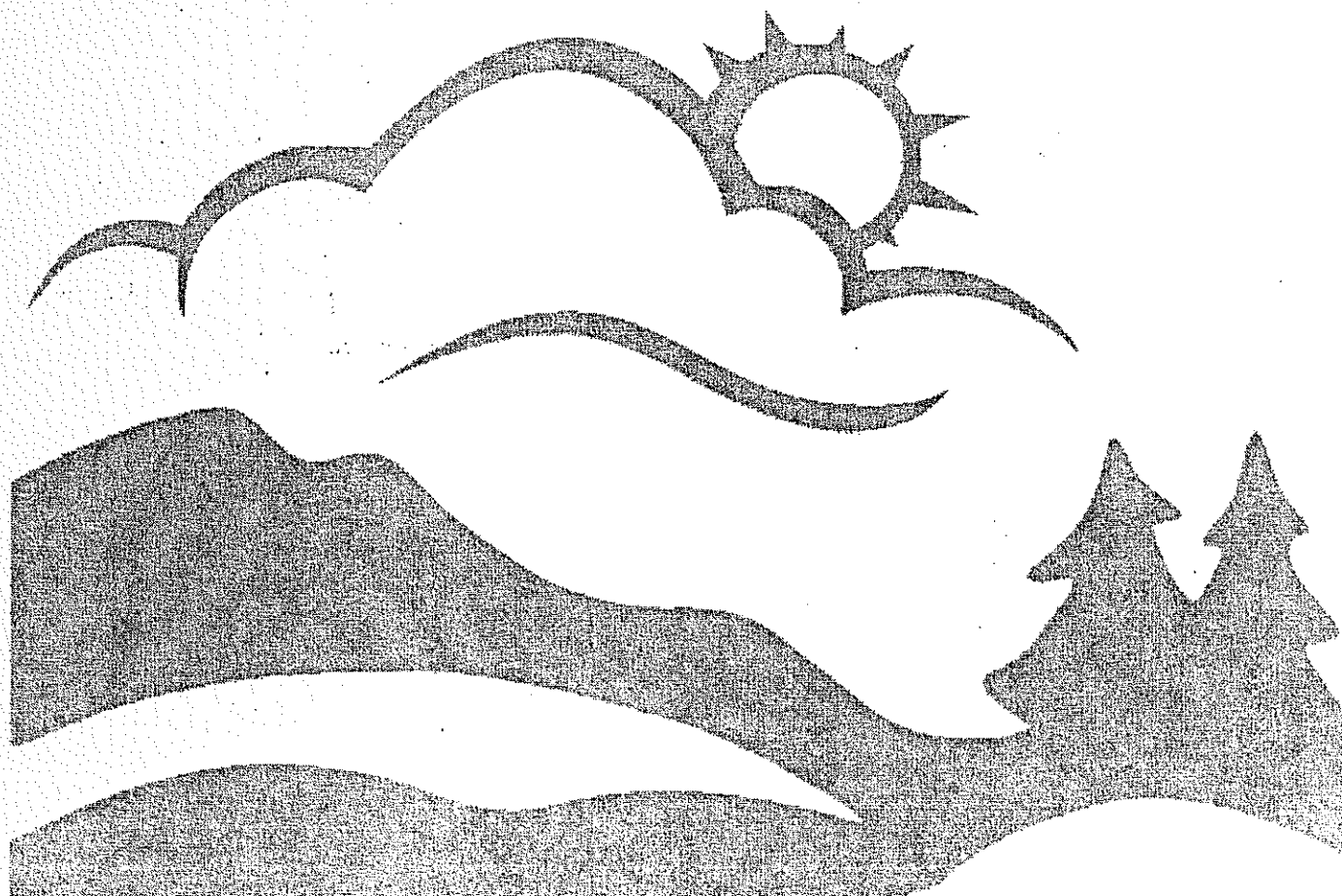
18. Comments or additional information which you believe will help us in reviewing this case:

No



State of Oregon
Department of
Environmental
Quality

Annual Accomplishments Report 2000



2000 ENFORCEMENT ACCOMPLISHMENTS REPORT

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I. INTRODUCTION AND OVERVIEW

The Oregon Department of Environmental Quality (DEQ) works to preserve and improve the ecological integrity of the State's land, water and air. DEQ operates under a combination of federal and state laws delegated by the US Environmental Protection Agency, the Oregon legislature, and the Oregon Environmental Quality Commission (DEQ's rule-making and adjudicative body). According to the conferred authority, the agency obtains and maintains compliance with environmental laws through a variety of regulatory tools.

Because most businesses and individuals have the goodwill and initiative to protect public health and the environment by voluntarily complying with the laws, DEQ emphasizes education and technical assistance. These cooperative efforts create the best environmental results through pollution prevention and regulatory compliance. However, any successful regulatory program must incorporate an enforcement mechanism to deter those entities that do not take the initiative to achieve compliance on their own. Enforcement is also needed to maintain fairness among those who expend the resources and make the effort to comply with environmental laws, and those who seek to avoid costs of lawful compliance. For these reasons, DEQ remains committed to an effective, consistent, and visible enforcement program, in addition to its collaborative programs.

Of the formal enforcement actions the Department issued in the year 2000, DEQ issued more penalties for more penalty money in the Water Quality Program than any other. (*See Table I*).

Table I. A summary of the NONs and formal enforcement actions issued, in 2000, in all program areas. NON=Notice of Noncompliance; NPV=Notice of Permit Violation; O=Order; CP=Civil Penalty Assessment; WMC=Waste Management & Cleanup.							
	Total					Formal	Total
Program area	NON	NPV	O	CP	CP/O	Actions	Penalties
Air Quality	556	0	3	54	11	64	\$447,438
Water Quality	464	27	10	45	7	89	\$494,859
WMC	497	1	2	21	23	47	\$439,897
Total	1,517	28	15	120	37	200	\$1,382,194

In 2000, DEQ assessed nearly \$1.4 million in penalties (*see figure 1 on following page*). While these penalty amounts are not an accurate or complete measure of whether overall compliance with environmental laws is increasing or decreasing, they indicate that continued vigilance is necessary to assure all sources are meeting their environmental responsibilities.

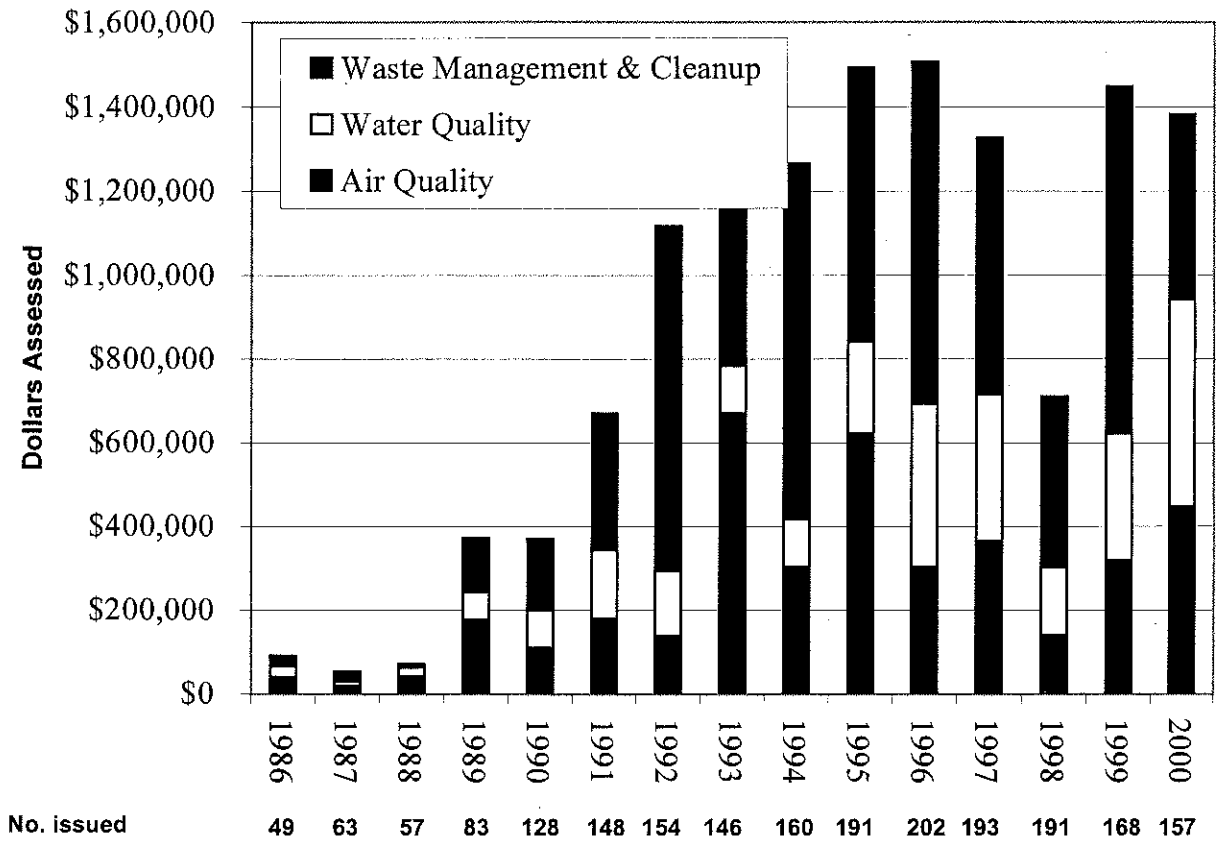


Figure 1. Summary of the total number of penalties issued each year from 1985 through 2000, and the dollar amount attributable to each program for each year.

II. TOOLS FOR ENFORCEMENT

A. ADMINISTRATIVE ENFORCEMENT

1. **Notice of Noncompliance (NON)** – By rule, the Department must issue a NON for every documented violation regardless of its relative significance or environmental impact. A NON is not a formal contestable document and therefore does not include any penalty or appealable order. It informs a person of a violation and the consequences of the violation, and may state a schedule of actions required to resolve the violation or remediate the effects of the violation. Approximately 85% of NONs do not result in subsequent formal enforcement action.

2. **Notice of Permit Violation (NPV)** – An NPV is issued for violation of solid waste disposal permits (excluding subtitle D permits) and wastewater permits. An NPV specifies the violation, and states 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: (1) a statement certifying that the permitted facility is in compliance with the permit; or (2) a written proposal to bring the facility into compliance with the permit within the shortest time possible. If any approved compliance schedule provides for a compliance period of greater than 6 months, the Department is required to incorporate the compliance schedule into an Order that provides for stipulated penalties in case the compliance schedule is not met. An NPV carries no appeal rights and may not include a civil penalty. However, after the first NPV in any 36 month period, the Department may send the violator a Notice of Civil Penalty Assessment without any further formal warning or notice.

3. **Notice of Civil Penalty Assessment (CP)** – DEQ may initiate a formal enforcement action in which the Department assesses a civil penalty for a violation of any environmental statute, rule, order or permit. A civil penalty may be coupled with a Department or Commission Order. Penalties are calculated according to a formula given in Oregon Administrative Rule (OAR) 340-012-0045 which considers the classification, magnitude, and duration of the violation; and the violator's history, mental state, and cooperativeness. The penalty may contain a non-punitive estimate of the economic benefit received through noncompliance. Inclusion of this estimate is intended to take away the economic advantage the violator gained over its competitors. If the violation creates an imminent likelihood for extreme hazard to public health or causes extensive damage to the environment, OAR 340-012-0049(7) adopted pursuant to ORS 468.996, directs DEQ to assess a penalty of \$75,000 if the alleged violator acted intentionally and \$100,000 if he or she acted flagrantly. The recipient of a CP may appeal the action by filing a request for hearing and an answer to the charges within 20 days of service of the CP. With few exceptions, penalty money does not return directly to DEQ, but is paid to the General Fund of the State Treasury.

4. **Department Order or Commission Order (O)** – A formal Order includes a schedule of requirements designed to bring the recipient into compliance with the environmental regulations and/or to require the recipient to remediate the effects of the violation. Commission orders may be issued by the Environmental Quality Commission or by the Director on behalf of the Commission. Department Orders are issued by the Director or an authorized representative. The recipient of the Order generally may appeal the action. In

some circumstances, for example if the Order was issued as the result of an emergency, the recipient has no pre-enforcement appeal right and may suffer treble damages for costs incurred if the Department is forced to respond to the emergency with its own resources. Violation of a Final Order is, in itself, a violation which may be subject to civil penalty.

5. ***Mutual Agreement and Order*** (MAO) – Formerly known as “Consent Order” or “Stipulation and Final Order,” an MAO is a formal document composed of two integrated parts: (1) a negotiated agreement signed by the regulated party and the Director on behalf of DEQ and (2) a Final Order signed by the Director on behalf of the Commission. An MAO may include a schedule of requirements or limitations on the regulated party, and may contain stipulated civil penalties for past or ongoing violations. It may provide for stipulated civil penalties for violations of the Order. An MAO is designed to finalize a formal enforcement action through settlement or other negotiated resolution.

6. ***Penalty Demand Notice*** (PDN) – A PDN is a formal letter from the Department notifying a respondent that its actions have violated the terms of an MAO and that stipulated penalties as described in the MAO are due. A PDN is contestable, but the issues on appeal are limited by the provisions of the MAO.

B. CIVIL INJUNCTIVE RELIEF

The Commission has the power to seek equitable remedies in circuit court, including temporary injunctions in cases of emergency and permanent injunctions where circumstances warrant such.

C. CRIMINAL PROSECUTION

Under Oregon law, extreme violations of most environmental statutes, rules, orders, and permits can be prosecuted criminally. Environmental misdemeanors can be punished by up to \$10,000 or \$5,000 and 1 year in prison, depending on the violation. The most egregious environmental felonies can be punished by up to \$1,000,000 and 15 years imprisonment. For some examples of criminal convictions for 2000, see page 19.

III. PROGRAM DEVELOPMENTS

A. ENFORCEMENT OUTREACH

Perhaps the most important aspect of enforcement is that would-be violators are deterred after learning the potential consequences of noncompliance. In order to inform the regulated public about ongoing enforcement efforts, DEQ issues public statements on all penalties describing the violations and their environmental consequences. In 2000 Enforcement staff spoke at several law conferences, university classrooms, and trade-group meetings to discuss the role of enforcement in environmental compliance, and to explain how businesses and individuals can avoid or minimize the consequences of enforcement through cooperation and compliance.

B. SUPPLEMENTAL ENVIRONMENTAL PROJECTS PROGRAM

Under DEQ's Supplemental Environmental Projects (SEPs) program, the Department may mitigate a part of a civil penalty if the violator conducts a project that benefits human health or the environment in Oregon. Projects benefiting pollution prevention and/or the local area in which the violation occurred are preferred. The internal management directive governing this program states that the Department may approve a SEP when (1) the penalty to be mitigated is \$2,000 or greater, (2) the project is not otherwise required by law, and (3) the project does not create a market advantage for the violator. Furthermore, the project should not involve an inordinate amount of DEQ staff time to plan, arrange, implement, monitor, or follow-up. The Department generally relies on the violator to come forward with suggested projects. During 2000, DEQ received several proposals for SEPs. Of these, the Department approved the following:

- Coos County is mitigating a \$42,510 penalty with a \$34,008 SEP by installing new groundwater monitoring well equipment at the Beaver Hill, Joe Ney, and Bandon landfills, using the equipment to collect data, and reporting the information gathered to DEQ.
- Coos County mitigated a \$8,276 civil penalty with a \$9,500 contribution towards a project to rebuild three culverts that pass streams under county roads. The goal of this project was to improve salmonid access to approximately 9¼ miles of stream for juvenile and adult spawning habitat. The County provided labor, materials and equipment toward several key steps in the project.
- Evanite Fiber Corporation mitigated a \$18,476 penalty with a \$10,941 SEP by installing a "Stormceptor" settling chamber at its Hardboard facility in Corvallis in order to reduce suspended solids which enter the storm drain and ultimately flow into the Willamette River, thereby enhancing water quality.
- Hawthorne Ridge - Portland, LLC is mitigating a \$39,600 penalty with a \$30,000 donation to the City of Portland Bureau of Environmental Services' Johnson Creek Revegetation Program. Working primarily with private property owners, the program includes removal of exotic plant species, site preparation, revegetation using native plants, animal damage protection, and monitoring and maintenance.

- Miles Fiberglass, Inc. mitigated \$974 of its \$6,069 civil penalty by purchasing, installing and operating an acetone recovery solvent still at its Oregon City location at a cost of \$16,265. Purchase of the still allowed Miles Fiberglass to reduce the amount of unregulated still bottoms, which were being put in the landfill by 30%-35%.
- Skyport Properties of Oregon, LTD mitigated \$600 of its \$3,000 civil penalty by agreeing to sponsor and fund a portion of a Watershed Revegetation Program with the City of Portland's Bureau of Environmental Services. Skyport Provided \$11,105 of the project's \$27,763 total costs, which provides for the restoration and maintenance of approximately 3.5 acres of riparian vegetation along the Columbia and Whitaker Sloughs through 2005.

IV. SUMMARIES AND STATISTICS BY DIVISION

A. AIR QUALITY

Table II. A summary of the NONs and formal enforcement actions issued, in 2000, for violations of air quality law. CP includes CP and PDNs; MAOs with penalties are counted as CP/O; MAOs without penalties are counted in the O column. See footnote for abbreviations.

Program area	NONs	NPVs	O	CP	CP/O	Total Formal Enf.	Total Penalties
Asbestos	103	0	1	18	1	20	\$152,698
ACD Permits	72	0	0	12	0	12	\$56,740
Empl. Commute	35	0	0	0	3	3	\$9,988
Open Burning	246	0	0	18	0	18	\$150,802
Title V Permits	49	0	2	7	3	12	\$77,210
Miscellaneous	51	0	0	0	0	0	0
TOTAL	556	0	3	55	7	65	\$447,438

1. Asbestos – The Department regulates asbestos because asbestos is a known carcinogen for which no safe level of exposure is known. In most cases, only a specially licensed contractor who must follow legally prescribed work practices and disposal methods, which are designed to prevent asbestos fibers from becoming airborne, can disturb asbestos-containing material. Below is a table of parties receiving formal enforcement action for asbestos violations in 2000:

Name	Location	Action	Penalty	Status
ASHMORE, VIRGINIA I. & PAUL	BEAVERTON, WASHINGTON	CP	\$7,200	CCH held
CARR CHEVROLET, INC.	BEAVERTON, WASHINGTON	CP	\$3,000	Paid
CEDILLO, DARLENE	BROOKS, MARION	O		Complied
CURLY'S DAIRY, INC. and WILCOX DAIRY FARMS, L.L.C.	SALEM, MARION	CP	\$7,200	Paid
FG & T CONSTRUCTION, INC.	PORTLAND, MULTNOMAH	CP	\$3,600	Paid
GLODT, JAMES	MONMOUTH, POLK	CP	\$8,400	Settled \$6,000; PP
INSULATION REMOVAL CORPORATION	CORVALLIS, BENTON	CP	\$2,400	Reduced to \$600 at CCH; paid
JC GENERAL CONSTRUCTION, INC.	SALEM, POLK	CP	\$9,600	Contested
JENSEN BROTHERS INVESTMENTS, LLC	REDMOND, DESCHUTES	CP	\$1,200	Default; DOR; lien
JENSEN, ROBERT A.	MEDFORD, JACKSON	CP	\$54,640	Contested
JOHN'S WATERPROOFING CO.	SILVERTON, MARION	CP	\$7,200	Settled \$5,000, PP; paid
LEE'S CARPET CENTER, INC. DBA/ LEE'S CARPETMAX	MEDFORD, JACKSON	CP	\$6,000	Contested
LUCAS, RANDY	BEND, DESCHUTES	CP	\$2,035	Settled \$1,535; paid

Abbreviations: See Appendix I.

Asbestos, continued:

Name	Location	Action	Penalty	Status
MIKKELSON, PEDER B.	PORTLAND, MULTNOMAH	CP	\$6,000	Settled \$4,800; PP; default; DOR; lien
MILNE, JAMES S.	PORTLAND, MULTNOMAH	CP	\$3,600	Paid
OREGON DEPT OF HUMAN RESOURCES, OR STATE HOSPITAL	SALEM, MARION	CP	\$800	Paid
SIDING MART, INC.	SWEET HOME, LINN	CP	\$3,000	Settled \$550; paid
SLEVCOVE, HARRY DBA/ A HAUL OF FAME	TURNER, MARION	CP	\$9,600	Contested
STACEY, DAN & STACEY, STARLA	BROOKS, MARION	CP/O	\$11,223	Settled \$0
TEKTONIKS CORP.	PENDLETON, UMATILLA	CP	\$6,000	Paid

2. Open Burning – The open burning of plastics, garbage and other materials that produce dense smoke is prohibited statewide because the smoke can contain toxic materials. Open burning of agricultural, construction, demolition, and yard debris is allowed at certain times of the year in some non-urban areas of the State. The smoke from all of these sources contributes to concentrations of “PM₁₀” (particulate matter less than 10 microns) and of “PM_{2.5}” (particulate matter less than 2.5 microns). These particles, especially the latter, tend to be breathed very deeply into the lungs and may contribute to respiratory cancer. Most open-burning cases were referred from fire departments responding to problem sources. Below is a table of parties receiving formal enforcement action for open-burning violations in 2000:

Name	Location	Action	Penalty	Status
BUCHANAN, FRED	BEND, DESCHUTES	CP	\$1,241	Settled \$641
DAHL, BILL DBA/ 3-D CONSTRUCTION	LAKESIDE, COOS	CP	\$1,578	Settled \$589; paid
ETZEL, DON	TURNER, MARION	CP	\$10,000	Default, DOR; lien
FERGUSON, WILLIAM HENRY	MEDFORD, JACKSON	CP	\$900	Paid
HARTZ, RON	PHILOMATH, BENTON	CP	\$4,006	Default; DOR; lien
JANTZER ENTERPRISES, INC.	GRANTS PASS, JOSEPHINE	CP	\$1,750	Paid
LOWDER, JERRY	TURNER, MARION	CP	\$4,462	Settled \$1,600; paid
MARTIN, THOM	MEDFORD, JACKSON	CP	\$4,617	Contested
MIGNOT, WILLIAM	GRANTS PASS, JOSEPHINE	CP	\$3,675	Settled \$3,675; PP
NATIVIDAD, TODD	SALEM, MARION	CP	\$3,633	Settled \$1,383; paid
SHOCKMAN, JEROME., DBA/W.J. SHOCKMAN & SON	MILTON- FREEWATER, UMATILLA	CP	\$1,021	Paid
TALENT IRRIGATION DISTRICT	TALENT, JACKSON	CP	\$836	Paid
TIMMERMAN, LYNNE	PENDLETON, UMATILLA	CP	\$100,000	Contested

Abbreviations: See Appendix I.

Open Burning, continued:

Name	Location	Action	Penalty	Status
TORGESON, JOHN P.	CANBY, CLACKAMAS	CP	\$1,053	Settled \$800; PP
WEISGRAM, WILLIAM	TURNER, MARION	CP	\$1,817	Settled \$1,817 PP
WELDON, VERN	TILLAMOOK, TILLAMOOK	CP	\$6,296	Settled \$2,027; PP
WHALEN, SEAN	KEIZER, MARION	CP	\$1,000	Settled \$500; paid
WITTRIG, JOHN W.	LEBANON, LINN	CP	\$2,917	Paid

3. Employee Commute Option – All Portland-area businesses with 50 or more employees at a single site must plan and provide incentives for their workers to reduce commute trips to the work site by 10 percent within three years. Compliance is based on employers making a "good faith effort" toward the goal by implementing trip reduction strategies and surveying employees. Below is a table of parties not meeting this standard and receiving formal enforcement action for employee-commute option violations in 2000:

Name	Location	Action	Penalty	Status
BONITA PACKAGING PRODUCTS INC. DBA/ BONITA PIONEER	PORTLAND, WASHINGTON	CP/O	\$2,638	Paid
FAMILIAN NORTHWEST, INC.	PORTLAND, MULTNOMAH	CP/O	\$3,595	Settled \$3,195; paid
GAMBEL INC. DBA/ PEPSI COLA BOTTLING CO. OF PORTLAND	PORTLAND, MULTNOMAH	CP/O	\$3,755	Paid

4. Permit Violations – The Department uses a permitting process to regulate sources of air contaminants in the state. The permits assure that the most appropriate pollution control technologies are used and that the sources do not exceed certain emission limitations. Sources having less "potential to emit" contaminants operate under a state Air Contaminant Discharge Permit. Below is a table of parties receiving formal enforcement action for violations of state Air Contaminant Discharge Permits in 2000:

Name	Location	Action	Penalty	Status
4-R EQUIPMENT L.L.C.	BEND, DESCHUTES	CP	\$1,509	Paid
BENTON, FARRIS B. & JUDY L. DBA/ BENTON ROCK PRODUCTS	BURNS, HARNEY	CP	\$1,183	Paid
BYERS ACQUISITION CORP.	PORTLAND, MULTNOMAH	CP	\$3,000	Contested
CIRCLE CONSTRUCTION CO.	MULTNOMAH	CP	\$4,358	Paid
GEORGIA-PACIFIC RESINS, INC.	ALBANY, LINN	CP	\$18,067	Paid
MEDPLY, INC.	WHITE CITY, JACKSON	CP	\$3,600	Settled \$1,200; paid
MOORE, EUGENE A.	DESCHUTES	CP	\$16,702	Contested
MORRILL ASPHALT PAVING CO., INC.	HERMISTON, UMATILLA	CP	\$3,064	Paid

Air Contaminant Discharge Permits, continued:

Name	Location	Action	Penalty	Status
OCHOCO LUMBER COMPANY DBA/ MALHEUR LUMBER COMPANY	GRANT	CP	\$1,500	Paid
PORTABLE ROCK PRODUCTION CO. & BESSETT, LONNY	BURNS, HARNEY	CP	\$1,200	Paid
ROSS BROS. & COMPANY, INC.	THE DALLES, WASCO	CP	\$1,143	Upheld at CCH; paid
SUNDANCE ROCK, INC.	WINSTON, JACKSON	CP	\$1,414	Paid

Air contaminant sources with the largest "potential to emit" must operate under a state-written, federally-approved Oregon Title V Operating Permit. Below is a table of parties receiving formal enforcement action for violations related to violations of Title V Permits in 2000:

Name	Location	Action	Penalty	Status
AQUA GLASS WEST, INC.	KLAMATH FALLS, KLAMATH	MAO	\$13,890	Paid
BEAVER MOTOR COACHES, INC.	BEND, DESCHUTES	CP	\$4,500	Paid
DANNER SHOE MANUFACTURING CO.	PORTLAND, MULTNOMAH	O		
EAGLE-PICHER MINERALS, INC.	VALE, MALHEUR	O		Complying
FORT JAMES OPERATING COMPANY	CLATSKANIE-- WAUNA MILL, CLATSOP	CP	\$1,300	Paid
GUNDERSON, INC.	PORTLAND, MULTNOMAH	CP	\$1,800	Paid
OCHOCO LUMBER COMPANY	PRINEVILLE, CROOK	CP/O	\$10,437	Settled \$8,677; paid
OREGON SANDBLASTING & COATING, INC.	TUALATIN, WASHINGTON	CP	\$1,400	Paid
ROYAL OAK ENTERPRISES, INC.	WHITE CITY, JACKSON	CP	\$1,400	Paid
SMC CORPORATION (HARNEY COACH WORKS)	HINES, HARNEY	CP	\$3,000	Paid
TDY INDUSTRIES, INC., FKA/ TELEDYNE INDUSTRIES, INC	ALBANY, LINN	MAO	\$5,400	Paid
WILLAMETTE INDUSTRIES, INC.	ALBANY, LINN	CP	\$34,083	Paid

Abbreviations: See Appendix I.

B. WATER QUALITY

Table III. A summary of the NONs and formal enforcement actions issued, in 2000, for violations of water quality law. CP includes CP and PDNs; MAOs with penalties are counted as CP/O; MAOs without penalties are counted in the O column. See Appendix I for abbreviations.

Program area	NONs	NPVs	O	CP	CP/O	Total Formal Enf.	Total Penalties
Industrial	126	4	1	16	3	24	\$333,306
Municipal	96	8	8	6	1	23	\$34,500
On-site	118	0	0	10	1	11	\$30,633
Domestic waste	53	11	1	8	1	21	\$64,620
Stormwater	71	4	0	5	1	10	\$31,800
TOTAL	464	27	10	45	7	89	\$494,859

1. Industrial Waste – Most sources that do not dispose of contaminated wastewater through a public treatment works, dispose of it under a permit with DEQ. If the method of disposal is treatment and disposal into state waters, the source operates under a National Pollutant Discharge Elimination System (NPDES) permit. If the source disposes of the water to land or by evaporation, the source operates under a state Water Pollution Control Facility (WPCF) permit. Sources that reclaim water by treatment and subsequent use as non-food crop irrigation operate under either an NPDES or WPCF permit, depending on whether they have any discharge to state waters. Below are the formal enforcement actions for industrial-waste violations in 2000:

Name	Location	Action	Penalty	Status
BIONIC BROOM JANITORIAL INC.	PORTLAND, MULTNOMAH	CP	\$10,200	Contested
CLAUSEN, MAX AND LILLI, DBA/CLAUSEN OYSTERS	COOS BAY, COOS	NPV	n.a.	NPV response accepted
DEPENDABLE AUTO SHIPPERS, INC.	UNION	CP	\$6,000	Paid
HENDRICKSON WELL DRILLING, INC.	WESTFIR, LANE	CP	\$3,000	Settled \$2,400; PP
HUFF, REGGIE D.	SCAPPOOSE, COLUMBIA	CP	\$1,400	CCH held; appeal to EQC
J. H. BAXTER & COMPANY	LANE	MAO	\$25,000	Paid
J. R. SIMPLOT COMPANY	HINKLE, UMATILLA	CP	\$1,600	Paid
JELD-WEN, inc.	KLAMATH FALLS, KLAMATH	NPV	n.a.	NPV response accepted
LUNDEEN, DENNIS, DBA/SEPTI-CLEAN	YONCALLA, DOUGLAS	NPV	n.a.	NPV response accepted
MIDWAY MOTORS POWER CHRYSLER DBA/ POWER CHRYSLER PLYMOUTH DODGE	NEWPORT, LINCOLN	CP	\$1,200	Paid
MITSUBISHI SILICON AMERICA CORPORATION	SALEM, MARION	CP	\$124,800	Contested

Abbreviations: See Appendix I.

Industrial Waste, continued:

Name	Location	Action	Penalty	Status
OCEAN TERMINALS CO.	NORTH BEND, COOS	CP	\$8,954	Settled \$3,858; paid
OREGON METALLURGICAL CORPORATION	ALBANY, LINN	CP	\$4,800	Settled \$4,800 with new O
PACIFIC CHOICE SEAFOOD, INC. DBA/ INLAND QUICK FREEZE & STORAGE	ALBANY, LINN	CP	\$1,551	Settled \$1,100; paid
PACIFIC WOOD LAMINATES, INC.	BROOKINGS, CURRY	CP	\$3,000	Paid
PATEL, MAGANBHAI; NEWELL, CHARLES O., ET AL	OAKLAND, DOUGLAS	NPV	n.a.	NPV response accepted
SAFEWAY, INC.	MYRTLE POINT, COOS	CP/O	\$3,600	Paid
SMURFIT NEWSPRINT COMPANY	OREGON CITY MILL, CLACKAMAS	CP	\$96,280	Paid
SNAKE RIVER CORRECTIONAL INSTITUTION	ONTARIO, MALHEUR	CP	\$4,121	Paid
STRUBEL, JACK AND STRUBEL, CHERYL	MERLIN, JOSEPHINE	CP/O	\$3,000	Contested
TDY INDUSTRIES, INC., FKA/TELEDYNE INDUSTRIES	ALBANY, LINN	CP	\$20,000	Paid
TELEDYNE INDUSTRIES, INC.	MILLERSBURG, LINN	CP	\$11,800	Paid
THE AMALGAMATED SUGAR COMPANY, LLC	NYSSA, MALHEUR	CP	\$3,000	Paid
UNION PACIFIC RAILROAD	UMATILLA	MAO		

2. Municipal Waste – Domestic sewage wastewater is disposed in the same manners as industrial wastewater. Raw sewage is a health hazard because of the pathogenic parasites it may contain. Many municipal sources entered into formal agreements (MAOs) with enforceable compliance schedules and interim limitations while their facilities were being up-graded. Below is a table of parties receiving formal enforcement action for municipal-waste violations in 2000:

Name	Location	Action	Penalty	Status
AMITY, CITY OF	YAMHILL	MAO	\$0	EPOC
ASHLAND, CITY OF	ASHLAND, JACKSON	NPV	n.a.	NPV response accepted
BROWNSVILLE, CITY OF	LINN	NPV	n.a.	NPV response accepted
DRAIN, CITY OF	DOUGLAS	NPV		NPV response accepted
FALLS CITY, CITY OF	POLK	MAO		EPOC
GERVAIS, CITY OF	MARION	MAO	\$0	
HAINES, CITY OF	BAKER	MAO	\$0	
JUNCTION CITY	JUNCTION CITY, , LANE	PDN	\$100	Paid
KLAMATH COUNTY SCHOOL DISTRICT (HENLEY SCHOOL)	KLAMATH	MAO		EPOC
LAFAYETTE, CITY OF	YAMHILL	NPV	n.a.	NPV response accepted
LAKESIDE, CITY OF	COOS	NPV	n.a.	NPV response accepted
LANE COMMUNITY COLLEGE	EUGENE, LANE	MAO		
LEBANON, CITY OF	LINN	MAO		

Abbreviations: See Appendix I.

Municipal Waste, continued:

Name	Location	Action	Penalty	Status
OREGON PACIFIC LEASING, INC.	COOS BAY, COOS	CP	\$3,600	Paid
PILOT ROCK, CITY OF	UMATILLA	NPV	n.a.	NPV response accepted
PORTLAND, CITY OF	MULTNOMAH	CP	\$9,600	Reissued at \$8,400
PORTLAND, CITY OF	MULTNOMAH	CP	\$5,100	Contested
RIVER MEADOWS HOMEOWNERS ASSOCIATION & STAGE STOP	SUNRIVER, DESCHUTES	NPV	n.a.	NPV response accepted
ROSEBURG URBAN SANITARY AUTHORITY	ROSEBURG, DESCHUTES	NPV	n.a.	NPV response accepted
SCAPPOOSE, CITY OF	COLUMBIA	CP/O	\$12,000	Reduced to \$9,600 at CCH
TOLEDO, CITY OF	LINCOLN	MAO		
WASCO, CITY OF	WASCO	MAO		
WEDDERBURN SANITARY DISTRICT	WEDDERBURN, CURRY	CP	\$3,600	Contested
WESTFIR, CITY OF	LANE	PDN	\$500	Paid

3. Domestic Waste – Some larger private sewage systems also require either NPDES or Water Pollution Control Facility permits. Below are the domestic sewage cases for 2000:

Name	Location	Action	Penalty	Status
ASHLEY'S INC.	BORING, CLACKAMAS	NPV	n.a.	NPV response accepted
CAN-AMERICAN, INC.	BORING, CLACKAMAS	CP	\$1,600	Paid
CENTURY MEADOWS SANITARY SYSTEM, INC.	CANBY, MARION	CP	\$16,251	Settled \$0
COVE ORCHARD SEWER SERVICE DISTRICT	COVE ORCHARD, YAMHILL	NPV	n.a.	NPV response accepted
ELDORADO TRES CORPORATION	COOS BAY, COOS	CP/O	\$6,400	Settled \$5,600; paid
GRABHORN, BURTON E. (CARVER RANCH MHP)	CLACKAMAS	MAO		
HARRISON, J. GEORGE AND CHIPMAN, MICHAEL	VENETA, LANE	CP	\$1,200	Default; DOR; lien
JONES, CASEY L.	WEST FIR, LANE	NPV	n.a.	NPV response accepted
KLB CONSTRUCTION, INC.	PORTLAND, MULTNOMAH	CP	\$3,600	Settled \$2,500; paid
LEHMAN DEVELOPMENT CORPORATION	UKIAH, UMATILLA	CP	\$13,323	Contested
LOG-JAM, INC. DBA/THE LOGGER RESTAURANT	KNAPPA, CLATSOP	NPV	n.a.	NPV response accepted
MAGAR E. MAGAR DBA/ RIVERWOOD MOBILE HOME PARK	RAINIER, COLUMBIA	NPV	n.a.	NPV response accepted
MALO, ADRIAN	SEASIDE, CLATSOP	CP	\$2,574	Contested
OAK LODGE SANITARY DISTRICT	MILWAUKIE, CLACKAMAS	NPV	n.a.	NPV response accepted
PATEL, HARISH S.	FLORENCE, LANE	NPV	n.a.	NPV response accepted
R.L.K. AND COMPANY (TIMBERLINE LODGE)	CLACKAMAS	CP	\$4,000	Settled \$3,400; paid

Abbreviations: See Appendix I.

Domestic Waste, continued:

Name	Location	Action	Penalty	Status
ROBERTS, ANNA (BIG BARN MARINA & RV PARK)	TILLAMOOK, TILLAMOOK	NPV	n.a.	NPV response accepted
ROUND LAKE UTILITIES, INC.	KLAMATH FALLS, KLAMATH	PDN	\$500	Paid
SAGINAW PARK, INC.	COTTAGE GROVE, LANE	CP/O	\$15,172	Contested
STEPHENS, ELI AND MONTCHALIN, MIKE DBA/ BARNHART PROPERTIES	PENDLETON, UMATILLA	NPV	n.a.	NPV response accepted
SUESS, C. ROBERT AND HELEN S.	EUGENE, LANE	NPV	n.a.	NPV response accepted
UNITED STATES ARMY CORPS OF ENGINEERS	COTTAGE GROVE, LANE	NPV	n.a.	NPV response accepted

4. On-site Sewage – The Department regulates on-site sewage system installation, operation, and pumping to assure that on-site sewage systems are installed and operated in a manner that properly limits the amount of raw sewage discharged into the environment and to protect human health. Below is a Table of parties receiving formal enforcement action for on-site installation violations in 2000:

Name	Location	Action	Penalty	Status
AMERICAN SANITATION, INC.	KLAMATH FALLS, KLAMATH	CP	\$1,000	Settled \$600; PP
BOYCE, DAVID LEE	TROUTDALE, MULTNOMAH	CP	\$2,034	Default; DOR; lien
COKLEY EXCAVATION, INC	WARRENTON, CLATSOP	CP	\$1,000	Default; DOR; lien
DAUGHERTY, ALFRED H., DBA/AL DAUGHERTY CONSTRUCTIO	KLAMATH FALLS, KLAMATH	CP	\$2,055	Paid
MCDANIEL, SCOTT DBA/SCOTT MCDANIEL CONSTRUCTION	BEND, DESCHUTES	CP	\$3,000	Settled \$1,000; paid
SERDSEV, ALEX DBA/ ALEX EXCAVATING	GERVAIS, MARION	CP	\$1,200	Settled \$800; PP; paid
SMITH, FLOYD, dba/EDSON CREEK ROCK PRODUCTS	OPHIR, CURRY	CP	\$3,813	Settled \$2,000; paid
TURNER, ARTHUR	LAKEVIEW, LAKE	CP	\$1,812	Paid
WENSENK, CLYDE DBA/ C & D CONSTRUCTION	BURNS, HARNEY	CP	\$9,866	Default; Lien

Below is a Table of parties receiving formal enforcement action for on-site operation violations in 2000:

Name	Location	Action	Penalty	Status
DUCKWORTH, PAUL	WINSTON, DOUGLAS	CP/O	\$1,831	Contested
TIMIAN, DON	CORVALLIS, BENTON	CP	\$3,022	Settled \$0

Abbreviations: See Appendix I.

5. Storm Water – Stormwater runoff, which can contain sediment, petroleum products, pesticides, and other contaminants, is a significant source of pollution for Oregon's streams and rivers. The stormwater rules require sources of stormwater runoff to control the pollutants being carried with the runoff. For example, large land areas cleared for construction must prevent dirt and silt from being washed into the waters of the state by installing silt fences and settling ponds and by replanting with grass. Exposed industrial lots must be kept clean to prevent the rain from washing oils and chemicals into the waters. Below is a table of parties receiving formal enforcement action for storm-water violations in 2000:

Name	Location	Action	Penalty	Status
AKRO CONSTRUCTION CO. (DILSON, & SCHINDLER)	CORVALLIS, BENTON	CP	\$4,800	Contested
BUSINESS PROPERTIES INVESTMENT LIMITED PARTNERSHIP	GRESHAM, MULTNOMAH	NPV	n.a.	
BUSINESS PROPERTIES INVESTMENT LIMITED PARTNERSHIP	GRESHAM, MULTNOMAH	CP	\$6,000	DOR; lein; bankrupt
BUSSMAN, EARNEST A.	FOUR MILE CREEK, COOS	CP/O	\$4,200	CP reduced to \$3,900 at CCH.
CUSTOM CAST CORPORATION (BENNETT, HOWARD)	TUALATIN, WASHINGTON	NPV	n.a.	NPV response accepted
HELPING HANDS MAINTENANCE, INC.	GRESHAM, MULTNOMAH	CP	\$9,000	Contested
J. C. COMPTON COMPANY (RIVER BEND SAND & GRAVEL)	TURNER, MARION	NPV	n.a.	NPV response accepted
S & V RENTALS, INC. (HILGEDICK, STEVE)	WHEELER, TILLAMOOK	CP	\$4,200	Settled \$1,000; paid
SAND HOLLOW SUBDIVISION, LLC.	ADAMS, UMATILLA	NPV	n.a.	NPV response accepted
SEASIDE HEIGHTS DEVELOPMENT LLC	SEASIDE, CLATSOP	CP	\$3,600	Settled \$800; paid

C. WASTE PREVENTION AND MANAGEMENT

Table IV. A summary of the NONs and formal enforcement actions issued, in 2000, for violations of waste management laws. CP includes CP and PDNs; MAOs with penalties are counted as CP/O; MAOs without penalties are counted in the O column. See Appendix I for abbreviations.

Program area	NONs	NPVs	O	CP	CP/O	Total Formal Enf.	Total Penalties
Hazardous waste	55	0	0	15	17	32	\$280,125
Spills	5	0	0	1	1	2	\$32,400
Solid waste	104	1	0	3	4	8	\$167,748
(UST) Tanks	327	0	2	2	1	5	\$346,074
Miscellaneous	6	0	0	0	0	0	\$0
SUM	497	1	2	21	23	47	\$439,897

1. Hazardous Waste – Hazardous waste rules govern how certain toxic or dangerous chemical wastes may be managed, reused, recycled, stored, treated, transported, and disposed in a manner that protects the public from harmful exposure. Below are the formal enforcement actions for hazardous waste violations in 2000:

Name	Location	Action	Penalty	Status
AHN, YOUNG.HO DBA/ELK CLEANERS & LAUNDRY CO.	PORTLAND, MULTNOMAH	CP	\$800	Settled \$700; paid
BRALEY & GRAHAM CO.	PORTLAND, WASHINGTON	CP	\$1,167	Paid
BYERS INDUSTRIES, INC. DBA/ PORTLAND WILLAMETTE CO.	PORTLAND, MULTNOMAH	CP	\$9,000	Settled \$9,000; PP
COMMERCIAL AFFILIATES INC., DBA/CARPET RESOUC E CNT	PORTLAND, MULTNOMAH	CP	\$9,000	Settled \$6,000; paid
CSC, INC., DBA/MEDFORD FABRICATION	MEDFORD, JACKSON	CP	\$1,200	Paid
DYNIC USA CORP.	HILLSBORO, WASHINGTON	CP/O	\$1,000	Paid
EC COMPANY DBA/ E C POWER SYSTEMS	PORTLAND, MULTNOMAH	CP	\$3,800	Settled \$2,800; paid
ERICKSON AIR-CRANE CO., L.L.C.	CENTRAL POINT, JACKSON	CP/O	\$20,973	Settled \$11,673; paid
EVANITE FIBER CORPORATION	CORVALLIS, BENTON	CP	\$18,476	Settled \$2,735 + \$13,676 SEP; paid
EXCELLO PROGUCTS, INC.	PORTLAND, CLACKAMAS	CP/O	\$5,600	Paid; complied
F.D. THOMAS, INC.	CENTRAL POINT, JACKSON	CP/O	\$7,219	Paid
FUEL PROCESSORS, INC.	PORTLAND, MULTNOMAH	CP/O	\$114,000	Settled \$53,052; paid
GALVANIZERS COMPANY	PORTLAND, MULTNOMAH	CP/O	\$9,600	Settled \$3,600; paid

Abbreviations: See Appendix I.

Hazardous waste, continued:

Name	Location	Action	Penalty	Status
GREAT WESTERN CHEMICAL COMPANY	PORTLAND, MULTNOMAH	CP	\$1,200	Paid
HORIZON AIR INDUSTRIES, INC.	PORTLAND, MULTNOMAH	CP/O	\$1,000	Paid
LIGHTING RECYCLERS, INC.	PORTLAND, MULTNOMAH	CP	\$38,940	Default; DOR; lein
LOGAN INTERNATIONAL, LTD.	METOLIUS. CROOK	CP/O	\$1,200	Paid
MAC'S RADIATOR & REPAIR, INC.	BEND, DESCHUTES	CP	\$4,800	Settled \$640 + \$2,560 SEP; paid
NORRIS, JEFF DBA/ BANDON CLEANERS	BANDON, COOS	CP/O	\$800	Paid
OLYMPUS ENVIRONMENTAL, INC. (WALLY C. SEMON)	TROUTDALE, MULTNOMAH	CP/O	\$5,200	Contested
PARK, MINJA DBA/ MASTERCRAFT CLEANERS	BEND, DESCHUTES	CP/O	\$800	Contested
PIPKIN, CASSANDRA DBA/ SPRINGFIELD CLEANERS	SPRINGFIELD, LANE	CP/O	\$800	Settled \$700; paid
QUALITY METAL FINISHING, INC.	EUGENE, LANE	CP/O	\$3,300	Settled \$3,300; PP; paid
REINFORCED FIBERGLASS & PLASTICS INCORPORATED	PORTLAND, MULTNOMAH	CP	\$3,600	Settled \$1,000; paid
SAFETY-KLEEN SYSTEMS, INC.	CLACKAMAS, CLACKAMAS	CP/O	\$10,800	Contested; bankruptcy
SAFETY-KLEEN SYSTEMS, INC. (PENINSULA TERMINAL)	PORTLAND, MULTNOMAH	CP	\$2,000	Contested; bankruptcy
SOUTHERN OREGON MARINE, INC.	COOS BAY, COOS	CP/O	\$8,881	Settled \$1,760 + \$22,000 SEP
SURGICHROME, INC.	CLACKAMAS, CLACKAMAS	CP	\$12,775	Contested
VALHALL, INC.	LANE	CP	\$5,600	Default; lien; DOR
WALTER E. NELSON COMPANY	PORTLAND, MULTNOMAH	CP	\$6,000	Settled \$3,200; paid
WENTWORTH BUICK GMC TRUCKS CO.	EUGENE, LANE	CP/O	\$1,200	Paid
YANG, CHAN.SIK DBA/ MERIDIAN CLEANERS	LAKE OSWEGO, WASHINGTON	CP/O	\$800	Settled \$700; paid

2. Solid Waste – Improperly disposed solid wastes can contaminate soils, cause polluted runoff to surface and groundwater, and create a public nuisance. Below is a table of parties receiving formal enforcement action for solid-waste violations in 2000:

Name	Location	Action	Penalty	Status
CENTER FOR HUMAN DEVELOPMENT DBA/ HEALTY SOLUTIONS	LA GRANDE, UNION	CP	\$17,752	Contested
CROOK COUNTY	CROOK	CP	\$15,600	Settled \$6,148 + \$9,760 SEP
FOSTER-BALL GLASS CONTAINER CO., L.L.C.	MULTNOMAH	MAO	\$0	
JOSEPHINE COUNTY	JOSEPHINE	NPV	n.a.	NPV response accepted

Abbreviations: See Appendix I.

Solid waste, continued:

Name	Location	Action	Penalty	Status
LIGHTING RECYCLERS, INC.	PORTLAND, MULTNOMAH	CP	\$23,400	Default; DOR; lien
MCINNIS WASTE SYSTEMS, INC., DBA/RIVER CITY DISPOSAL & RECYCLING	PORTLAND, MULTNOMAH	CP/O	\$5,247	Paid
NORTH POWDER, CITY OF	UNION	CP/O	\$13,285	Reduced to \$12,925 at CCH
RUSSELL, DAVID A. & MARY	BAKER	CP/O	\$4,200	Settled \$1,500; paid

3. **Spills** – Oregon law provides that spills of oil, hazardous material and other chemicals must be immediately cleaned up because of the potential for significant damage to the environment and danger to public health. Even small spills may cause damage through the aggregate effect of cumulative impacts. This is especially true of spills into waters of the state, which are strictly prohibited. Oregon statutes double the penalties that may be assessed for spills into water created negligently or intentionally and provide that these penalties may be placed in a special spill fund for future cleanups. Below is a table of parties receiving formal enforcement action for spill violations in 2000:

Name	Location	Action	Penalty	Status
COLUMBIA BASIN SPREADERS, INC.	HERMISTON, UMATILLA	CP/O	\$21,600	Settled \$10,200; paid
LA FRANCHI, RONALD C. (ABN RON'S OIL COMPANY)	KNOWLES CREEK, LANE	CP	\$6,000	CCH held; appeal to EQC

4. **Underground Storage Tanks (USTs)** – DEQ uses a notice-and-permit system to track USTs, identify potential contamination, and ensure general compliance with the UST rules. In cases of confirmed releases of petroleum associated with underground storage tanks, the owner or operator is statutorily obligated to properly investigate, monitor, and clean up the release. The environmental consequences may worsen and the cost of cleanup become more expensive over time as the oil migrates with the groundwater. Penalties associated with violations in the Leaking Underground Storage Tank (LUST) Program are placed in a special LUST account to be used to fund future cleanups. Below is a table of parties receiving formal enforcement action for UST violations in 2000:

Name	Location	Action	Penalty	Status
A & B ENTERPRISES, INC.	LA GRANDE, UNION	MAO	\$0	
BOYLEN, WILLIAM	MEDFORD, JACKSON	CP/O	\$13,582	Contested
LEATHERS ENTERPRISES, INCORPORATED, DBA/LEATH. OIL	SANDY, CLACKAMAS	MAO		
PROVIDENCE HEALTH CENTER- OREGON	PORTLAND, MULTNOMAH	CP	\$1,600	Paid
SEMINOLE ENVIRONMENTAL, INC.	CLACKAMAS	CP	\$6,100	Settled \$3,400; paid

V. ENVIRONMENTAL CRIMES PROGRAM

1. Structure of DEQ's Program

In 1993, Oregon enacted a series of environmental crimes laws that provide felony and new misdemeanor authority for criminal prosecution of extreme violations of environmental law. The most severe fine that can be imposed is for environmental endangerment. Individuals committing this felony may be penalized by up to 15 years imprisonment and fined \$1,000,000; businesses may be fined up to \$2,000,000.

As Oregon's primary environmental enforcement agency, DEQ leads the development of the statewide environmental crimes program and assists in coordinating environmental inspectors, laboratory technicians, local emergency response teams, law enforcement officers, and criminal prosecutors. In administering the program, DEQ participates in an Environmental Crimes Coordination Team composed of representatives from DEQ, Oregon State Police, the federal Environmental Protection Agency, the Federal Bureau of Investigation, and the US Attorney's Office. Once a week the Team meets to discuss reports of suspected environmental crimes. The Team discusses whether to initiate a full criminal investigation based on evidence supplied by federal, state and local regulators, law enforcement agencies, citizens and other individuals and agencies. In deciding whether to go forward with a criminal case, the Team considers a number of discretionary factors. These can be summarized in three questions:

- Does the violator have a history of violating the environmental laws?
- Did the violator act intentionally, deceitfully, deliberately or dishonestly in committing the violation?
- Did the violation threaten or cause harm to public health or the environment?

In some cases the Team, using investigative discretion, determines that the alleged conduct does not meet the criteria as an environmental crime, and that a DEQ inspector should proceed with a civil enforcement action. In other cases, the Team determines that the state or federal law enforcement officers should initiate a criminal investigation. The Team also discusses the progress of ongoing investigations and strategies based on resource availability and the particular needs of the investigation. Any decision to commit DEQ's resources to a criminal investigation is made after consulting with the DEQ Director.

2. Sanctions Imposed

During 2000, DEQ was involved in numerous investigations and prosecutions of potential environmental crimes. Once a case has been investigated, criminal investigators refer the case to a county district attorney (or U.S. Attorney if federal law). The district attorney must determine whether to charge felonies under guidelines which consider the significance of the violation, whether it caused environmental damage, and whether the violator acted in bad faith or was uncooperative in remedying the effects of the violation

or regaining compliance (see ORS 468.961). As a result of subsequent prosecutions, criminal sanctions imposed in 2000 included the following:

- Harrison “Hank” Vann was convicted by jury in Jackson County Circuit Court of a water quality felony and sentenced to a fine of \$6,000, 80 hours community service, and 18 months probation. Mr. Van, while owner of the Circle W RV Park, ran a hose from his backed-ups septic tank using a rented pump and pumped the sewage into the Rogue River.
- David McInnis, President of McInnis Enterprises, Ltd., as part of a sentencing agreement, took out the following full-page apology in the Oregonian newspaper on two dates in May:

My company, McInnis Enterprises, Ltd., formerly doing business as Schultz Sanitation and I recently pleaded guilty in Federal Court to charges of illegally discharging industrial process wastewater into the Columbia Boulevard and Tri-City wastewater facilities. My company also pleaded guilty to making false statements to conceal the discharges. We were prosecuted by the Environmental Crimes Section of the United States Department of Justice and the United States Attorney's Office.

Our Conduct was not only wrong, it was illegal. As a result of this, my company was fined \$60,000. I was personally fined \$30,000 and sentenced to four months home confinement as a condition of probation. I was charged and pleaded guilty because of my own conduct, and because I was the Responsible Corporate Officer of McInnis Enterprises, Ltd., d/b/a Schultz Sanitation. While my company and I are no longer involved in the disposal of septic or other wastewater, one of the terms of our plea agreement is that we publish this apology.

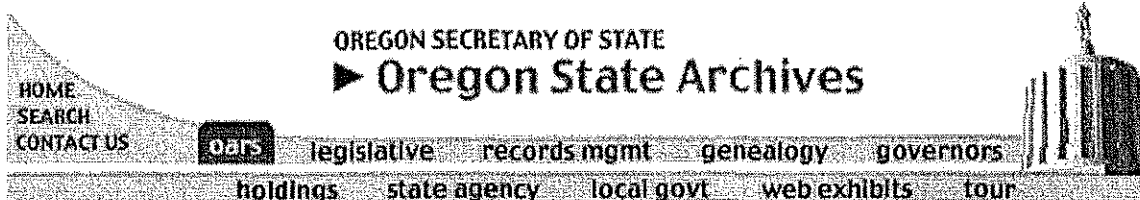
Publicly owned water treatment facilities like Columbia Boulevard and Tri-City represent a significant investment of tax dollars and serve to protect the water quality of our rivers and streams. The illegal discharge of industrial process wastewater into such treatment facilities could have severe environmental affects. It impacts the operation of the water treatment plants, the water quality of the river and harms marine life.

We hope our guilty plea will be a lesson to others that environmental laws must be respected.

We sincerely apologize to the community for our conduct.

APPENDIX I

Abbreviations	
CCH	Contested-case Hearing
CP	Civil Penalty
DOR	Department of Revenue
EQC	Environmental Quality Commission
MAO	Mutual Agreement and Order
NON	Notice of Noncompliance
NPV	Notice of Permit Violation
O	Department or Commission Order
PDN	Penalty Demand Notice
PP	Payment Plan
SEP	Supplemental Environmental Project



The Oregon Administrative Rules contain OARs filed through December 14, 2001

DEPARTMENT OF ENVIRONMENTAL QUALITY

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; DEQ 21-1992, 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; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, 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; DEQ 21-1992, 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; 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

340-012-0041

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; 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

340-012-0042

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:

(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 466.992 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:

(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:

(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.

(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) 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:

(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.

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; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

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: $BP + [(1 \times BP) \times (P + H + O + R + C)] + EB$, 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 ORS 468.135(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 OAR 340-012-0045;

(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, ORS Chapters 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, ORS Chapters 465, 466, 467, 468, 468A, or 468B, 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.: DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 9-2000, f. & cert. ef. 7-21-00

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 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 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 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 division 218;
- (m) 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;

(v) Advertising to sell, offering to sell or selling a non-certified woodstove;

(w) Open burning of materials which are prohibited from being open burned anywhere in the State by OAR 340-264-0060(3);

(x) Failure to install vapor recovery piping in accordance with standards set forth in OAR chapter 340, division 150;

(y) Installing vapor recovery piping without first obtaining a service provider license in accordance with requirements set forth in OAR chapter 340, division 160;

(z) Submitting falsified actual or calculated emission fee data;

(aa) Failure to provide access to premises or records when required by law, rule, permit or order;

(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, 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 that do not result in emissions above the Oregon Title V Operating Permit permitting thresholds pursuant to OAR 340 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 340-264-0060(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 340-242-0620 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;
 - (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 340-242-0620 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) referenced in this rule is 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; DEQ 31-1990, 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; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

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 340-264-0060(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);

(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; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

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 permittee'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; DEQ 21-1992, 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 under-ground 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 under-ground 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) referenced in this rule is 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 466.992 & 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; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

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 466.992 & 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; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

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 466.992

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; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

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; DEQ 21-1992, 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 criterion; 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

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with the published version are satisfied in favor of the Administrative Order. The Oregon Administrative Rules and the Oregon Bulletin are copyrighted by the Oregon Secretary of State. Terms and Conditions of Use

Alphabetical Index by Agency Name

Numerical Index by OAR Chapter Number

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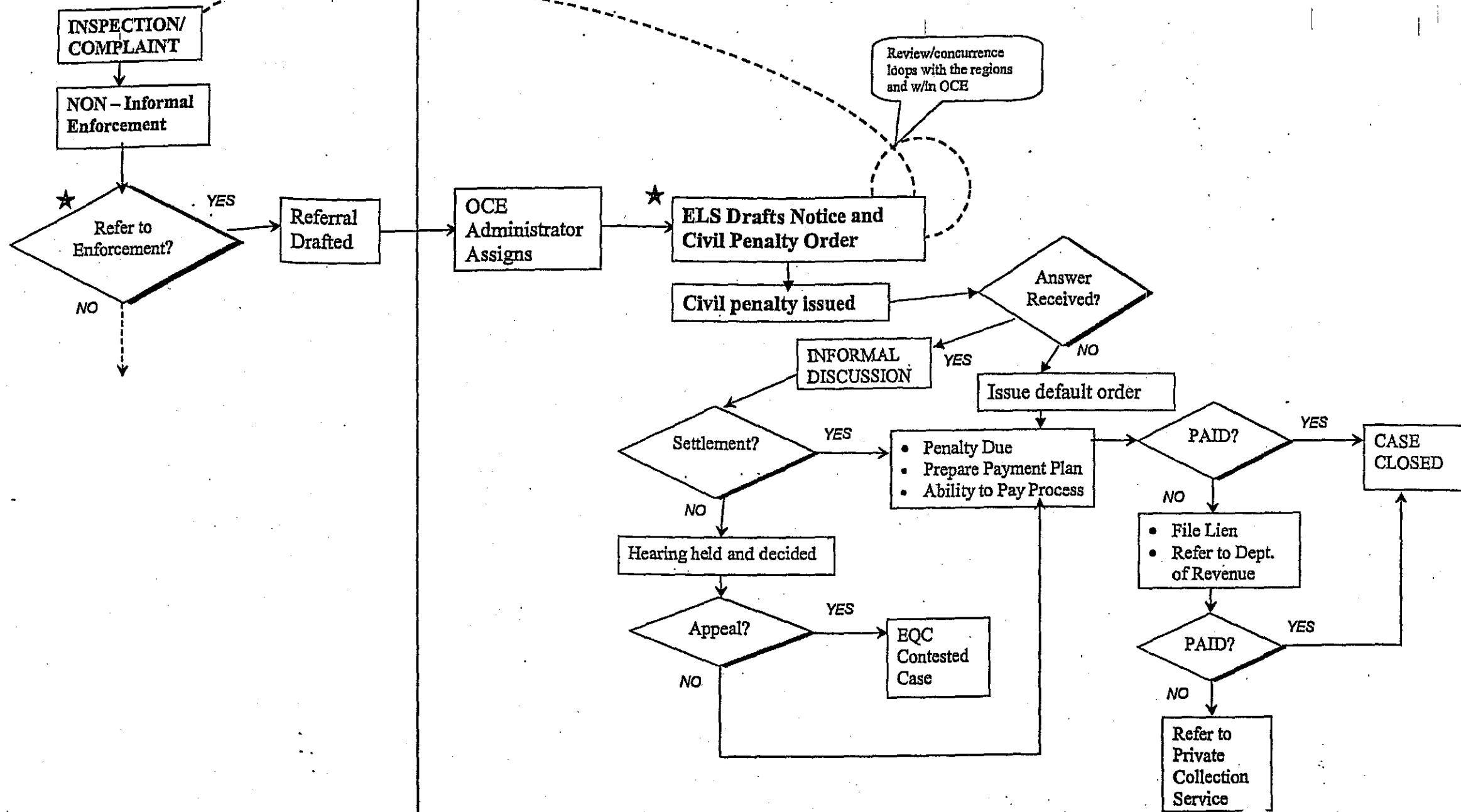
Questions about Administrative Rules?

Link to the Oregon Revised Statutes

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REGIONAL OFFICE

OFFICE OF COMPLIANCE AND ENFORCEMENT (OCE)



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		
	MAJOR	MODERATE	MINOR
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

+

$[(.1 \times BP) \times (P + H + O + R + C)]$

+

EB

= TOTAL PENALTY



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

To: Environmental Quality Commissioners
From: *Anne R. Price*, Administrator, Office of Compliance and Enforcement
Date: January 17, 2002
Re: Preparatory Materials for the Enforcement Discussion at January 24th EQC Meeting

I apologize for not getting these materials to you in your original meeting packet. However, these materials are being sent to you only if you want to take a look at them before the meeting! As many of the points will be covered in the meeting as time and interest allow.

DEQ is about to begin a review of the Division 12 – Enforcement Procedure and Civil Penalty regulations. (Copy enclosed.) In this review we hope to address a number of issues regarding either the outcome of enforcement actions or the enforcement process itself. A portion of the January 24th Informational Item on Enforcement Improvements will be a discussion of this Division 12 rulemaking effort. It will be extremely helpful to have the input of the EQC at the start of this effort.

Below is a list of issues or questions that have already been identified. To the extent you are able to review these and have gathered your own thoughts prior to the meeting, the discussion may be more focused on those areas you would most like to see evaluated during the rulemaking process. Any and all thoughts and comments are welcome. I very much look forward to having this discussion with you.

Please feel free to call me prior to the meeting if you have any questions. I can be reached at (503) 229-6585. Thank you!

Purpose of the Division 12 rulemaking:

- To address issues of equity and fairness raised during the 2001 Legislative Session and by the EQC.
- To address internal process and consistency issues DEQ has identified.
- To be able to answer key legislative and internal questions.

The rule review will look, at a minimum, at five main issue areas. It is likely that you will have the most thoughts on areas #4 and #5. Therefore, you might want to start with these areas in your review. I have cross-referenced the issue areas to the actual rules so you can find the relevant portions more easily. I've also highlighted possible questions for EQC input, but please do not be limited by those questions.

1. Are the current Division 12 violations, that are listed by program (see OAR Sections 340-012-0050 to 340-012-0073):
 - a. The priority violations for DEQ or the violations DEQ wants to be able to enforce;
 - b. Written clearly, such that they can be enforced;
 - c. Otherwise meeting the expectations of the programs?

Potential EQC Input:

- Any thoughts on current violations that you do not believe should be, or on violations that are not currently listed, but which should be?
 - Any perspectives on what characteristics should make a violation a priority?
 - Other thoughts?
2. Are the violation classifications (Class I, II or III) (see also OAR Sections 340-012-0050 to 340-012-0073):
 - a. Within each classification, consistent across programs for violations of a similar impact (e.g., potential or actual impact to human health and the environment);
 - b. Within each program, resulting in the desired distribution of violations across each classification?

Potential EQC Input:

- Are there violations within a Classification (e.g., Class I) that appear to be inconsistent across programs (e.g., a specific Class I Air Quality violation does not appear to be “as severe” as a specific Water Quality violation)?
 - Any thoughts on criteria you would recommend to split the violations into different classifications (i.e., what should make a violation a Class I vs. a Class II)?
 - Other thoughts?
3. Are the selected magnitudes (see OAR 340-012-0090):
 - a. Supportive of achieving a penalty consistent with the severity of the impact?

Potential EQC Input:

- Any thoughts as to how the magnitudes relate to the initial base penalty in each of the matrices?
 - Other thoughts?
4. Do the current penalty matrices (\$10,000; \$2,500; \$1,000; \$500 and \$100,000) support deterrence and/or align the severity of a violation with an adequate penalty (see OAR 340-012-0042 and 340-012-0049(7))? Specifically:
 - a. Are the current violations aligned within the appropriate matrix (e.g., Should all the current Class I asbestos violations be Class I? Should certain types of violators automatically trigger a shift into a smaller or larger penalty matrix?)

- b. Is there a need for a \$25,000 penalty matrix for violations with more significant volume or impact? Where would the line be drawn?

Potential EQC Input:

- Are there types of violators the EQC would like to see treated differently with respect to the penalty matrices? (e.g., Should individual violators end up in a lower penalty matrix than business violators? What about the issue of impact of the violation? That is, an individual can create just as great a degree of harm to human health and the environment as a business.)
 - Other thoughts?
5. Does the current penalty equation (see OAR 340-012-0045) emphasize the factors that are important for deterrence and is it appropriate to the severity of the violation? The current penalty matrix is made up of the following pieces:
- a. Base penalty (OAR 340-012-0042) – Comprised of type of violation, classification, and magnitude.
 - b. Aggravating factors –
 - i. P = prior significant actions (OAR 340-012-0045(1)(c)(A))
 - ii. H = history in correcting the prior significant actions under P (OAR 340-012-0045(1)(c)(B))
 - iii. O = repeated or continuous violation (OAR 340-012-0045(1)(c)(C))
 - iv. R = mental state (OAR 340-012-0045(1)(c)(D))
 - v. C = cooperativeness of the respondent (OAR 340-012-0045(1)(c)(E))
 - c. Economic benefit (OAR 340-012-0045(1)(F)) – The dollar amount of the economic benefit gained through non-compliance.

Potential EQC Input:

- Any other aggravating factors you would recommend evaluating?
- Any recommended modifications to the existing aggravating factors?
- DEQ's ability to assess economic benefit is often limited to the availability of economic information. Any thoughts on how much emphasis to place on economic benefit?
- Other thoughts?

Division 12 Rulemaking Schedule

January 2002	<ul style="list-style-type: none"> • Determine who is on the rulemaking team • Meet with the rulemaking team and clarify the internal process.
February	<ul style="list-style-type: none"> • Complete scoping of rulemaking to identify the complete list of rulemaking issues, identify all fairness and equity issues, and the criteria for evaluation. • Identify and contact Advisory Committee members.
March	<ul style="list-style-type: none"> • Initial Advisory Committee meeting
April – July	<ul style="list-style-type: none"> • Hold four Advisory Committee meetings – one/month • Develop rules using internal team
August	<ul style="list-style-type: none"> • Initial compiled rulemaking draft completed. • Conduct internal DEQ review
September	<ul style="list-style-type: none"> • Hold public meetings and hearing
October	<ul style="list-style-type: none"> • Respond to comments and rule redrafting
November-December	<ul style="list-style-type: none"> • Conduct any outreach or early education necessary
January 2003	<ul style="list-style-type: none"> • EQC consideration of rules
February 2003 and on	<ul style="list-style-type: none"> • Implementation of rules as adopted



Base Penalty +

Aggravating Factors +

Economic Benefit =

Total Penalty (may be multiplied
for multiple days)



OCE Resources

1 FTE – Senior Policy Advisor

1 FTE – Office Support

1 FTE – Case Tracking and Data Management – NEW!

8.75 FTE – Environmental Law Specialist

Resource shifts in year 2000:

.25 FTE permanent reduction in WQ On-Site program enforcement

1 FTE for 6 months donated to agency-wide rule coordination effort

What's the plan for this year?

January 2002

- Complete the draft enforcement guidance.
- Implement the Enforcement Deterrence Industry Survey.
- Identify immediate data needs and begin to implement those that can be done within OCE (e.g., tracking each violation).
- Complete and circulate agency-wide the proposed clarifications to the criminal case review process.
- Participate in the PPA process.
- Support development of any OCE-related legislative concepts.

Feb/ March 2002

- Complete revision of the multiday, multiple penalty policy
- Begin to address collections issues, including ability to pay process, and bankruptcy issues.
- Begin a review of enforcement templates and revise accordingly. (Revise again post-Division 12.)
- Identify Hearings Officer-related issues and begin discussions with the Hearings Panel

April/May 2002

- Begin to address the Regional MAO process. This will require program participation.
- Begin to look at ELS reclassification issues.

June/July 2002

- Conduct basic enforcement process training



Pieces -- Unfinished or in Progress:

- Template improvements
- Policies need updating – SEP, Multiday penalties, and others
- Basic enforcement training for DEQ staff
- Updating Enforcement Guidance
- Continued increasing awareness of OCE purpose and processes



Getting the word out – what is OCE?

Internal to DEQ:

- Increased involvement in rulemaking and policy development
- Increased awareness and integration of OCE issues
- PPA process involvement
- OECDD Compliance Assistance position

External to DEQ:

- Presentations to industry groups
- Self disclosure policy completed
- 2000 Enforcement Accomplishments Report

A vertical strip of film showing a series of black and white frames, likely a sequence of images from a film strip. The frames are arranged in a vertical column, with some frames showing a dark, textured background and others showing a lighter, more uniform background. The film strip has a grainy, high-contrast appearance, typical of older film photography.

- Year 2000 total penalties assessed = approx. \$1.38 mill. and
Year 2001 total penalties assessed = approx. \$2.23 mill.
- Number of actions: In 2000, assigned = 220; issued = 200
In 2001, assigned = 294; issued = 265
- Average penalty size: In 2000 = \$6,900; In 2001 = \$8,400
- Number of contested cases: In 2000 = 82; In 2001 = 106
- Number of cases settled: In 2000 = 63; In 2001 = 76
- Number of hearings: In 1999 = 8; In 2000 = 15; In 2001 = 21
- Number of cases liquidated: In 2000 = 28; In 2001 = 42
- Number of cases closed: In 1999 = 159;
In 2000 = 199;
In 2001 = 242



Pieces -- Unfinished or in Progress:

- Timeliness is improving anecdotally, but still need data to pinpoint areas for possible improvement
- Database improvements still needed for better case tracking
- Using Q-Time, but need data history to flag resource needs
- Other process improvements needed: defaults, bankruptcies, regional MAOs, many others!
- Compliance deterrence industry survey
- Criminal case primer and process flow



Case Development Process

Update:

- Backlog at referral assignment stage is gone
- Shifted to ELS workload management
- Shifted case load composition to newer cases
- Closed numerous old cases – final disposition on almost all 1999 and earlier cases
- Received case tracking position – interviewing

Frustrations:

- Much of the compliance process is not overseen by OCE
- Need to build ground level awareness first – OCE priorities are not necessarily program area priorities
- Data not easy to use and missing key information to be able to answer questions



Office of Compliance and Enforcement --

What are we covering today?

- First Year Update
 - Successes and Frustrations - in two main areas
 - Data Nuggets
 - Unfinished or In Progress Pieces
 - What's the plan for this year?
- Division 12 Rulemaking
 - Overview
 - Process Timeline
 - EQC Input and Discussion

Minutes are not final until approved by the Commission.

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

**December 6-7, 2001
Regular Meeting¹**

The following Environmental Quality Commission members were present for the regular meeting, held at the Department of Environmental Quality (DEQ), 811 S.W. Sixth Avenue, Portland, Oregon.

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

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

Thursday, December 6, 2001

Chair Eden called the meeting to order at approximately 1:00 p.m. Agenda items were taken in the following order.

A. Contested Case: Case No. WMC/HW-WR-99-086 regarding Dar Tammadon

Larry Knudsen, Assistant Attorney General, introduced the case and explained that Mr. Dar Tammadon had appealed a proposed order, dated January 10, 2001, that assessed Mr. Tammadon a \$7,200 civil penalty for illegally disposing of hazardous waste. Mr. Knudsen summarized the findings of fact made by the Hearing Officer and asked Commissioners to declare any ex parte contacts or conflicts of interest regarding this case. All Commissioners declared they had no ex parte contacts or conflicts of interest. Mr. A. B. Cummins summarized arguments on behalf of Mr. Tammadon. Anne Price, DEQ Administrator of the Office of Compliance and Enforcement, Jeff Bachman, Environmental Law Specialist, and Larry Edelman, Department of Justice, summarized arguments on behalf of the Department. The Commission discussed legal issues with representatives of both parties and considered alternatives for deciding the case.

During its deliberation, the Commission determined that it wanted the Hearing Officer to consider and address three legal and factual issues: (1) When a respondent's violation is based on imputed or vicarious liability, is the "R factor" under OAR 340-012-0045 (1)(c)(D) to be based upon the negligent, reckless or flagrant conduct of the respondent, the conduct of the respondent's agents, or the conduct of either?; (2) Based on the existing record, is the hearing officer able to make findings regarding whether Mr. Tamaddon is directly liable for the cited violation?; and (3) Based on the existing record, is the hearing officer able to make findings with respect to whether the conduct of Mr. Tamaddon's employees was negligent, intentional, or flagrant? Commissioner Reeve moved the Commission remand the case to the Hearing Officer for further consideration and preparation of an amended proposed order. Commissioner Van Vliet seconded the motion and it passed with five "yes" votes. The Commission asked Mr. Knudsen to prepare the order for the Director's signature on the Commission's behalf.

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.

B. Contested Case: Case No. WQ/I-NWR-00-125 regarding Reggie Huff

Mr. Knudsen summarized events leading up to this hearing on this case. On September 20, 2001, the Commission considered the Reggie Huff's appeal of a proposed order dated April 21, 2001, that found Mr. Huff liable for a \$1,200 civil penalty for placing waste where it was likely to escape or be carried into waters of the state. At the September hearing, the Commission determined that it wished to hear oral argument on the issue of how the phrase "likely to escape or be carried into waters of the state" in ORS 468B.025(1) should be interpreted and applied to the case. Accordingly, the Commission set the matter over to the December 6, 2001 meeting.

At this meeting, the Commission heard arguments from Mr. Huff and Susan Greco, Environmental Law Specialist representing the Department. Mr. Knudsen asked Commissioners to declare any ex parte contacts or conflicts of interest regarding this case, and Commissioners declared none. After considering the arguments presented by Mr. Huff and the Department, the Commission determined that the term "likely" as used in ORS 468B.025 should be given its ordinary and common meaning and applied on a case-by-case basis. The Commission concluded the Hearing Officer was correct in finding that waste was placed in a storm drain, which was designed to convey storm water into the surrounding ground and groundwater, and under these circumstances, the waste was in a location where it was likely to reach waters of the state. Commissioner Malarkey moved the Commission uphold the Hearing Officer's proposed order. Commissioner Reeve seconded the motion and it passed with five "yes" votes. The Commission asked Mr. Knudsen to prepare the order for the Director's signature on the Commission's behalf.

C. Information and Action Item: Report on Rulemaking for Methane Regulation

Director Hallock introduced this item to the Commission. In August 2001, a citizen association called CLEAN petitioned the Commission for temporary and permanent rulemaking to add methane, under certain conditions, to the list of hazardous substances subject to the state's environmental cleanup rules. At its September 21, 2001 meeting, the Commission denied the petition for temporary rulemaking and directed the Department to work with stakeholders on permanent rules to address methane issues associated with unpermitted landfills. In November 2001, CLEAN filed a second petition with the Commission again seeking the adoption of temporary rules relating to the regulation of methane.

At this meeting, Dave Rozell, Acting DEQ Administrator of the Land Quality Division, and Al Kiphut, Land Quality Manager, summarized the Department's work on this issue and discussed the next steps with the Commission. The Commission also heard arguments from representatives of CLEAN in support of their petition. After considering alternatives, the Commission concluded that adoption of a temporary rule is not appropriate at this time, but that the present inability of the Department to regulate methane gas at unpermitted landfills was a significant concern. In preparation for the January 24-25, 2002 Commission meeting, the Commission asked the Department to evaluate whether a temporary rule that effectively addressed methane issues would serve the public interest. Commissioner Malarkey moved the Commission deny the petition for temporary rulemaking and direct the Department to bring this matter back to the Commission for further consideration of a temporary rule at its January 2002 meeting. Commissioner Reeve seconded the motion and it passed with five "yes" votes. The Commission asked Mr. Knudsen to prepare an order denying the petition for the Director to sign on the behalf of the Commission.

E. Informational Item: City of Portland Combined Sewer Overflow Control Program Status Report

Richard Santner, DEQ Water Quality Manager in Northwest Region, introduced representatives of the City of Portland to give a status report on the Combined Sewer Overflow (CSO) Control Program. In 1991, the Commission and City entered a legal agreement that established the framework for a twenty-year CSO control program to reduce the frequency and volume of sewer overflow to the Willamette River. Now at the halfway point, the City has made significant progress in controlling CSOs. Dean Marriott, City of Portland Bureau of Environmental Services Director, Virgil Adderley, CSO Program Manager, and Paul Gribbon, CSO Design Manager, presented the status and accomplishments of the CSO program to the Commission. Commissioners discussed the progress of the project to date and commended the City on their work. The Commission accepted the City's program report and thanked Mr. Marriott, Mr. Adderley and Mr. Gribbon for their presentation.

Chair Eden adjourned the meeting for the day at approximately 6:45 p.m.

Friday, December 7, 2001

The Commission held an executive session at 8:00 a.m. on Friday, December 7, to consult with counsel concerning legal rights and duties with regard to current and potential litigation involving the Department. Executive session was held pursuant to ORS 192.660(1)(h).

At approximately 8:45 a.m., Chair Eden called the regular meeting to order and agenda items were taken in the following order.

F. Approval of Minutes

September 20-21, 2001 Minutes: Commissioner Reeve amended the draft minutes on page 2, by changing "Item C. Consideration of Tax Credit Requests" to "Item G. Consideration of Tax Credit Requests." Chair Eden amended the minutes on page 2, Item E, by changing "member" to "members" in the second sentence, and on page 3, Item H, by changing "4" to "four" and "made a motion" to "moved" in the second paragraph. Commissioner Van Vliet moved the Commission approve the minutes as amended. Commissioner Malarkey seconded the motion and it passed with five "yes" votes.

G. Consideration of Tax Credit Requests

Director Hallock introduced pollution control facility tax credit requests to the Commission, and asked Helen Lottridge, DEQ Management Services Division Administrator, Jim Roys, Management Services Division Manager, and Maggie Vandehey, Tax Credit Coordinator, to present tax credit requests. Commissioners discussed the applications with Mr. Roys and Ms. Vandehey.

The Commission considered and acted on the group of applications that the Department recommended for approval, as summarized below.

- **Pollution Control Facilities Tax Credits: Air Pollution Control Facilities**
Commissioner Van Vliet moved to approve these applications as recommended by the Department, but remove Application #5230 for Fujitsu Microelectronic, Inc., pending information on the closure of the plant. Commissioner Malarkey seconded the motion and it passed with five "yes" votes.
- **Pollution Control Facilities Tax Credits: Alternatives to Open Field Burning Facilities**
Commissioner Van Vliet moved to approve these applications as recommended by the Department. Commissioner Reeve seconded the motion and it passed with five "yes" votes.
- **Pollution Control Facilities Tax Credits: Material Recovery: SW Pollution Control Facilities**
Commissioner Van Vliet moved to approve these applications as recommended by the Department, but postpone action on Application #5621 for Container Recovery, Inc., pending advice from counsel on whether the filing date met the application deadline. Commissioner Malarkey seconded the motion and it passed with five "yes" votes.
- **Pollution Control Facilities Tax Credits: Water Pollution Control Facilities**
Commissioner Van Vliet moved to approve these applications as recommended by the Department, but postpone action on Application #5231 for Fujitsu Microelectronic, Inc., pending information on the closure of the plant. Commissioner Reeve seconded the motion and it passed with five "yes" votes.
- **Pollution Control Facilities Tax Credits: Nonpoint Source Pollution Control Facilities, Wood Chippers**
Commissioner Reeve moved to approve these applications as recommended by the Department. Commissioner Bennett seconded the motion and it passed with four "yes" votes. Commissioner Van Vliet abstained from this vote after stating a conflict of interest with these applications.
- **Reclaimed Plastics Tax Credits**
Commissioner Bennett moved to approve these applications as recommended by the Department. Commissioner Van Vliet seconded the motion and it passed with five "yes" votes.

The Commission discussed Application #5490 and #5494, which the Department recommended for denial. Commissioner Van Vliet moved to deny these applications, Commissioner Malarkey seconded the motion and it passed with five "yes" votes.

The Commission discussed Certificate #4530, which the Department recommended for transfer. Commissioner Bennett moved to transfer this certificate as recommended by the Department. Commissioner Van Vliet seconded the motion and it passed with five "yes" votes.

The Commission's actions on all tax credit requests are summarized in the attachment to these minutes.

I. Discussion and Public Comment on an Approval Process for Umatilla Chemical Agent Disposal Facility Operation

Wayne Thomas, DEQ Administrator of the Chemical Demilitarization Program, introduced a proposed modification to the Umatilla Chemical Agent Disposal Facility permit to require Department approval for the start of surrogate testing operations and Commission approval for the start of chemical agent operations. Mr. Thomas discussed the purpose of the modification and the process for public involvement with the Commission.

Chair Eden invited public testimony on the proposed modification and the following people provided comment to the Commission:

- Umatilla Chemical Agent Disposal Facility (UMCDF) Permittees: Colonel Fred Pellissier, Commander of the Umatilla Chemical Depot; Don Barclay, UMCDF Project Manager; Dave Nylander, Washington Demilitarization Company
- Dan Brosnan, Morrow County Commissioner and Tamra Mabbott, County Planning Director
- Armand Minthorn, member of the Confederated Tribes of the Umatilla Board of Trustees and Governing Body and Rod Skeen, Tribe staff
- Dr. Robert Palzer, Ashland resident
- Karyn Jones, Hermiston resident, representing GASP and the Oregon Wildlife Federation

Chair Eden thanked these people for their comments. Mr. Thomas asked presenters to provide any written comments to the Department by December 12, 2001. Commissioners, Mr. Thomas and Director Hallock discussed the testimony provided in the context of the Commission's upcoming action on the proposed permit modification. Chair Eden thanked Mr. Thomas for his coordination of this public process.

Public Forum

At approximately 11:30 a.m., Chair Eden asked whether anyone wished to provide public comment. No public comment was provided.

H. Director's Report

Director Hallock gave the Director's report to the Commission and discussed with Commissioners current issues and recent events involving the Department. The Director asked Mary Abrams, DEQ Laboratory Administrator, to explain the role of the lab in responding to emergency events and discuss the Department's efforts to find a new lab facility. Director Hallock introduced Chuck Donaldson, DEQ Spill Response Manager, who coordinated overall emergency response preparation at the agency. Director Hallock asked Helen Lottridge, DEQ Management Services Division Administrator, to discuss the Department's response to the Governor's request for agency budget reductions.

D. Discussion Item: Strategic Planning and Performance Measures

As part of the Director's Report, Director Hallock presented the final draft of the agency's strategic plan for 2001 through 2005, called "Strategic Directions." The Commission discussed DEQ's development of strategic priorities and executive performance measures, and the Department's process for getting input from key stakeholders. Director Hallock asked the Commission to provide any comments to the Department for incorporation into the final document, which was scheduled to be printed in late January 2002.

At this point in the meeting, Director Hallock left the meeting and asked Helen Lottridge, DEQ Management Services Division Administrator, to continue on her behalf.

J. Rule Adoption: On-Site Fee Reduction

Mike Llewelyn, DEQ Water Quality Administrator, and Ed Woods, Water Quality Manager, presented proposed rules to permanently reduce on-site sewage disposal fees. The Commission adopted a temporary rule to reduce these fees on June 22, 2001. The Commission discussed the fee reduction with Mr. Llewelyn and Mr. Woods. Commissioner Reeve moved the Commission adopt proposed permanent rules. Commissioner Malarkey seconded the motion and it passed with five "yes" votes.

M. Rule Adoption: Incorporation of National Emission Standards for Hazardous Air Pollutants

Andy Ginsburg, DEQ Air Quality Administrator, and Jerry Ebersole, Air Quality staff, presented proposed rules to incorporate new National Emission Standards for Hazardous Air Pollutants (NESHAPs) to assure continued delegation of authority from EPA for the Department to implement NESHAPs in the state. Commissioners discussed the proposed rules with Mr. Ginsburg and Mr. Ebersole. Commissioner Van Vliet moved the Commission adopt the proposed rule as presented in the staff report. Commissioner Reeve seconded the motion and it passed with five "yes" votes.

N. Rule Adoption: SIP Amendments: LRAPA Title 36 Excess Emissions Rules and VIP On-Site Testing Program

Andy Ginsburg, DEQ Air Quality Administrator, and Loretta Pickerell, Air Quality Rules Coordinator, presented proposed rules to (1) approve Lane County Regional Air Pollution Authority's (LRAPA) Title 36 Excess Emission Rules, and (2) adopt both LRAPA's Title 36 rules and DEQ's Vehicle Inspection Program On-site Testing rules and related procedures as amendments to Oregon's State Implementation Plan (SIP). Ms. Pickerell explained that these actions were primarily procedural to satisfy requirements for Commission oversight of LRAPA's air quality standards and for Commission adoption of SIP amendments. Commissioners discussed the rules with Mr. Ginsburg and Ms. Pickerell. Commissioner Van Vliet moved the Commission approve LRAPA's Title 36 Excess Emission Rules and adopt these rules as amendments to the SIP. Commissioner Reeve seconded the motion and it passed with five "yes" votes. Commissioner Van Vliet moved the Commission adopt DEQ's Vehicle Inspection Program On-site Testing rules and procedures as amendments to the SIP. Commissioner Bennett seconded the motion and it passed with five "yes" votes.

K. Discussion Item: Development of Performance Appraisal Process for Director

Commissioner Bennett and Commissioner Van Vliet presented a proposed process and evaluation criteria for assessing the Director's performance. The Commission discussed the proposed process, frequency of evaluation, and methods for soliciting external input on the Director's performance. Commissioners asked Mikell O'Mealy, Assistant to the Commission, to compile Commissioner comments and prepare a final proposal for Commission consideration at the January 24-25, 2002 meeting.

Helen Lottridge, DEQ Management Services Division Administrator, presented a summary of the Director's financial transactions for the Commission to review, consistent with a Department of Administrative Services (DAS) requirement that took effect on July 16, 2001. Ms. Lottridge explained that the Commission was required to take action on this report by July 16, 2002. Commissioners discussed the summary and review requirement. Commissioner Van Vliet moved the Commission approve the financial transaction of the Director as set forth in DAS policy for the period of July 1, 2001 through November 30, 2001. Commissioner Malarkey seconded the motion and it passed with five "yes" votes.

O. Commissioners' Reports

Commissioners gave no reports.

~~L. Rule Adoption: Amendment and Clarification of Asbestos Rules~~

This item was removed from the Commission agenda.

Chair Eden adjourned the meeting at approximately 2:30 p.m. on December 7, 2001.

Tax Credit Applications

EQC Action

App #	Applicant	Type	Cost	Percent Allocable	Action
5140	Wacker Siltronic Corp.	Water	\$ 15,359,622	100%	Approved
5141	Wacker Siltronic Corp.	Air	\$ 456,384	100%	Approved
5206	NPI Inc.	Reclaimed Plastics	\$ 3,604	100%	Approved
5208	NPI Inc.	Reclaimed Plastics	\$ 2,495	100%	Approved
5230	Fujitsu Microelectronics Inc.	Air	\$ 2,896,905	100%	Postponed
5231	Fujitsu Microelectronics Inc.	Water	\$ 3,801,560	100%	Postponed
5373	Sanders Forest Products, Inc.	Water	\$ 814,084	100%	Approved
5448	H.J. Heinz Company	Air	\$ 619,917	100%	Approved
5502	Willamette Industries, Inc.	Water	\$ 165,643	100%	Approved
5538	McCall Oil and Chemical Corp.	Water	\$ 133,300	100%	Approved
5567	Halsey CIO2 Limited Partnership	Water	\$ 33,790,250	100%	Approved
5593	John Pohlschneider	Air:Field Burning	\$ 53,000	100%	Approved
5603	William C. Smith Farms, Inc.	Air:Field Burning	\$ 8,423	100%	Approved
5604	Mark McKay Farms, Inc.	Air:Field Burning	\$ 44,953	96%	Approved
5606	Gary Troost	Water	\$ 83,896	100%	Approved
5608	Cascade Steel Rolling Mills, Inc.	Water:Oil/Water	\$ 26,048	100%	Approved
5610	Bowco Industries, Inc.	Reclaimed Plastics	\$ 15,600	100%	Approved
5611	Cascade Steel Rolling Mills, Inc.	Air	\$ 134,910	100%	Approved
5612	Bowco Industries, Inc.	Reclaimed Plastics	\$ 33,000	100%	Approved
5613	Bowco Industries, Inc.	Reclaimed Plastics	\$ 12,435	100%	Approved
5614	J-CAD Equipment, LLC	Material Recovery:SW	\$ 392,040	100%	Approved
5616	LGOC, Inc.	Air:CFC	\$ 2,024	100%	Approved
5617	LGOC, Inc.	Air:CFC	\$ 2,024	100%	Approved
5618	LGOC, Inc.	Air:CFC	\$ 2,024	100%	Approved
5619	Nixon Farms, Inc.	Air:Field Burning	\$ 98,640	100%	Approved
5620	Container Recovery, Inc.	Material Recovery:SW	\$ 19,572	100%	Approved
5621	Container Recovery, Inc.	Material Recovery:SW	\$ 49,560	100%	Postponed
5622	Container Recovery, Inc.	Material Recovery:SW	\$ 49,350	100%	Approved
5623	Container Recovery, Inc.	Material Recovery:SW	\$ 19,992	100%	Approved
5624	Portland Disposal & Recycling	Water:Oil/Water	\$ 7,800	100%	Approved
5625	Stephan T. May	Air:NPS	\$ 1,895	100%	Approved
5627	Pendleton Sanitary Service, Inc.	Material Recovery:SW	\$ 48,825	100%	Approved
5628	Pendleton Sanitary Service, Inc.	Material Recovery:SW	\$ 12,845	100%	Approved
5629	Pendleton Sanitary Service, Inc.	Material Recovery:SW	\$ 10,912	100%	Approved
5630	Bowco Industries, Inc.	Reclaimed Plastics	\$ 36,147	100%	Approved

Tax Credit Applications

App #	Applicant	Type	EQC Action		
			Cost	Percent Allocable	Action
5631	Newberg Garbage Service, Inc.	Material Recovery:SW	\$ 3,772	100%	Approved
5632	Newberg Garbage Service, Inc.	Material Recovery:SW	\$ 3,300	100%	Approved
5633	Insurance Auto Auctions, Inc.	Water:Oil/Water	\$ 10,737	100%	Approved
5634	Ace H. Todd	Air:NPS	\$ 1,250	100%	Approved
5635	Mark Hallert	Air:NPS	\$ 596	100%	Approved
5636	Ronald L. Prchal	Air:NPS	\$ 1,200	100%	Approved
5637	Donald L. Brown	Air:NPS	\$ 596	100%	Approved
5638	Geraldine Griffin	Air:NPS	\$ 599	100%	Approved
5639	John E. Owen	Air:NPS	\$ 1,150	100%	Approved
5640	Rawland Kelley	Air:NPS	\$ 2,500	100%	Approved
5641	Ronald D. Louie	Air:NPS	\$ 2,108	100%	Approved
5642	Western Bank	Material Recovery:SW	\$ 156,829	100%	Approved
5643	Western Bank	Material Recovery:SW	\$ 397,685	100%	Approved
5644	Western Bank	Material Recovery:SW	\$ 161,433	100%	Approved
5646	J.R. and Virginia Downing	Air:NPS	\$ 980	100%	Approved
5647	Clarence Clever	Air:NPS	\$ 4,690	100%	Approved
5648	Arden, Inc.	Material Recovery:SW	\$ 465,476	100%	Approved
5649	Harmon & Son Dairy, LLC	Water	\$ 25,260	100%	Approved
5650	Mr. & Mrs. James J. Lawton	Air:NPS	\$ 405	100%	Approved
5651	Robert L. Broussard	Air:NPS	\$ 1,163	100%	Approved
5652	Ronald K. Gimba	Air:NPS	\$ 1,736	100%	Approved
5653	Walter D. Neaderhiser	Air:NPS	\$ 1,499	100%	Approved
5654	Robert E. Woodson	Air:NPS	\$ 596	100%	Approved
5655	Herald G. & Grace R. Callison	Air:NPS	\$ 1,345	100%	Approved
5656	Melvin D. Evers	Air:NPS	\$ 1,739	100%	Approved
5657	Traughber Oil Co.	UST/AST	\$ 112,069	100%	Approved
5658	Sabroso Company	Water	\$ 1,012,395	100%	Approved
5659	Bruce D. Barney	Air:NPS	\$ 2,395	100%	Approved
5661	Portland General Electric Co.	Water:Secondary Cont.	\$ 67,773	100%	Approved
5662	Portland General Electric Co.	Water:Secondary Cont.	\$ 59,862	100%	Approved
5663	Portland General Electric Co.	Water:Secondary Cont.	\$ 84,078	100%	Approved
5664	Portland General Electric Co.	Water:Secondary Cont.	\$ 40,650	100%	Approved
5665	Leigh Blew	Air:NPS	\$ 800	100%	Approved
5666	Ann Cammarano Daubenspeck	Air:NPS	\$ 700	100%	Approved
5667	Kenneth Aaron Brown	Air:NPS	\$ 630	100%	Approved

Tax Credit Applications

App #	Applicant	Type	EQC Action		
			Cost	Percent Allocable	Action
5669	Pacific Sanitation Inc.	Material Recovery:SW	\$ 29,130	100%	Approved
5671	Alan D. Christie	Air:NPS	\$ 900	100%	Approved
5672	Bunker LLC	Air:NPS	\$ 14,992	100%	Approved
5674	Donald P. Haber	Air:NPS	\$ 700	100%	Approved
5675	Oscar Gutbrod	Air:NPS	\$ 2,399	100%	Approved
5676	Denton Plastics, Inc.	Reclaimed Plastics	\$ 7,363	100%	Approved
5677	NPI Inc.	Reclaimed Plastics	\$ 12,500	100%	Approved
5678	NPI Inc.	Reclaimed Plastics	\$ 2,085	100%	Approved
5679	NPI Inc.	Reclaimed Plastics	\$ 5,858	100%	Approved
5680	NPI Inc.	Reclaimed Plastics	\$ 16,429	100%	Approved
5681	NPI Inc.	Reclaimed Plastics	\$ 16,428	100%	Approved
5682	Corvallis Recycling and Disposal	Material Recovery:SW	\$ 112,493	100%	Approved
5683	Western Bank	Material Recovery:SW	\$ 305,820	100%	Approved
5684	Western Bank	Material Recovery:SW	\$ 349,417	100%	Approved
5685	Western Bank	Material Recovery:SW	\$ 158,460	100%	Approved
5686	Myron B. Cooley	Air:NPS	\$ 2,180	100%	Approved
5687	Armando J. Alvarez	Air:NPS	\$ 2,007	100%	Approved
5688	Douglas A. Romer	Air:NPS	\$ 999	100%	Approved
5689	Celeste R. Baumann	Air:NPS	\$ 620	100%	Approved
5690	David D. Rankin	Air:NPS	\$ 5,505	100%	Approved
5691	Arolf Salo	Air:NPS	\$ 800	100%	Approved
5692	Fujimi America Inc.	Water	\$ 124,952	100%	Approved
5693	Dancing Oaks Nursery, Inc.	Air:NPS	\$ 2,295	100%	Approved
5694	Douglas A. Sanford	Air:NPS	\$ 599	100%	Approved
5695	Gary B. Weis	Air:NPS	\$ 2,450	100%	Approved
5696	James B Goes	Air:NPS	\$ 596	100%	Approved
5697	Nancy C Doornink	Air:NPS	\$ 799	100%	Approved
5698	Tigard Rental Properties	Air:NPS	\$ 1,550	100%	Approved
5699	William K. Lofton	Air:NPS	\$ 596	100%	Approved
5700	Deines Service Co. Inc.	Material Recovery:SW	\$ 48,710	100%	Approved
5701	Pacific Pure-Aid Company	Water	\$ 4,354	100%	Approved
5703	Douglas R.Griesel	Air:NPS	\$ 1,499	100%	Approved
5704	Jon K. Jensen	Air:NPS	\$ 598	100%	Approved
5705	Robert G. Cate Farms, LLC	Air:Field Burning	\$ 32,370	100%	Approved
5706	Allen E. Feringa	Air:NPS	\$ 800	100%	Approved

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bold denotes a change from claimed cost or percentage

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Tax Credit Applications

App #	Applicant	Type	EQC Action		
			Cost	Percent Allocable	Action
5707	Reginald Tonry	Air:NPS	\$ 500	100%	Approved
5708	Anna Jenny Ensinger	Air:NPS	\$ 795	100%	Approved
5709	Wichita Sanitary Service	Material Recovery:SW	\$ 15,881	100%	Approved
5710	Gordon Elwood	Air:NPS	\$ 498	100%	Approved
5711	Wichita Sanitary Service	Material Recovery:SW	\$ 11,426	100%	Approved
5712	Bonnie Denise Ullmann	Air:NPS	\$ 400	100%	Approved
5713	Danny R Thompson	Air:NPS	\$ 1,499	100%	Approved
5714	Erik W Johnson	Air:NPS	\$ 1,600	100%	Approved
5715	Mark Slick	Air:NPS	\$ 1,000	100%	Approved
5716	Morgan Reiter	Air:NPS	\$ 1,251	100%	Approved
5717	Stanley O. McClanahan	Air:NPS	\$ 630	100%	Approved
5718	William A. Schoonhoven	Air:NPS	\$ 1,499	100%	Approved
5721	John P. Lehl Company	Material Recovery:SW	\$ 177,785	100%	Approved
5722	John P. Lehl Company	Material Recovery:SW	\$ 20,443	100%	Approved
5723	John P. Lehl Company	Material Recovery:SW	\$ 40,886	100%	Approved
5724	John P. Lehl Company	Material Recovery:SW	\$ 45,039	100%	Approved
5725	Wichita Sanitary Services	Material Recovery:SW	\$ 10,360	100%	Approved
5728	Wichita Sanitary Service	Material Recovery:SW	\$ 40,886	100%	Approved
5729	Bender's Noble Tree Farm	Air:NPS	\$ 10,000	100%	Approved
5730	Cain Petroleum Inc.	UST/AST	\$ 71,804	78%	Approved
5731	Western Bank	Material Recovery:SW	\$ 480,340	100%	Approved
5732	Western Bank	Material Recovery:SW	\$ 981,256	100%	Approved
5733	DeVern Pinnock	Air:NPS	\$ 900	100%	Approved
5735	Tricia Nickelson	Air:NPS	\$ 1,550	100%	Approved
5739	Mel Deines Sanitary Service, Inc	Material Recovery:SW	\$ 37,635	100%	Approved
5740	Charles M. Cornett	Air:NPS	\$ 630	100%	Approved
5741	Albert Vaughn	Air:NPS	\$ 629	100%	Approved
5742	Aubrey G. Spears	Air:NPS	\$ 630	100%	Approved
5743	Frank A Lane	Air:NPS	\$ 580	100%	Approved
5744	Dale K. Johnson	Air:NPS	\$ 800	100%	Approved
5745	Gary L. Billick	Air:NPS	\$ 2,450	100%	Approved
5746	Gerald W. Zimmer	Air:NPS	\$ 700	100%	Approved
5747	S & C Properties	Material Recovery:SW	\$ 345,322	100%	Approved
5748	Tracy Phelan	Air:NPS	\$ 498	100%	Approved
5749	Webb E. Norton	Air:NPS	\$ 596	100%	Approved

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bold denotes a change from claimed cost or percentage

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Tax Credit Applications

App #	Applicant	Type	EQC Action		
			Cost	Percent Allocable	Action
5750	John P. Lehl Company, Inc.	Material Recovery:SW	\$ 19,415	100%	Approved
5751	R.A. Brownrigg Inv. Inc.	Material Recovery:SW	\$ 6,275	100%	Approved
5752	R.A. Brownrigg Inv. Inc	Material Recovery:SW	\$ 163,755	100%	Approved
5753	Curtis R. Pellham	Air:NPS	\$ 1,450	100%	Approved
5754	Robert R. McCone	Air:NPS	\$ 5,115	100%	Approved
5756	Ronald S. Bergeson	Air:NPS	\$ 2,279	100%	Approved
5757	Carolyn Tweedy	Air:NPS	\$ 464	100%	Approved
5758	Grechen L. Schott	Air:NPS	\$ 3,150	100%	Approved
5759	Kristen T. O'Sullivan	Air:NPS	\$ 850	100%	Approved
5760	Norm D. Cholewwski	Air:NPS	\$ 1,739	100%	Approved
5761	Robert L. Olson	Air:NPS	\$ 800	100%	Approved
5763	Denton Plastics, Inc.	Reclaimed Plastics	\$ 10,479	100%	Approved
5764	Denton Plastics, Inc.	Reclaimed Plastics	\$ 12,375	100%	Approved
5765	American West Leasing, Inc.	Material Recovery:SW	\$ 39,465	100%	Approved
5766	Jay M. Goodman	Air:NPS	\$ 1,712	100%	Approved
5768	John F. Phillips	Air:NPS	\$ 1,499	100%	Approved
5769	Mark E. Ritchie	Air:NPS	\$ 899	100%	Approved
5770	Juszcak W. Karol	Air:NPS	\$ 1,445	100%	Approved
5771	Francis P. Massey	Air:NPS	\$ 2,639	100%	Approved
5772	Irma E. Mack	Air:NPS	\$ 2,099	100%	Approved
5773	Maria A. Balint	Air:NPS	\$ 2,450	100%	Approved
5774	Jensen Brother Investments, LLC	UST/AST	\$ 161,094	92%	Approved
5775	Hugh B. Johnston	Air:NPS	\$ 1,034	100%	Approved
5776	J. Robert Swanson	Air:NPS	\$ 600	100%	Approved
5777	Selwyn O. Graves	Air:NPS	\$ 596	100%	Approved
5778	Sheldon Hatheway	Air:NPS	\$ 900	100%	Approved
5784	John W. M'Gonigle	Air:NPS	\$ 590	100%	Approved
5785	Eric J. Resener	Air:NPS	\$ 596	100%	Approved
5786	Daniel L. Willcox	Air:NPS	\$ 1,599	100%	Approved
5787	Paul J. LaFreniere	Air:NPS	\$ 1,499	100%	Approved
5788	Charles Belusko	Air:NPS	\$ 899	100%	Approved
5789	Dean H. Miller	Air:NPS	\$ 390	100%	Approved
5790	Sam W. Demanett	Air:NPS	\$ 2,150	100%	Approved
5791	Laurence Senn	Air:NPS	\$ 1,395	100%	Approved
5792	Marcia A. Wood	Air:NPS	\$ 1,000	100%	Approved

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bold denotes a change from claimed cost or percentage

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Tax Credit Applications

App #	Applicant	Type	EQC Action		
			Cost	Percent Allocable	Action
5793	Alan J. Ralston	Air:NPS	\$ 2,136	100%	Approved
5794	Earl S. Petty	Air:NPS	\$ 5,600	100%	Approved
5795	Thom Trusewicz	Air:NPS	\$ 899	100%	Approved
5799	George S. Bailey	Air:NPS	\$ 7,645	100%	Approved
5803	Willamette Farms of Oregon	Air:NPS	\$ 4,435	100%	Approved
5805	Randell Stenquist	Air:NPS	\$ 477	100%	Approved
5806	Sheri M. Girdner	Air:NPS	\$ 800	100%	Approved
5808	Limbwalker Tree Care Company	Air:NPS	\$ 19,600	100%	Approved
5813	Clyde Hartly	Air:NPS	\$ 1,500	100%	Approved
5814	Janice Haskett	Air:NPS	\$ 596	100%	Approved
5815	John Wilda	Air:NPS	\$ 1,449	100%	Approved
5825	Gary Thomas	Air:NPS	\$ 596	100%	Approved
5826	Geoffrey C. Nankervis	Air:NPS	\$ 2,193	100%	Approved
5827	Mark Rohrbacher	Air:NPS	\$ 5,250	100%	Approved
5828	Ronald E. Alexander	Air:NPS	\$ 580	100%	Approved
5829	Peter R. Torres	Air:NPS	\$ 18,506	100%	Approved
5832	Christian V. Horlyk	Air:NPS	\$ 2,450	100%	Approved
5833	D & D Tree Farms	Air:NPS	\$ 5,450	100%	Approved
5834	Linda Lee Race	Air:NPS	\$ 650	100%	Approved
5836	John C. Slagle	Air:NPS	\$ 1,576	100%	Approved
5837	Marvin Astleford	Air:NPS	\$ 1,125	100%	Approved
5839	Donald Tillman	Air:NPS	\$ 2,000	100%	Approved
5840	Mark Curtis	Air:NPS	\$ 600	100%	Approved
5841	Leeroy J. Stevenson	Air:NPS	\$ 750	100%	Approved
5844	Jerry Woods	Air:NPS	\$ 1,071	100%	Approved
5846	Daniel C. Fischer	Air:NPS	\$ 1,099	100%	Approved
5847	James Rindahl	Air:NPS	\$ 1,599	100%	Approved
5848	Jeffery Bert	Air:NPS	\$ 2,244	100%	Approved
5849	Leo Delarm	Air:NPS	\$ 2,167	100%	Approved
5852	Karl Konecny	Air:NPS	\$ 2,795	100%	Approved
5857	Daryl C. Knowles	Air:NPS	\$ 790	100%	Approved
5858	John F. Wengert	Air:NPS	\$ 2,900	100%	Approved
5859	John Trum	Air:NPS	\$ 5,891	100%	Approved
5860	Joseph Berto	Air:NPS	\$ 4,250	100%	Approved
5861	Joy Lenora Costello	Air:NPS	\$ 2,450	100%	Approved

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bold denotes a change from claimed cost or percentage

1/23/2002 1:10 PM

Tax Credit Applications

App #	Applicant	Type	EQC Action		
			Cost	Percent Allocable	Action
5862	Larry DeYoung	Air:NPS	\$ 378	100%	Approved
5863	Max M Hoffman	Air:NPS	\$ 6,533	100%	Approved
5864	Ronald S. Sinclair	Air:NPS	\$ 419	100%	Approved
5865	Thomas M. Meyers	Air:NPS	\$ 22,465	100%	Approved
5866	Carolyn Bella	Air:NPS	\$ 1,295	100%	Approved
5867	Stanford Dew	Air:NPS	\$ 1,599	100%	Approved
5868	William R. Slavin	Air:NPS	\$ 882	100%	Approved
5870	Roger W. Beed	Air:NPS	\$ 899	100%	Approved

218 Total Approvals \$ 66,020,911

5490	McLagan Farms, Inc.	Air:Field Burning			Denied
5494	Joel N. Rohde	Air:Field Burning			Denied

	Certificate Number 4530				Transferred
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Date: January 4, 2002

To: Environmental Quality Commission

From: Stephanie Hallock, Director

S. Hallock

Subject: Agenda Item D, Action Item: General Clarification and Enhancement of Asbestos Rules, January 25, 2002, EQC Meeting

Department Recommendation The Department recommends the Commission amend OAR 340 Division 248 as presented in Attachment A to adopt changes in asbestos rules.

Need for Rulemaking The proposed amendments make the asbestos rules easier to understand and enhance DEQ's ability to enforce the rules. The amendments include a survey requirement for building owners that will ensure that DEQ's rules can be used to implement the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos, after obtaining delegation from EPA.

Effect of Rule In this proposal:

- DEQ added definitions such as *accredited inspector*, *negative pressure enclosure*, *owner or operator*, *shattered*, and *survey* to make it easier for people to understand what they have to do to comply with asbestos rules. (see attachment A pages 1-4)
- DEQ expanded other definitions such as *asbestos abatement project*, *asbestos-containing material*, *friable asbestos-containing material* and *nonfriable asbestos-containing material* to make these definitions consistent and clearer. (see attachment A pages 1-4)
- DEQ separated the requirements for nonfriable and friable asbestos waste disposal. The disposal rule was originally written to handle friable asbestos waste and only provided exceptions for nonfriable material, causing confusion about how to handle the two types of asbestos waste disposal. (see attachment A page 29-34 for the friable disposal rule and page 34-35 for the nonfriable disposal rules)
- DEQ added a requirement for building owners to survey for asbestos materials before work begins on any demolition or renovation project. In past enforcement cases, DEQ determined that the public was exposed to asbestos because building owners did not identify and properly remove asbestos containing materials before completing demolition or renovation work. This requirement will ensure that owners identify the presence of asbestos materials and properly remove them before completing renovation work. The survey requirement will prevent public exposure to asbestos during renovation and demolition work. The addition of this rule will also allow DEQ to obtain delegation of the federal NESHAP. (see attachment A page 24, rule -0270(1))

All of the proposed changes make the asbestos rules easier to understand, and thus help compliance with and enforcement of the rules.

**Commission
Authority**

The Commission has authority to take this action under ORS468A.700 to ORS468A.760.

**Stakeholder
Involvement**

In lieu of an advisory committee, DEQ conducted workshops to discuss the proposed rules in Medford, Bend, Salem and Portland in August of 2001. Notice of the workshops was provided to the asbestos industry, building management firms, and landfill operators in addition to the general public. Approximately 50 people participated in these workshops.

Public Comment

A public comment period extended from August 15, 2001 to September 25, 2001 and included a public hearing in Portland on September 18, 2001. Twenty comments were received. The comments and DEQ's response are provided in Attachment B.

Key Issues

Three commenters expressed concern that the rules will require building owners to survey any building area where demolition or renovation will occur to determine the presence of asbestos-containing materials, and that the rules require the surveyor to be accredited. DEQ has proposed adoption of the survey provision because this is necessary to obtain delegation from EPA to implement the asbestos NESHAP. DEQ believes that the survey provision should not be burdensome because most building owners affected by the proposed rule are already required to survey by either EPA or OSHA rules. DEQ believes that the surveys must be conducted by surveyors who have completed EPA's training to ensure that asbestos-containing material is properly identified.

While DEQ believes that the proposed amendments are not burdensome overall, DEQ is recommending several exemptions for residential buildings to reduce the potential cost to homeowners.

- First, DEQ recommends exempting private residences from the *survey requirement* if the residences are not used as rental properties or commercial businesses and the *owner* performs the asbestos abatement. In this case, there is low risk of exposure to the public from the asbestos abatement.
- Second, DEQ recommends exempting residential buildings built after 1987 with four or fewer dwelling units from the *survey requirement*. In this case, there is low risk that asbestos-containing materials were used in construction and the exemption is not expected to affect delegation of the NESHAP (exemption of larger buildings would prevent delegation and continue dual implementation of the program by both DEQ and EPA).
- Third, DEQ recommends exempting residential owner-occupants from a requirement to *provide notification* for asbestos removal done on the

outside of their homes. In this case, DEQ intends to use outreach and education to ensure that homeowners are aware of proper asbestos abatement methods.

These three changes are included in Attachment A page 19, OAR 340-248-0250(2)(a) to (c).

Next Steps

The proposed effective date of these amendments is February 01, 2002. The DEQ will wait until after September 1, 2002 to begin formal enforcement of the requirement to perform surveys for asbestos before beginning demolition or renovation projects (see attachment A page 24, rule -0270(1)). From February through August, 2002, DEQ will reach out to the general public, building owners, and industry representatives by holding workshops and public meetings, sending brochures, and providing information on DEQ's website to explain and help assure that people and contractors know how to comply with the new requirements. Existing asbestos staff in Medford, Coos Bay, Salem, Bend, Pendleton and Portland will implement these rule revisions and work with those affected.

A workgroup composed of representatives from all DEQ regions, the Office of Compliance and Enforcement and LRAPA developed the proposed rule amendments. This workgroup will develop all of the implementation and outreach procedures.

Attachments

- A. Proposed Rule Revisions (redlined version)
- B. Public Input and Department's Response
- C. Presiding Officer's Report on Public Hearings
- D. Relationship to Federal Requirements
- E. Fiscal and Economic Impact Statement
- F. Land Use Evaluation Statement
- G. Rule Implementation Plan

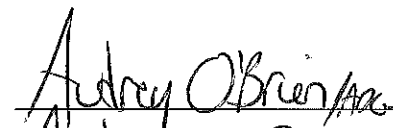
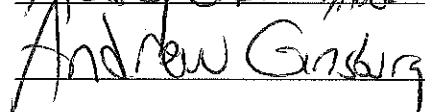
Available Upon Request

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Written Comment Received

Approved:

Section:

Division:

Report Prepared by: David Wall

Phone: (503) 229-5364

DRAFT**DIVISION 248****ASBESTOS REQUIREMENTS****340-248-0005****Applicability**

OAR 340-248-0010 through 340-248-0290 applies to asbestos milling, manufacturing, fabricating, abatement, disposal, or any situation where a potential for exposure to asbestos fibers exists.

340-248-0010**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) "Accredited inspector" means a person that has completed training and received accreditation under 40 CFR Part 763 Subpart E, Appendix C (Model Accreditation Plan), Section B (Initial Training), Subsection 3 (Inspector), (1994).
- (21) "Accredited trainer" means a provider of asbestos abatement training courses authorized by the Department to offer training courses that satisfy requirements for worker training.
- (32) "Adequately wet" means to sufficiently mix or penetrate asbestos-containing material with liquid to prevent the release of particulate asbestos materials. An asbestos-containing material is not adequately wetted if visible emissions originate from that material. PrecipitationThe absence of visible emissions is not an appropriate method for sufficient evidence of being adequately wetting asbestos-containing material.
- (43) "Agent" means an individual who works on an asbestos abatement project for a contractor but is not an employee of the contractor.
- (54) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.
- (65) "Asbestos aAbatement pProject" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling, disturbance, or disposal of any asbestos-containing material with the potential of releasing asbestos fibers from asbestos containing material into the air. Emergency fire fighting is not an asbestos abatement project.
- (76) "Asbestos manufacturing operation" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos with any other material(s) including commercial asbestos, and the processing of this combination into a product as specified in OAR 340-248-0210(3).
- (87) "Asbestos-cContaining mMaterial" means any material, including particulate material, that contains more than one-percent asbestos as determined using the method specified in 40 CFR Part 763 Appendix E, Subpart E, Section 1, Polarized Light Microscopyby weight, including particulate asbestos material.
- (98) "Asbestos mill" means any facility engaged in the conversion or any intermediate step in the conversion of asbestos ore into commercial asbestos.

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- (109) "Asbestos tailings" mean any solid waste product of asbestos mining or milling operations ~~that~~^{which} contains asbestos.
- (110) "Asbestos ~~w~~Waste generator" means any person performing an asbestos abatement project or any owner or operator of a source subject to OAR 340-248-0040~~5~~⁵ through 248-02980 whose act or process generates asbestos-containing waste material.
- (124) "Asbestos-containing waste material" means any waste ~~that~~^{which} contains asbestos tailings or any commercial asbestos, and is generated by a source subject to OAR 340-244-0200 and OAR 340-248-0210 through 340-248-02980. This term includes, but is not limited to, filters from control devices, asbestos abatement project waste, and bags or containers that previously contained commercial asbestos.
- (132) "Asbestos waste shipment record" means the shipment document, required to be originated and signed by the asbestos waste generator; used to track and substantiate the disposition of asbestos-containing waste material.
- (143) "Certified supervisor" means a person who has a current Oregon supervisor certification card.
- (154) "Certified worker" means a person who has a current Oregon worker certification card.
- (165) "Contractor" means a person that undertakes for compensation an asbestos abatement project for another person. As used in this Division, "compensation" means wages, salaries, commissions and any other form of remuneration paid to a person for personal services.
- (176) "Commercial asbestos" means asbestos ~~that~~^{which} is produced by extracting asbestos from asbestos ore.
- (187) "Commission" means the Environmental Quality Commission.
- (198) "Demolition" means the wrecking or removal of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.
- (2049) "Department" means the Department of Environmental Quality.
- (210) "Director" means the Director of the Department of Environmental Quality.
- (224) "EPA" means the U.S. Environmental Protection Agency.
- (232) "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.
- (243) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.
- (254) "Friable ~~asbestos-containing material~~" means any asbestos-containing material that hand pressure can be crumbled, pulverized or reduced to powder by hand pressure when dry. Friable asbestos material includes any asbestos-containing material that is shattered or subjected to sanding, grinding, sawing, abrading or has the potential to release asbestos fibers.
- (265) "HEPA filter" means a high efficiency particulate air filter capable of filtering 0.3 micron particles with 99.97 percent efficiency.
- (276) "Inactive asbestos-containing waste disposal site" means any disposal site for asbestos-containing waste where the operator has allowed the Department's solid waste permit to lapse, has gone out of business, or no longer receives asbestos-containing waste.

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- (287) "Interim storage of asbestos-containing material" means the storage of asbestos-containing waste material ~~that~~^{which} has been placed in a container outside a regulated area until transported to an authorized landfill.
- (298) "Licensed" means a contracting entity has met the Department's training and experience requirements to offer and perform asbestos abatement projects and has a current asbestos abatement contractor license. For purposes of this definition, a license is not a permit subject to OAR Chapter 340, Division 14.
- (30) "Negative pressure enclosure" means any enclosure of an asbestos abatement project area where the air pressure outside the enclosure is greater than the air pressure inside the enclosure and the air inside the enclosure is changed at least four times an hour by exhausting it through a HEPA filter.
- (3129) "Nonfriable asbestos-containing material" means any asbestos-containing material containing more than one percent (1%) asbestos as determined by weight that when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure. Nonfriable asbestos-containing material does not include material that has been subjected to shattering, sanding, grinding, sawing, or abrading or that has the potential to release asbestos fibers.
- (329) "Open accumulation" means any accumulation, including interim storage, of friable asbestos-containing material or asbestos-containing waste material other than material securely enclosed and stored as required by this chapter ~~OAR 340-248-0280~~.
- (33) "Owner or operator" means any person who owns, leases, operates, controls or supervises a facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.
- (344) "Particulate asbestos material" means any finely divided particles of asbestos material.
- (352) "Person" means individuals, ~~estates, trusts, corporations, associations, firms, partnerships, joint stock companies, municipal corporations, political sub-divisions, the state and any agencies thereof, and the f~~^{ederal g}overnment and any agencies thereof.
- (363) "Renovation" means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or removed are excluded.
- (37) "Shattered" means the condition of an asbestos-containing material that has been broken into four (4) or more pieces from its original whole condition.
- (384) "Small-scale, short-duration activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:
- (a) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;
 - (b) Replacement of an asbestos-containing gasket on a valve;
 - (c) Installation or removal of a small section of wallboard;
 - (d) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those ~~that~~^{which} can be contained in a single glove bag;
 - (e) Minor repairs to damaged thermal system insulation ~~that~~^{which} does not require removal;
 - (f) Repairs to asbestos-containing wallboard;
 - (g) Repairs, involving encapsulation, enclosure, or removal, ~~to~~^{of} small amounts of friable asbestos-containing material in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those ~~that~~^{which} can be contained in a single prefabricated mini-enclosure. Such an enclosure must~~shall~~ conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

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- (395) "Structural member" means any load-supporting member of a facility, such as beams and load-supporting walls; or any non-supporting member, such as ceilings and non-load-supporting walls.
- (40) "Survey" means to conduct a detailed inspection of a building, structure, or facility for the presence of asbestos-containing material. The survey must be conducted by an accredited inspector and include sampling of materials suspected to contain asbestos, analysis of those samples to determine asbestos content, and evaluation of the materials in order to assess their condition.
- (4136) "Training Day" means a day of classroom instruction that consists of at least seven hours of actual classroom instruction and hands-on practice.

Asbestos Licensing and Certification Requirements**340-248-0100****Applicability**

- (1) OAR 340-248-0100 through 340-248-0180:
- (a) Apply to asbestos contractor licensing, worker and supervisor certification, asbestos abatement trainer accreditation, and the Department's administration and enforcement by the Department;
 - (b) Apply to any asbestos abatement project ~~as defined in 340-248-0010(4);~~ and
 - (c) Provide training, licensing, and certification standards for implementation of OAR 340-248-0205 through 340-248-0280, Emission Standards and Procedural Requirements for Asbestos.
- (2) OAR 340-248-0100 through 340-248-0180 do not apply to:
- (a) An asbestos abatement project exempted by OAR 340-248-0250(2)(a); and
 - (b) ~~PT~~ persons performing vehicle brake and clutch maintenance or repair.

340-248-0110**General Provisions**

- (1) ~~Any persons performing~~ engaged in an asbestos abatement project must be certified, unless exempted by OAR 340-248-0100(23).
- (2) An owner or operator of a facility ~~may~~ shall not allow any persons other than those employees of the facility owner or operator who are appropriately certified or a licensed asbestos abatement contractor to perform an asbestos abatement project in or on that facility. ~~Facility owners and operators are not required to be licensed to perform asbestos abatement projects in or on their own facilities.~~
- (3) ~~Any~~ Each contractor ~~that performs~~ engaged in an asbestos abatement project must be licensed by the Department under the provisions of OAR 340-248-0120.
- (4) ~~Any~~ Each person acting as the supervisor for any asbestos abatement project must be certified by the Department as a supervisor under the provisions of OAR 340-248-0130.
- (5) ~~Any~~ Each person engaged in or working on any asbestos abatement project must be certified by the Department as a worker or ~~as a supervisor~~ under the provisions of OAR 340-248-0130.
- (6) A certified supervisor is required to be present on each asbestos abatement project other than a small-scale short-duration activity.

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- (7) Each training provider for asbestos abatement certification must be accredited by the Department under the provisions of OAR 340-248-0140.
- (8) Each person licensed, certified, or accredited by the Department under the provisions of this Division ~~must~~^{shall} comply with OAR 340-248-00105 through 340-248-02980 ~~and. Such persons shall maintain a current address on file with the Department. Failure to comply with this paragraph will, or be subject such persons to suspension or revocation of license, certification, or accreditation.~~
- (9) ~~The Department may accept evidence of violations of this Division from representatives of federal, state, or local agencies.~~
The Department may require training providers to ask applicants to provide their social security number and to retain records of those numbers for the Department's use in identifying and tracking workers and supervisors. Trainers must notify each applicant that providing their social security number is voluntary and explain how the Department proposes to use the social security number.
- (10) A regional air pollution authority which has been delegated authority under OAR 340-244-0020(2) may inspect for and enforce against violations of licensing and certification regulations. A regional air pollution authority may not approve, deny, suspend or revoke a training provider accreditation, contractor license, or worker certification, but may refer violations to the Department and recommend denials, suspensions, or revocations.
- (11) ~~Any person who conducts an asbestos abatement project shall insure accessibility for the Department to perform inspections.~~

340-248-0120

Contractor Licensing

- (1) ~~Any cContractors performing an asbestos abatement project must~~^{shall} be licensed by the ~~Department to perform asbestos abatement.~~
- (2) Application for licenses ~~must~~^{shall} be submitted on forms prescribed by the Department and ~~must~~^{shall} be accompanied by the following:
 - (a) Documentation that the contractor, or the contractor's employee representative, is a certified supervisor;
 - (b) Certification that the contractor has read and understands the applicable Oregon and federal rules and regulations on asbestos abatement and agrees to comply with the rules and regulations;
 - (c) A list of all certificates or licenses, issued to the contractor by any other jurisdiction, that have been suspended or revoked during the past year, and a list of any asbestos-related enforcement actions taken against the contractor during the past year;
 - (d) A list of additional project supervisors for asbestos abatement projects and their certification numbers;
 - (e) A summary of all asbestos abatement projects conducted by the contractor during the past 12 months;
 - (f) A license application fee.
- (3) The Department will review the application for completeness. If the application is incomplete, the Department ~~will~~^{shall} notify the applicant in writing of the deficiencies.
- (4) The Department shall deny, in writing, a license to a contractor who has not satisfied the license application requirements.

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- (5) The Department ~~will~~shall issue a license to the applicant after the license is approved.
- (6) ~~The Department shall grant a license is valid for a period of 12 months but will. Licenses~~
may be extended pending during the Department's review of a renewal application provided
the renewal application is filed before the expiration date of the contractor's license.
- (7) Renewals:
 - (a) License renewals must be applied for in the same manner as required for the initial license;
 - (b) For renewal, the contractor or employee representative must have a valid certified supervisor card;
 - (c) The complete renewal application ~~must~~shall be submitted no later than 60 days before
prior to the license expiration date.
- (8) The Department may suspend or revoke a license if the licensee:
 - (a) Fraudulently obtains or attempts to obtain a license; or
 - (b) Fails at any time to satisfy the qualifications for a license; or
 - (c) Fails to meet any applicable state or federal standard relating to asbestos abatement; or
 - (d) Permits an untrained or uncertified worker to work on an asbestos abatement project; or
 - (e) Employs a worker who fails to comply with applicable state or federal rules or regulations relating to asbestos abatement; or
 - (f) Fails to make current certification cards readily available at worksites for inspection by the Department; or
 - (g) Fails to pay delinquent application fees, notification fees, ~~or~~and civil penalty assessments.
- (9) A contractor whose license has been revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

340-248-0130**Certification**

- (1) Any pPersons working on an asbestos abatement projects must~~shall~~ be either an Oregon certified supervisor or certified worker, at one or more of the following levels:
 - ~~(a) Certified supervisor. A certified supervisor may work as a certified worker without having separate certification as a worker;~~
 - ~~(b) Certified worker.~~
- (2) Application for Certification-General Requirements:
 - (a) Any pPersons applying wishing to become a certified supervisors or persons relying on prior training, as provideddescribed in OAR 340-248-0160 must~~shall~~ submit applications to the Department, through the training provider, for certification;
 - (b) Any pPersons applying for worker certification without prior training and any certified workers taking a refresher courses must~~shall~~ apply directly to the accredited training provider using Department-approved forms.
- (3) An application to be a certified supervisor must~~shall~~ include:
 - (a) Documentation that the applicant has successfully completed the supervisor supervisor-level training and examination as specified in OAR 340-248-0150 and the Department's **Asbestos Training Guidance Document**; and
 - (b) Documentation that the applicant has:

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- (A) Been certified as a worker and has at least three months of asbestos abatement experience, including time on powered air purifying respirators and experience on at least five separate asbestos abatement projects; or
- (B) ~~SHas~~ successfully completed certified worker training and six months of general construction, environmental or maintenance supervisory experience demonstrating skills to independently plan, organize and direct personnel in conducting an asbestos abatement project. The Department ~~will~~ shall have the authority to determine if any applicant's experience satisfies those requirements.
- (4) ~~An application to be a certified worker must~~ shall include documentation that the applicant ~~applying to be a certified worker has successfully completed the level of training and examination as specified in OAR 340-248-0150 and the Department's~~ **Asbestos Training Guidance Document**.
- (5) A typed certification card and a certificate of course completion ~~will~~ shall be issued by the training course provider to an applicant who has fulfilled the requirements of certification.
- (6) Certification at all levels is valid for ~~a period of~~ one year after the date of issue.
- (7) Annual Recertification:
 - (a) ~~Previously c~~ Certified Oregon workers and supervisors must ~~be approved by a training provider before apply through the training provider to taking a~~ recertification refresher courses;
 - (b) ~~Training providers must ensure a~~ Applicants for re-certification must possess a valid certification card in order to take the ~~before granting refresher course admission;~~
 - (c) ~~All c~~ Certified supervisors and workers must complete an ~~their~~ annual recertification course during the three months before ~~prior to~~ the expiration date of their certification card. A c Certified supervisors ~~and or~~ workers may reinstate certification by taking the appropriate refresher course up to one year after the expiration date of the current Oregon certification card. After that time, such persons must take the initial course to be recertified.
- (8) A current worker certification card ~~must~~ shall be readily available for inspection by the Department at each asbestos abatement project for each worker or supervisor engaged in asbestos abatement activities.
- (9) Suspensions and Revocations: The Department may suspend or revoke a person's certification ~~if for the person:~~
 - (a) ~~Failure to comply with state or federal asbestos abatement regulations; or~~
 - (b) ~~Performing~~ asbestos removal without having physical possession of a current certification card; or
 - (c) ~~Permitting~~ the use or duplication of one's certification card or certificate by another; or
 - (d) ~~Obtaining~~ certification from a training provider that does not have the Department's or the EPA's approval to offer training for the particular discipline ~~from the Department or EPA; or~~
 - (e) ~~Failure to pay delinquent application fees, or~~ civil penalties.
- (10) A person whose certification has been revoked may not apply for recertification until 12 months after the revocation date.

340-248-0140**Training Provider Accreditation**

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(1) General:

- (a) Any person may apply to become an Oregon accredited asbestos training provider
~~courses or certification requiring accreditation under this Division may be provided by any person;~~
- (b) Only training providers accredited by the Department may offering training in Oregon to satisfy these certification requirements contained in this Division~~must be accredited by the Department;~~
- (c) The Department will accredit each individual training course~~shall be individually accredited by the Department;~~
- (d) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles;
- (e) ~~The Department may require any accredited training provider to use examinations developed by the Department in lieu of the examinations offered by the training provider;~~
- (f) Training course providers must~~shall~~ permit representatives of the Department or its designee to attend, evaluate and monitor any training course without charge. The Department is not required to give advance notice of its inspection. The Department may suspend or withdraw approval of a training course based upon the ground~~ser~~ criteria specified in OAR 340-248-0140(4);
- (f) All initial worker and supervisor certification training, or refresher training involving persons wishing to be certified in Oregon using prior training from an EPA approved accreditation or certification course, must take place in Oregon.
- (g) The Department may require accredited training providers to pay a fee equivalent to cover the reasonable travel expenses for one Department representative to audit for compliance with this Division any accredited refresher course that~~which~~ is not offered in the State of Oregon ~~for compliance with this Division. This fee is a condition shall be an~~ addition to the standard accreditation application fee.

(2) Application for Accreditation:

- (a) Applications for accreditation must~~shall~~ be submitted to the Department in writing on forms provided by the Department and include the information required by this section~~attachments as stated in OAR 340-248-0140(2)(A) through 340-248-0140(2)(B). Such applications shall, at a minimum, contain the following information:~~
 - (A) Name, address, telephone number of the firm, individual(s), or sponsors conducting the course, including the name under which the training provider intends to conduct the training;
 - (B) The type of course(s) for which approval is requested;
 - (C) A detailed course outline showing topics covered and the amount of time given to each topic, and including working with asbestos-substitute materials, fitting and using respirators, use of glove-bag, donning protective clothing and constructing a decontamination unit, the number of students to be accommodated; the number of instructors; and the amount of time for hands-on skill training;
 - (D) A copy of the course manual, instructor notebooks and all printed material to be distributed in the course;
 - (E) A description of teaching methods to be employed, including description of audio-visual materials to be used. Upon~~The Department's may, at its discretion, request~~

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- ~~that applicant must provide copies of the materials be provided for review.~~ Any audio-visual materials provided to the Department will be returned to the applicant;
- (F) A description of the hands-on facility to be utilized including protocol for instruction ~~which includes working with asbestos substitute materials, fitting and using respirators, use of glove bag, donning protective clothing and constructing a decontamination unit, the number of students to be accommodated; the number of instructors; and the amount of time for hands-on skill training;~~
 - (G) A description of the equipment that will be used during ~~both~~ classroom lectures and hands-on training;
 - (H) A list of all personnel involved in course preparation and presentation and a description of the background, special training and qualification of each, as well as the subject matter covered by each;
 - (I) A copy of each written examination to be given including the scoring methodology to be used in grading the examination; and a detailed statement about the development and validation of the examination;
 - (J) A list of the tuition or other fees required;
 - (K) A sample of the certificate of completion;
 - (L) A description of the procedures and policies for re-examination of students who do not successfully complete the training course examination;
 - (M) A list of any states or accrediting systems that approve the training course;
 - (N) A description of student evaluation methods (other than written examination to be used) associated with the hands-on skill training and course evaluation methods used by students, as applicable;
 - ~~(O) A description of course evaluation methods used by students;~~
 - (OP) Any restriction on attendance such as class size, language, affiliation, ~~and/or~~ target audience of class;
 - (PQ) A description of the procedure for issuing replacement certification cards to workers who were issued a certification card ~~or certification card label~~ by the training provider within the previous 12 months and whose cards have been lost or destroyed;
 - (QR) Any additional information or documentation ~~as may be required by the~~ Department may require in order to evaluate the adequacy of the application;
 - (RS) Accreditation application fee.
- (b) The training provider ~~must~~shall retain a copy of the application materials listed above for at least three years. Such applications ~~must~~shall be made available for inspection by the Department or its designees upon request.
 - (c) Application for initial training course accreditation and course materials ~~must~~shall be submitted to the Department at least 45 days ~~before~~prior to the requested approval date;
 - (d) Upon approval of an initial or refresher asbestos training course, the Department will issue a certificate of accreditation. The certificate is valid for one year from the date of issuance;
 - (e) Application for renewal of accreditation must follow the procedures described for the initial accreditation. In addition, course instructors must demonstrate that they have maintained proficiency in their instructional specialty and adult training methods during the 12 months ~~before~~prior to renewal.

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- (3) Training Provider Administrative Tasks. Accredited training providers ~~must~~shall perform the following as a condition of accreditation:
- (a) Administer the training course only to those persons who have been approved by the Department, ~~and/or~~ have surrendered their expired certification cards to the trainer and others who are otherwise qualified according to these rules. Such persons ~~may~~are allowed to take the examination to complete the training course;
 - (b) Issue a numbered certificate and a photo certification card to each student who successfully passes the training course examination and meets all other requirements for certification. Each certificate and photo certification card ~~must~~shall include:
 - (A) A unique certificate number;
 - (B) Name of certified person;
 - (C) Training course completed;
 - (D) Dates of the training course;
 - (E) Date of the examination;
 - (F) An expiration date of one year after the date upon which the person successfully completed the course and examination;
 - (G) The name, address, and telephone number of the training provider that issued the certificate;
 - (H) A statement that the person receiving the certificate has completed the requisite training for asbestos certification as specified in OAR-340-248-0130.
 - (c) Provide the Department with advance payment for each certificate to be issued;
 - (d) Utilize and distribute as part of the course information or training aides furnished by the Department;
 - (e) Provide the Department with a monthly class schedule at least one week before the schedule begins. Notification ~~must~~shall include time and location of each course. Training providers ~~must~~shall obtain approval from ~~notify~~ the Department before any class taking place that is not on their monthly schedule, and if the trainer wishes to hold a class with less than one week advanced notice ~~within three days whenever any unscheduled class is given;~~
 - (f) ~~Recordkeeping Requirements for Training Providers~~ must comply with the following recordkeeping requirements:
 - (A) Maintain the training records required by this subsection for a minimum of three years and make them readily available for inspection by the Department or its designee.
 - (BA) ~~Training providers must R~~retain copies of all instructional materials used during each classroom course.
 - (CB) ~~Training providers must R~~retain copies of all instructor resumes and instructor approvals issued by either the Department or US EPA. ~~Trainers must also record the instructors that taught each part of the course for each date that an accredited course is offered;~~
 - (DC) ~~Training providers must D~~ocument ~~various~~ the following information for each accredited course:
 - (i) The date the exam was given;
 - (ii) Training course for which the exam was given;
 - (iii) The name of the exam proctor;

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- (iv) The name and score of each person taking the exam and a single copy of the exam;
- (v) Attendance record;
- (vi) Course evaluation form.
- (vii) The names of the instructors for each part of the course offered.
- ~~(ED) Training providers shall maintain records of certificates issued to students, including the following information. Such records shall contain:~~
 - (i) Name, address, telephone number, social security number of person receiving the certificate;
 - (ii) Certificate numbers given to each person;
 - (iii) Photographs of each persons;
 - (iv) Discipline for which the certificate was given;
 - (v) Dates of training and certificate expiration.
- ~~(FE) Training providers shall maintain training records, as specified above, for a minimum of three years. Such records shall readily be available for inspection by the Department or its designee. If a training provider is not accredited, or ceases to give asbestos worker certification training, the training provider must notify and allow the Department to take possession of the records for lawful disposition.~~
- ~~(G) Training providers must submit certification class information to as required by the Department within 30 days after the end of each training class or as directed by the Department.~~
- (g) Notify the Department before prior to issuing a replacement certification card;
- ~~(h) Accredited training providers must have their current accreditation certificates at the training location where they are conducting training.~~
- (4) Denial, Suspension or Revocation of Accreditation. The Director may deny, suspend, or revoke an application or current accreditation for any of the reasons contained in this section upon finding of sufficient cause. The Department will issue a notice of denial, suspension, or revocation specifying the reasons for the action. ~~Applicants and certificate holders shall also be advised of the duration of suspension or revocation and any conditions that must be met before the certificate will be issued or reinstated.~~ Applicants ~~may~~ shall have the right to appeal the Director's determination by requesting a contested case hearing through an administrative hearing in accordance with ~~pursuant to~~ the provisions of OAR Chapter 340 Division 11. The following ~~are~~ may be considered grounds for denial, revocation or suspension:
 - (a) ~~Misrepresentation of the extent of a training course's approval by a State or the EPA;~~
 - (b) ~~Failing~~ Failure to submit required information or notifications in a timely manner;
 - (c) ~~Failing~~ Failure to report to the Department any change in staff or program which substantially deviates from the information contained in the application;
 - (d) ~~Failing~~ Failure to maintain requisite records;
 - (e) ~~Falsification of accreditation records, instructor qualifications, or other accreditation information;~~
 - (f) ~~Failing~~ Failure to adhere to the training standards and requirements of this Division;
 - (g) ~~Failing~~ Failure to comply with the administrative tasks and any other requirement of this Division;

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- (h) Providing ~~concurrent~~ training for either initial or refresher courses in combination for supervisors and asbestos workers;
- (i) ~~Failing~~ to pay delinquent application fees, notification fees, ~~or~~ and civil penalties;
- (j) ~~In addition to the criteria listed above, the~~ Department may also suspend or withdraw a training course's approval ~~if where~~ an approved training course instructor, or other person with supervisory authority over the delivery of training ~~has been found in violation of~~ any of other asbestos regulations administered by the Department or other agencies.

340-248-0150**General Training Standards**

- (1) The training provider ~~must~~ shall limit each class to a maximum of 25 participants unless ~~the Department grants~~ an exception in writing by the Department. The student to instructor ratio for hands-on training ~~must~~ shall be equal to or less than ten to one (10:1). To apply for an exception allowing class size to exceed 25, the course sponsor must submit the following information in writing to the Department ~~for evaluation and receive approval before~~ prior to expanding the class size:
 - (a) The new class size limit;
 - (b) The teaching methods and techniques for training the proposed larger class;
 - (c) The protocol for conducting the written examination; and
 - (d) Justification for a larger class size.
- (2) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles.
- (3) The Department may require any accredited training provider to use examinations developed by the Department in lieu of the examinations offered by the training provider.
- (4) ~~The Department may require accredited training providers to pay a fee equivalent to reasonable travel expenses for one Department representative to audit any accredited course which is not offered in the State of Oregon for compliance with this Division. This condition shall be an addition to the standard accreditation application fee.~~
- (45) Courses of instruction required for certification ~~must~~ shall be specific for each of the certificate categories and shall be in accordance with ~~the Department's guidelines~~ requirements. ~~The topics or subjects of course instruction which a person must receive to meet the training requirements must be presented through a combination of lectures, demonstrations, and hands-on practice.~~
- (56) Courses requiring hands-on training ~~must~~ shall ~~be presented in an environment suitable to permit provide participants to have actual experience performing tasks associated with asbestos abatement. Demonstrations not involving individual participation shall be~~ unacceptable as a not substitute for hands-on training.
- (67) Any person seeking certification as a supervisor ~~must~~ shall successfully complete an accredited training course of at least five training days ~~that satisfies the elements contained as outlined in the Department Asbestos Training Guidance Document~~. The training course ~~must~~ shall include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit testing, course review, and a written examination consisting of multiple choice questions. ~~To successfully complete the course, the training shall candidate must attend the lectures and demonstrations, fully participate in the hands-on training, and be~~

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~~demonstrated by achieving a passing score on the closed book examination, course attendance, and full participation in the hands-on training.~~

- (78) Any person seeking certification as a worker ~~must~~ shall successfully complete an accredited training course of at least four training days as outlined in the Department **Asbestos Training Guidance Document**. The training course shall include lectures, demonstrations, at least 14 hours of actual hands-on training, individual respirator fit testing, course review, and an examination of multiple choice questions. ~~To s~~ Successfully complete ~~ion of the course, the candidate must~~ shall attend the lectures and demonstrations, fully participate in the hands-on training, and be demonstrated by achieving a passing score on the closed book examination, course attendance, and full participation in the hands-on training.
- (89) Refresher training ~~consists of~~ shall be one training day for certified supervisors and workers. The refresher courses ~~must~~ shall include a review of key areas of initial training, updates, and an examination of multiple choice questions as outlined in the Department **Asbestos Training Guidance Document**. ~~To s~~ Successful completion of the course, the candidate must attend the course, fully participate in any hands-on training, and shall be demonstrated by achieving a passing score on the closed book examination, course attendance, and full participation in any hands-on training.

340-248-0160

Prior Training

A candidate may rely on s ~~Successful completion of a prior training course accredited by a governmental agency other than the Department may be used to satisfy the training and examination requirements of OAR 340-248-0130 and 340-248-0140 if provided that all of the following conditions are met:~~

- (1) The Department determines that the course and examination requirements are equivalent to or exceed the requirements of OAR 340-248-0130 and 340-248-0140 and the Department's **Asbestos Training Guidance Document**; for the level of certification sought or the Department has a reciprocity agreement with the other jurisdiction. State and local requirements may vary.
- (2) ~~For an applicant~~ To qualify for a refresher course and certification, prior training must have occurred during the within two years preceding of the date the application applies to the Department. Applicants must have a currently certification from EPA or an equivalently certificationed from in another at least one state when applying for consideration under this section.
- (3) ~~The applicant who has received recognition from the Department for alternate initial training successfully completes an Oregon accredited refresher course and refresher course examination for the level of certification sought.~~

340-248-0170

Reciprocity

The Department may develop reciprocity agreements with other jurisdictions regarding all activities under this Division.

340-248-0180

Fees

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- (1) ~~The Department may assess the following fees~~ Fees shall be assessed to provide revenues to operate the asbestos control program. Fees are assessed for the following:
- (a) Contractor Licenses: A non-refundable license application fee of \$1000 for a one-year Asbestos Abatement Contractor license;
 - (b) Worker and Supervisor Certifications: A non-refundable fee of \$65 for a one-year certification as an asbestos supervisor and \$45 for a one-year certification as an asbestos worker;
 - (c) Training Provider Accreditation: A non-refundable accreditation application fee of:
 - (i) \$320 for a one-year accreditation to provide a course for training asbestos supervisors;
 - (ii) \$320 for a one-year accreditation to provide a course for training asbestos workers;
 - (iii) \$320 each for a one-year accreditation to provide a course for refresher training for any level of Oregon asbestos certification;
 - (d) Asbestos Abatement Project Notifications as required in OAR 340-248-0260.
- (2) ~~Contractors shall pay a non refundable license application fee of \$1,000 for a one year Asbestos Abatement Contractor license.~~
- (3) ~~Workers shall pay a non-refundable certification fee of:~~
- (a) ~~\$65 for a one year certification as a certified supervisor;~~
 - (b) ~~\$45 for a one year certification as a certified worker.~~
- (4) ~~Training Providers shall pay a non refundable accreditation application fee of:~~
- (a) ~~\$320 for a one year accreditation to provide a course for training supervisors;~~
 - (b) ~~\$320 for a one year accreditation to provide a course for training workers;~~
 - (c) ~~\$320 for a one year accreditation to provide a course for refresher training for any level of certification.~~
- (25) Requests for waiver of fees must ~~shall~~ be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

Asbestos Emission Standards and Procedural Requirements

340-248-0200

Applicability

~~OAR 340-248-02010 through 340-248-02980 apply to asbestos milling, manufacturing, fabricating, abatement, and disposal.~~

340-248-0205

General Provisions

- (1) No person may openly accumulate friable asbestos-containing material or asbestos-containing waste material.
- (2) Contractors working on asbestos abatement projects at secure facilities must insure that all security clearance requirements are completed before asbestos abatement projects at secure facilities start so Department inspectors may gain immediate access to perform required asbestos project inspections.

340-248-0210

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Asbestos Emission Standards and Procedural Requirements for Mills, Roadways and Parking lots, and Manufacturing operations Asbestos

- (1) Emission standard for asbestos mills. No person ~~may~~shall cause or allow to be discharged into the atmosphere any visible emissions, including fugitive emissions, from any asbestos milling operation, ~~including fugitive emissions~~, except as provided under OAR 340-248-02750(214) Air Cleaning. For purposes of this rule, the presence of uncombined water in the emission plume ~~is~~shall not be cause for failure to meet a violation of the visible emission requirement. Outside storage of asbestos materials is not ~~considered~~ a part of an asbestos mill operation. ~~The~~ Each owner or operator of an asbestos mill ~~must~~shall meet the following requirements:
 - (a) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operations. The monitoring ~~must~~shall be by visual observation of at least 15 seconds duration per source of emissions;
 - (b) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis ~~according to this subsection~~, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, a the following: (A) mMaintenance schedule; and (B) rRecordkeeping plan.
 - (c) Maintain records of the results of visible emissions monitoring and air cleaning device inspections using a format approved by the Department ~~and which includes~~ the following information:
 - (A) Date and time of each inspection;
 - (B) Presence or absence of visible emissions;
 - (C) Condition of fabric filters, including presence of any tears, holes, and abrasions;
 - (D) Presence of dust deposits on clean side of fabric filters;
 - (E) Brief description of corrective actions taken, including date and time;
 - (F) Daily hours of operation for each air cleaning device.
 - (d) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section;
 - (e) Retain a copy of all monitoring and inspection records for at least two years;
 - (f) Submit a copy of visible emission monitoring records to the Department quarterly. The quarterly reports ~~must~~shall be postmarked by the 30th day following the end of the calendar quarter;
 - (g) Asbestos-containing waste material produced by any asbestos milling operation ~~must~~will be disposed of according to OAR 340-248-0280 and -0290.
- (2) Roadways and Parking Lots. No person may construct or maintain, or allow to be constructed or maintained a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless (for asbestos tailings):
 - (a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine); or

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- (b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at a minimum frequency of least once per calendar year or within 12 months of road construction to prevent dust emissions; or
 - (c) It is encapsulated in asphalt concrete meeting the specifications contained in **Section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-85, 1985**, or their equivalent.
- (3) Manufacturing. No person ~~may~~shall cause or allow to be discharged into the atmosphere any visible emissions, except as provided in OAR 340-248-0275~~0~~(214), from any building or structure in which manufacturing operations utilizing commercial asbestos are conducted, or directly from any such manufacturing operations if they are conducted outside buildings or structures, or from any other fugitive emissions. All asbestos-containing waste material produced by any manufacturing operation ~~must~~shall be disposed of according to OAR 340-248-0280 and -0290. Visible emissions from boilers or other points not producing emissions directly from the manufacturing operation; and having no possible asbestos material in the exhaust gases are, shall not be considered a violation for purposes of this rule. The presence of uncombined water in the exhaust plume ~~is~~shall not be cause for failure to meet a violation of the visible emission requirements:
- (a) Applicability. Manufacturing operations ~~subject to~~considered for purposes of this rule are as follows:
 - (A) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials;
 - (B) The manufacture of cement products;
 - (C) The manufacture of fire proofing and insulating materials;
 - (D) The manufacture of friction products;
 - (E) The manufacture of paper, millboard, and felt;
 - (F) The manufacture of floor tile;
 - (G) The manufacture of paints, coatings, caulks, adhesives, or sealants;
 - (H) The manufacture of plastics and rubber materials;
 - (I) The manufacture of chlorine, using asbestos diaphragm technology;
 - (J) The manufacture of shotgun shell wads;
 - (K) The manufacture of asphalt concrete;
 - (L) Any other manufacturing operation ~~that~~which results or may result in the release of asbestos material to the ambient air.
 - (b) The owner or operator of the manufacturing operation must m~~mon~~itor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment. Monitoring must be done, at least once each day during daylight hours for visible emissions to the outside air during periods of operation and. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions;
 - (c) The owner or operator of the manufacturing operation must i~~in~~spect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in

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- filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis ~~according to this subsection~~, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, ~~the following:~~ (A) ~~a~~ maintenance schedule; (B) ~~and~~ recordkeeping plan.
- (d) ~~The owner or operator of a manufacturing operation must m~~Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department ~~and which includes~~ the following information:
- (A) Date and time of each inspection;
 - (B) Presence or absence of visible emissions;
 - (C) Condition of fabric filters, including presence of any tears, holes and abrasions;
 - (D) Presence of dust deposits on clean side of fabric filters;
 - (E) Brief description of corrective actions taken, including date and time;
 - (F) Daily hours of operation for each air cleaning device.
- (e) ~~The owner or operator of a manufacturing operation must f~~Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section;
- (f) ~~The owner or operator of a manufacturing operation must r~~Retain a copy of all monitoring and inspection records for at least two years;
- (g) ~~The owner or operator of a manufacturing operation must s~~Submit quarterly a copy of the visible emission monitoring records to the Department if visible emissions occurred during the report period. Quarterly reports ~~must~~shall be postmarked by the 30th day following the end of the calendar quarter;
- (h) Asbestos-containing waste material produced by any asbestos ~~manufacturing~~milling operation shall be disposed of according to OAR 340-248-0280 ~~and -0290~~.
- (4) ~~Open accumulation of friable asbestos containing material or asbestos containing waste material is prohibited.~~

340-248-0220**Reporting Requirements for Asbestos Sources Using Air Cleaning Devices**

- (1) New sources covered by this rule ~~must~~shall submit the requested information 90 days ~~before~~prior to initial startup. Existing sources covered by this rule ~~must~~shall comply by March 1, 1996. Changes in the information provided to the Department ~~must~~shall be submitted within 30 days after the change.
- (2) Sources covered by OAR 340-248-0210(1) Mills, 340-248-0210(3) Manufacturing, 340-248-0275(4) Fabricating, and 340-248-0230 Asbestos to Nonasbestos Conversion Operations, ~~must~~shall provide the following information to the Department.
- (a) A description of the emission control equipment used for each process; and
 - (b) If a fabric filter device is used to control emissions:
 - (A) The airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$) if the fabric filter device uses a woven fabric, and, if the fabric is synthetic, whether the fill yarn is spun or not spun; and
 - (B) If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$).
 - (c) If a HEPA filter is used to control emissions, the certified efficiency.

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- (3) For sources covered by this rule and subject to OAR 340-248-0280(1) through 340-248-0280(9) and -0290(1) through -0290(9) Asbestos Disposal Requirements:
 - (a) A brief description of each process that generates asbestos-containing waste material; and
 - (b) The average volume of asbestos-containing waste material disposed of, measured in m³/day (yd³/day); and
 - (c) The emission control methods used in all stages of waste disposal; and
 - (d) The type of disposal site or incineration site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.
- (4) For sources covered by this rule and subject to OAR 340-248-0280(10) and -0290(10) Active Disposal Sites and 340-248-0280(11) and -0290(11) Inactive Disposal Sites:
 - (a) A brief description of the site; and
 - (b) The method or methods used to comply with the standard, or alternative procedures to be used.

340-248-0230**Asbestos To Nonasbestos Conversion Operations**

- (1) 40 CFR Part 61.155 (July 1, 2001/1995) is by this reference adopted and incorporated herein.
- (2) The following substitutions ~~are~~ shall be made in 40 CFR Part 61.155:
 - (a) "Administrator" means "Department";
 - (b) §61.150 means OAR 340-248-0280;
 - (c) §61.152 means OAR 340-248-0270(13);
 - (d) §61.154 means OAR 340-248-0280;
 - (e) §61.154(e) means OAR 340-248-0280(10)(a)(C)-(G);
 - (f) §61.154(f) means OAR 340-248-0280(10)(b).

340-248-0240**Asbestos Inspection Requirements for Oregon Title V Operating Permit Program Sources**

This rule applies to renovation and demolition activities at major sources subject to the Oregon Title V Operating Permit program as defined in OAR 340-200-0020.

- (1) To determine applicability of the "Department's asbestos regulations, the owner or operator of a renovation or demolition project ~~must~~ shall thoroughly ~~survey~~ inspect, using an accredited inspector, the affected area for the presence of asbestos, including nonfriable asbestos. A copy of that survey report must remain on site during any demolition or renovation activity.
- (2) For demolition projects where no asbestos-containing material is present, written notification ~~must~~ shall be submitted to the Department on an approved form. The notification ~~must~~ shall be submitted by the owner or operator or by the demolition contractor as follows:
 - (a) Submit the notification, as specified in section (3) of this rule, to the Department at least ten days before beginning any demolition project.
 - (b) ~~Failure to notify~~ The Department shall be notified before prior to any changes in the scheduled starting or completion dates or other substantial changes ~~or renders the notification of demolition will be void.~~
- (3) The following information ~~must~~ shall be provided for each notification of demolition:
 - (a) Name, address, and telephone number of the person conducting the demolition.
 - (b) Contractor's Oregon demolition license number, if applicable.

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- (c) Certification that no asbestos was found during the predemolition asbestos ~~survey inspection~~ and that if asbestos-containing material is uncovered during demolition the procedures found in OAR 340-248-0250 through OAR 340-248-02980 will be followed.
- (d) Description of building, structure, facility, installation, vehicle, or vessel to be demolished, including:
 - (A) The age, ~~and~~ present and prior use of the facility;
 - (B) Address or location ~~of where the scheduled demolition project is to be accomplished.~~
- (e) Major source owner's or operator's name, address and phone number.
- (f) Scheduled starting and completion dates of demolition work.
- (g) Any other information requested on the Department form.

340-248-0250**Asbestos Abatement Projects**

- (1) Any person who conducts or provides for the conduct of an asbestos abatement project ~~must~~ shall comply with the provisions of OAR 340- Division 248 except as provided in this rule -0260 and 340-248-0270(1) through (11).
- (2) The following asbestos abatement projects are exempt from certain provisions of this Division as listed in this Section ~~OAR 340-248-0260, 340-248-0270(1) through (11), and 340-248-0100 through 340-248-0180:~~
 - (a) Asbestos abatement conducted inside a single private residence:
 - (A) by the owner is exempt from OAR 340-248-0270(1), if the residence is not used as a rental property or commercial business and is not intended to be demolished; or
 - (B) by the owner-occupant which is occupied by the owner and the owner-occupant performs the asbestos abatement is exempt from OAR 340-248-0110 through -0270.
 - (b) Asbestos abatement conducted outside of a single private residence by the owner is exempt from OAR 340-248-0260 and -270(1), if the residence is not used as a rental property or a commercial business and is not intended to be demolished.
 - (c) Residential buildings with four or fewer dwelling units that were constructed after 1987 are exempt from the provisions of OAR 340-248-0270(1).
 - (d) Projects involving the removal of mastic and roofing products that are fully encapsulated with a petroleum-based binder and that are not hard, dry, and brittle; are ~~This exemption from OAR 340-248-0110 through -0280 and -0290(1), (2), (8), and (9) provided shall end whenever these materials are not made burned, shattered, crumbled, pulverized, or reduced to dust friable.~~
 - (e) Projects involving the removal of less than three square feet or three linear feet of asbestos-containing material are exempt from OAR 340-248-0110 through -0180 provided that the removal of asbestos is not the primary objective, is part of a needed repair operation, and the methods of removal are in compliance with OAR 437 Division 3 "Construction" Subsection Z and (29 CFR 1926, 1101(g)(i) through (iii) (1998)). An asbestos abatement projects may ~~shall~~ not be subdivided into smaller sized units in order to qualify for this exemption.
 - (f) Projects involving the removal of asbestos-containing materials that which are sealed from the atmosphere by a rigid casing are exempt from OAR 340-248-0110 through -0270 and -0290(2) through (4) and (7) through (9), provided that the casing is not broken

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or otherwise altered such that asbestos fibers could be released during removal, handling, and transport to an authorized disposal site.

- (2) ~~Accumulation of asbestos-containing material or asbestos-containing waste material is prohibited.~~
- (3) Any person who removes non-friable asbestos-containing material not exempted under OAR 340-248-0250(24) ~~must~~ shall comply with the following:
- (a) Submit asbestos removal notification and the appropriate fee to the Department Business Office on a Department form in accordance with OAR 340-248-0260.
 - (b) ~~Removal of nonfriable asbestos-containing materials in a manner that ensures the material remains nonfriable are not shattered, crumbled, pulverized or reduced to dust until delivered to an authorized disposal site is exempt from OAR 340-248-0270(10) and OAR 340-248-0110.~~
 - (c) A nonfriable asbestos abatement project is exempt from the asbestos licensing and certification requirements under OAR 340-248-0100 through -0180 ~~OAR 340-248-0270(10) and OAR 340-248-0110. This exemption shall end~~ whenever the asbestos-containing material becomes friable or has the potential to ~~and releases~~ asbestos fibers into the environment.

340-248-0260**Asbestos Abatement Notifications Requirements**

Except as provided for in OAR 340-248-0250, wWritten notification of any asbestos abatement project ~~must~~ shall be provided to the Department on a Department form prepared by and available from the Department, accompanied by the appropriate fee. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in sections (1), (2), or (3) of this rule except as provided in sections (5), (6), ~~or~~ and (7).

- (1) Submit the notifications as specified in section (4) of this rule and the project notification fee to the Department at least ten days before beginning any friable asbestos abatement project and at least five days before beginning any non-friable asbestos abatement project.
 - (a) The project notification fee ~~is~~ shall be:
 - (A) \$35 for each project less than 40 linear feet or 80 square feet of asbestos-containing material, a residential building, or a non-friable asbestos abatement project.
 - (B) \$70 for each project greater than or equal to 40 linear feet or 80 square feet but less than 260 linear feet or 160 square feet of asbestos-containing material.
 - (C) \$275 for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos-containing material.
 - (D) \$375 for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or 1600 square feet of asbestos-containing material.
 - (E) \$650 for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.
 - (F) \$750 for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.
 - (G) \$1,200 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.

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- (H) \$2,000 for each project greater than or equal to 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- (I) \$2,500 for each project greater than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- (J) \$260 for annual notifications for friable asbestos abatement projects involving removal of 40 linear feet or 80 square feet or less of asbestos-containing material removal.
- (K) \$350 for annual notifications for non-friable asbestos abatement projects performed at schools, colleges, and facilities.
- (b) Project notification fees ~~must~~shall be payable with the completed ~~accompany the project notification form. No notification has not~~will be considered to have occurred until the completed notification form and appropriate notification fee is received by the Department submitted.
- (c) The Department may waive the ~~ten-day~~ notification requirement in section (1) of this rule ~~may be temporarily waived in emergencies that~~which directly affect human life, health, and property. This includes:
 - (A) Emergencies where there is an imminent threat of loss of life or severe injury; or
 - (B) Emergencies where the public is exposed to air-borne asbestos fibers; or
 - (C) Emergencies where significant property damage will occur if repairs are not made immediately.
- (d) The Department may waive the ~~ten-day~~ notification requirement in section (1) of this rule ~~may be temporarily waived for asbestos abatement projects that~~which were not planned, resulted from unexpected events, and ~~which if not immediately performed will cause damage to equipment or impose unreasonable financial burden if not performed immediately.~~ This includes the non-routine failure of equipment.
- (e) In either subsection (c) or (d) of this section persons responsible for such asbestos abatement projects ~~must~~shall notify the Department by telephone ~~before~~prior to commencing work; or by 9:00 am of the next working day if the work was performed on a weekend or holiday. In any case notification as specified in section (4) of this rule and the appropriate fee ~~must~~shall be submitted to the Department within three days of commencing emergency or unexpected event asbestos abatement projects.
- (f) ~~Failure to notify~~The Department shall be notified prior to ~~before~~ any changes in the scheduled starting or completion dates or other substantial changes will render the notification will be void.
- (g) If an asbestos project, equal to or greater than 2,600 linear feet or 1,600 square feet continues for more than one year from the original start date of the project, a new notification and fee ~~must~~shall be submitted annually thereafter until the project is complete.
- (h) Residential buildings ~~shall include:~~ site built homes, modular homes constructed off site, mobile homes, condominiums, and duplexes or other multi unit residential buildings consisting of four units or less.
- (2) Annual notification for small-scale friable asbestos abatement projects. This notification ~~may~~shall only be used only for projects where no more than 40 linear or 80 square feet of asbestos-containing material is removed. The small-scale friable asbestos projects ~~may~~shall

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only be conducted at ~~multiple one or more~~ facilities by a single licensed asbestos contractor, or at a single facility that has owner with a centrally controlled asbestos operation and maintenance program where the facility owner uses appropriately trained and certified personnel to remove asbestos.

- (a) Establish eligibility for use of this notification procedure with the Department prior to use;
 - (b) Maintain on file with the Department a general asbestos abatement plan. The plan must~~shall~~ contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible;
 - (c) Provide to the Department a summary report of all asbestos abatement projects conducted ~~using the annual notification procedure~~, in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report must~~shall~~ include the information specified in subsections (4)(i) through (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan; and a description of asbestos abatement projects anticipated for the next quarter when possible;
 - (d) Provide to the Department, upon request, a list of asbestos abatement projects ~~that~~which are scheduled or are being conducted at the time of the request;
 - (e) Submit project notification and fee prior to use of this ~~annual~~ notification procedure;
 - (f) Failure to provide payment for use of this notification procedure will~~shall~~ void the general asbestos abatement plan and each subsequent abatement project will~~shall~~ be individually assessed a project notification fee.
- (3) Annual non-friable asbestos abatement projects may~~shall~~ only be performed at schools, colleges, and facilities where the removal work is done by certified asbestos abatement workers. Submit the notification as follows:
- (a) Establish eligibility for use of this notification procedure with the Department prior to use;
 - (b) Maintain on file with the Department a general non-friable asbestos abatement plan. The plan must~~shall~~ contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible;
 - (c) Provide to the Department a summary report of all non-friable asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report must~~shall~~ include the information specified in subsections (4)(i) through (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan, and a list describing the non-friable asbestos abatement projects anticipated for the next quarter, ~~when~~re possible;
 - (d) Submit project notification and fee prior to use of this notification procedure;
 - (e) Failure to provide payment for use of this notification procedure will~~shall~~ void the general non-friable asbestos abatement plan and each subsequent non-friable abatement project will~~shall~~ be individually assessed a project notification fee.
- (4) The following information must~~shall~~ be provided for each notification:
- (a) Name and address of person conducting asbestos abatement.
 - (b) The Oregon asbestos abatement c~~Contractor's Oregon asbestos abatement~~ license number, if applicable and certification number of the supervisor for the asbestos

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~~abatement or certification number or the trained worker for a project or, which does not have a supervisor for nonfriable asbestos abatement projects, the name of the supervising person that meets Oregon OSHA's competent person qualifications as required in OAR 437, Division 3 "Construction", Subdivision Z, 1926.1101(b) "Competent person", (2/10/1994).~~

- (c) Method of asbestos abatement to be employed.
- (d) Procedures to be employed to insure compliance with OAR 340-248-0270 ~~through and~~ 340-248-02980.
- (e) Names, addresses, and phone numbers of waste transporters.
- (f) Name and address or location of the waste disposal site where the asbestos-containing waste material will be deposited.
- (g) Description of asbestos disposal procedure.
- (h) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including:
 - (A) The age, present and prior use of the facility;
 - (B) Address or location where the asbestos abatement project is to be accomplished, including building, floor, and room numbers.
- (i) Facility owner's or operator's name, address and phone number.
- (j) Scheduled starting and completion dates of asbestos abatement work.
- (k) Description of the asbestos type, approximate asbestos content (percent), and location of the asbestos-containing material.
- (l) Amount of asbestos to be abated: linear feet, square feet, thickness.
- (m) For facilities described in OAR 340-248-0270(85) provide the name, title and authority of the State or local government official who ordered the demolition, date the order was issued, and the date demolition is to begin.
- (n) Any other information requested on the Department form.
- (5) The project notification fees specified in this section ~~will shall~~ be increased by 50% when an asbestos abatement project is commenced without filing of a project notification ~~and/or~~ submittal of a notification fee or when notification of less than ten days is provided under subsections (1)(c) and (d) of this rule.
- (6) The Director may waive part or all of a project notification fee. Requests for waiver of fees ~~must shall~~ be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship.
- (7) Pursuant to ORS 468A.135, a regional authority may adopt project notification fees for asbestos abatement projects in different amounts than are set forth in this rule. The fees ~~will shall~~ be based upon the costs of the regional authority in carrying out the delegated asbestos program. The regional authority may collect, retain, and expend such project notification fees for asbestos abatement projects within its jurisdiction.

340-248-0270**Asbestos Abatement Work Practices and Procedures**

Except as provided for in OAR 340-248-0250, the following procedures ~~must shall~~ be employed by any person who conducts or provides for the conduct of during an asbestos abatement project to prevent emissions of particulate asbestos material into the ambient air:

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- (1) Prior to performing a demolition or renovation activity on a facility the owner or operator of a facility must have an accredited inspector thoroughly survey the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos-containing material, including nonfriable asbestos-containing material.
- (2) The owner or operator of a facility that requires a survey pursuant to OAR 340-248-0270(1) must keep a copy of the survey report onsite at the facility during any demolition or renovation activity.
- (34) Remove all asbestos-containing materials before any activity begins ~~wrecking or dismantling~~ that would break up, dislodge, or disturb the materials or preclude access to the materials for subsequent removal. ~~However,~~ asbestos-containing materials need not be removed before demolition if:
 - (a) They are on a facility component that is encased in concrete or other similar material and are adequately wetted whenever exposed during demolition;
 - (b) They were not discovered before demolition and cannot be removed because of unsafe conditions as a result of the demolition.
- (4) Upon discovery of asbestos materials found during demolition the owner or operator performing the demolition ~~must~~ shall:
 - (aA) Stop demolition work immediately;
 - (bB) Notify the Department immediately of the occurrence;
 - (cC) Keep the exposed asbestos-containing materials and any asbestos-contaminated waste material adequately wet at all time until a licensed asbestos abatement contractor begins removal activities;
 - (dD) Have the licensed asbestos abatement contractor remove and dispose of the asbestos-containing waste material.
- (52) Asbestos-containing materials ~~must~~ shall be adequately wetted when they are being removed. In renovation, maintenance, repair, and construction operations, where wetting would unavoidably damage equipment or is incompatible with specialized work practices, or presents a safety hazard, adequate wetting is not required if the owner or operator:
 - (a) Obtains prior written approval from the Department for dry removal of asbestos-containing material;
 - (b) Keeps a copy of the Department's written approval available for inspection at the work site;
 - (c) Adequately wraps or encloses any asbestos-containing material during handling to avoid releasing fibers;
 - (d) Uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the asbestos abatement project.
- (63) When a facility component covered or coated with asbestos-containing materials is being taken out of the facility as units or in sections:
 - (a) Adequately wet any asbestos-containing materials exposed during cutting or disjointing operation;
 - (b) Carefully lower the units or sections to ground level, not dropping them or throwing them;
 - (c) Asbestos-containing materials do not need to be removed from large facility components such as reactor vessels, large tanks, steam generators, but excluding beams if the following requirements are met:

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- (A) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the regulated asbestos-containing material; and
 - (B) The component is encased in leak-tight wrapping; and
 - (C) The leak-tight wrapping is labeled according to OAR 340-248-0280(2)(b) during all loading and unloading operations and during storage.
- (74) For friable asbestos-containing materials being removed or stripped:
- (a) Adequately wet the materials to ensure that they remain wet until they are disposed of in accordance with OAR 340-248-0280;
 - (b) Carefully lower the materials to the floor, not dropping or throwing them;
 - (c) With prior written approval from the Department, transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped above ground level and were not removed as units or in sections.
 - (d) Enclose the area where friable asbestos materials are to be removed with a negative pressure enclosure prior to abatement unless written approval for an alternative is granted by the Department.
 - (e) A minimum of one viewing window will be installed in all enclosures, including negative pressure enclosures, in accordance with the following:
 - (A) Each viewing window must be a minimum of two feet by two feet and be made of a material that will allow a clear view inside the enclosure.
 - (B) For large enclosures, including negative pressure enclosures, install one viewing window for every 5,000 square feet of area when spatially feasible.
- (85) Any person that demolishes a facility is being demolished under an order of the State of Oregon or a local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse, the requirements of sections (1), (2), (3), (4), and (6) of this rule shall not apply, provided that the portion of the facility that contains asbestos-containing materials is adequately wetted during the wrecking operation must comply with the following:-
- (a) Obtain written approval from the Department for an ordered demolition procedure before that demolition takes place; and
 - (b) Send a copy of the order and an asbestos abatement project notification (as described in OAR 340-248-0260) to the Department before commencing demolition work; and
 - (c) Keep a copy of the order, Department's approval, and the notification form at the demolition site during all phases of demolition until final disposal of the project waste at an authorized landfill; and
 - (d) Keep asbestos-containing materials and asbestos contaminated debris adequately wet during demolition and comply with the disposal requirements set forth in OAR 340-248-0280 and -0290.
- (9) Persons performing asbestos abatement outside full negative pressure containment must obtain written approval from the Department before using mechanical equipment to remove asbestos-containing material.
- (106) Before a facility is demolished by intentional burning, all asbestos-containing material must shall be removed and disposed of in accordance with OAR 340-248-002410 through 340-248-0290.
- (117) None of the operations in sections (1) through (4) of this rule may shall cause any visible emissions. Any local exhaust ventilation and collection system or vacuuming equipment used

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during an asbestos abatement project, must be equipped with a HEPA filter or other filter of equal or greater collection efficiency.

(128) The Director may approve, on a case-by-case basis, requests to use an alternative to ~~thea~~ public health protection requirements as provided by ~~contained in~~ this rule for an asbestos abatement project. The contractor or facility owner or operator must submit ~~in advance a~~ written description of the proposed alternative and procedure ~~which~~ demonstrates to the Director's satisfaction that the proposed alternative ~~procedure~~ provides public health protection equivalent to the protection that would be provided by the specific requirement provision, or that such level of protection cannot be obtained for the asbestos abatement project.

(139) Final Air Clearance Sampling Requirements apply to projects involving more than 160 square feet or 260 linear feet of asbestos-containing material. Before a containment around such an area is removed, the person(s), ~~contractor or facility owner/operator~~ performing the abatement must ~~have~~ at least one air sample collected that documents that the air inside the containment has no more than 0.01 fibers per cubic centimeter of air. The air sample(s) collected may ~~shall~~ not exceed 0.01 fibers per cubic centimeter of air. The Department may grant a waiver to this section or exceptions to the following requirements upon receiving an advanced written request:

- (a) The air clearance samples must ~~shall~~ be performed and analyzed by a party who is National Institute of Occupational Safety and Health (NIOSH) 582 certified and financially independent from the person(s) conducting the asbestos abatement project;
- (b) Before final air clearance sampling is performed the following must ~~shall~~ be completed:
 - (A) All visible asbestos-containing material and asbestos-containing waste material debris ~~must~~ be removed according to the requirements of this section;
 - (B) The air and surfaces within the containment must ~~shall~~ be sprayed with an encapsulant;
 - (C) Air sampling may commence when the encapsulant has settled sufficiently so that the filter of the sample is not clogged by airborne encapsulant;
 - (D) Air filtration units must ~~shall~~ remain on during the air-monitoring period.
- (c) Air clearance sampling inside containment areas must ~~shall~~ be aggressive and comply with the following procedures:
 - (A) Immediately ~~before~~ prior to starting the sampling pumps, direct exhaust from a minimum one horse power forced air blower against all walls, ceilings, floors, ledges, and other surfaces in the containment;
 - (B) Then place stationary fans in locations ~~that~~ which will not interfere with air monitoring equipment and then directed toward the ceiling. Use one fan per 10,000 cubic feet of room space;
 - (C) Start sampling pumps and sample an adequate volume of air to detect concentrations of 0.01 fibers of asbestos per cubic centimeter according to NIOSH 7400 method;
 - (D) When sampling is completed turn off the pump and then the fan(s);
 - (E) As an alternative to meeting the requirements of paragraphs (A) through (D) of this subsection, air clearance sample analysis may be performed according to Transmission Electron Microscopy Analytical Methods prescribed by **40 CFR 763.99, Appendix A to Subpart E (Interim Transmission Electron Microscopy Analytical Methods)**.

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- (d) The person performing asbestos abatement projects requiring air clearance sampling ~~must~~shall submit the clearance results to the Department on a Department form. The clearance results must be received by the Department within 30 days after the completion date of the asbestos abatement project.

340-248-0275**Asbestos Standards for Air Cleaning, Spraying, Molded Insulation, and Fabricating**

The following methods must be employed for air cleaning, fabricating, and sprayed-on and molded insulation applications; ~~and fabricating~~:

- (12) Options for Air Cleaning. Rather than meet the no visible emissions requirements of OAR 340-248-0210(1) and (3), owners and operators may elect to use methods specified in Section (213).
- (213) Air Cleaning. All persons electing to use air cleaning methods rather than comply with the no visible emission requirements ~~must~~shall meet one of the provisions of subsections (a) through (d) of this section and all of the requirements specified in subsections (e) and (f) of this section:
- (a) Fabric filter collection devices must be used, except as provided in subsections (b) and (c) of this section. Such devices must be operated at a pressure drop of no more than four inches (10.16 cm) water gauge as measured across the filter fabric. The air flow permeability, as determined by ASTM Method D737-75, must not exceed 30 ft.³/min./ft.² (9 m³/min./m²) for woven fabrics or 35 ft.³/min./ft.² (11 m³/min./m²) for felted fabrics with the exception that airflow permeability of 40 ft.³/min./ft.² (12 m³/min./m²) for woven and 45 ft.³/min./ft.² (14 m³/min./m²) for felted fabrics ~~must~~shall be allowed for filtering air emissions from asbestos ore dryers. Each square yard of felted fabric must weigh at least 14 ounces (475 grams per square meter) and be at least 1/16 inch (1.6 mm) thick throughout. Any synthetic fabrics used must not contain fill yarn other than that which is spun;
 - (b) If the use of fabric filters creates a fire or explosion hazard, the ~~d~~Department may authorize the use of wet collectors designed to operate with a unit contacting energy of at least 40 inches (101.6 cm) of water gauge pressure;
 - (c) If High Efficiency Particulate Air (HEPA) filters are used to control emissions the certified efficiency ~~must~~shall be at least 99.97 percent for particles 0.3 microns or greater;
 - (d) The Department may authorize the use of filtering equipment other than that described in subsection (a), (b), or (c) of this rule if such filtering equipment is satisfactorily demonstrated to provide filtering of asbestos material equivalent to that of the described equipment;
 - (e) All air cleaning devices authorized by this section must be properly installed, operated, and maintained. Devices to bypass the air cleaning equipment may be used only during upset and emergency conditions, and then only for such time as is necessary to shut down the operation generating the particulate asbestos material;
 - (f) ~~For~~ fabric filters collection devices installed after January 10, 1989, ~~must be provide for~~ must be easily inspected ~~for~~ faulty bags.

- (314) Spraying:

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- (a) No person ~~may~~shall cause or allow to be discharged into the atmosphere any visible emissions from any spray-on application of materials containing more than one percent asbestos on a dry weight basis used to insulate or fireproof equipment or machinery, except as provided in section (213) of this rule. Spray-on materials used to insulate or fireproof buildings, structures, pipes, and conduits ~~must~~shall contain less than one-percent asbestos on a dry weight basis. ~~In the case of any city or area of local jurisdiction having ordinances or regulations for spray application materials more stringent than those in this section, the provisions of such ordinances or regulations shall apply;~~
- (b) ~~Twenty days before~~ Any person intending to sprays asbestos materials to insulate or fireproof buildings, structures, pipes, conduits, equipment, or machinery must, ~~that person shall~~ notify the Department in writing 20 days before the spraying operation begins. The notification ~~must~~shall contain the following:
 - (A) Name and address of person intending to conduct the spraying operation;
 - (B) Address or location of the spraying operation;
 - (C) The name and address of the owner of the facility being sprayed.
- (c) The spray-on application of materials in which the asbestos fibers are encapsulated with a bituminous or resinous binder during spraying and which are not friable after drying is exempted from the requirements of subsections (a) and (b) of this section.
- (14) Fabricating. Except as provided in section (2) of this rule ~~No person may~~shall cause or allow to be discharged into the atmosphere any visible emissions, including fugitive emissions, ~~except as provided in section (13) of this rule, from any fabricating operations including the following:~~
 - (a) Applicability. This section applies to ~~the following~~ fabricating operations using commercial asbestos:
 - (A) The fabrication of cement building products;
 - (B) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles;
 - (C) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.
 - (b) The owner or operator of a fabricating operation must ~~m~~Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices and; process equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring ~~must~~shall be by visual observation of at least 15 seconds duration per source of emissions; and
 - (c) The owner or operator of a fabricating operation must ~~i~~Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this subsection, submit to the department, revise as necessary, and implement a written maintenance plan to include, at a minimum, the following: (A) a ~~m~~Maintenance schedule and; (B) ~~r~~Recordkeeping plan.

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- (d) ~~The owner or operator of a fabricating operation must m~~Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department ~~that which~~ includes the following information:
 - (A) Date and time of each inspection;
 - (B) Presence or absence of visible emissions;
 - (C) Condition of fabric filters, including presence of any tears, holes, and abrasions;
 - (D) Presence of dust deposits on clean side of fabric filters;
 - (E) Brief description of corrective actions taken, including date and time;
 - (F) Daily hours of operation for each air cleaning device.
- (e) ~~The owner or operator of a fabricating operation must f~~Furnish upon request and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section;
- (f) ~~The owner or operator of a fabricating operation must r~~Retain a copy of all monitoring and inspection records for at least two years;
- (g) ~~The owner or operator of a fabricating operation must s~~Submit a copy of the visible emission monitoring records to the Department quarterly. The quarterly report ~~must shall~~ be postmarked by the 30th day following the end of the calendar quarter.
- (45) ~~Insulation. No owner or operator of a facility may install or reinstall on a facility component any Molded insulating materials which are friable and wet applied insulating materials which are friable after drying, installed after October 21, 1982, shall that contain no commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this section do not apply to insulating materials regulated under which are spray applied pursuant to section (344) of this rule.~~

340-248-0280**Friable Asbestos Disposal Requirements**

Work practices and procedures for packaging, storing~~age~~, transporting, and disposing~~at~~ of friable asbestos-containing waste material: The owner or operator of a facility~~source~~ or an activity covered under the provisions of OAR 340-248-0240~~5~~ through OAR 340-248-0280 or any other source of friable asbestos-containing waste material ~~must shall~~ meet the following standards:

- (1) There ~~may shall~~ be no visible emissions to the atmosphere, ~~except as provided in section (12) of this rule~~, during the collection; processing, ~~including incineration~~; packaging; transporting; or deposition of any asbestos-containing waste material ~~that which~~ is generated by a facility~~such source~~.
- (2) All asbestos-containing waste materials shall be adequately wetted to ensure that they remain wet until delivered to an authorized landfill~~disposed of~~, and:
 - (a) Processed into nonfriable pellets or other shapes; or
 - (b) Packaged in leak-tight containers such as two plastic bags each with a minimum thickness of 6 mil., or fiber or metal drum. Containers are ~~must to~~ be labeled as follows:
 - (A) The name of the asbestos waste generator and the location ~~at where~~ the waste was generated; and
 - (B) A warning label that states:

DANGER

Contains Asbestos Fibers
Avoid Creating Dust

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**Cancer and Lung Disease Hazard
 Avoid Breathing Airborne
 Asbestos Fibers**

Alternatively, warning labels specified by 29 CFR 1926.1101(k)(7) (8/19/94) may be used.

- (3) ~~If Where~~ the asbestos-containing materials are not removed from a facility ~~before~~^{prior to} demolition as described in OAR 340-248-0270(5), adequately wet the asbestos-containing waste material at all times after demolition and keep it wet during handling and loading for transport to a disposal site. Such asbestos-containing waste materials must, ~~shall~~ be transported in lined and covered containers for bulk disposal.
- (4) The interim storage of asbestos-containing waste material must~~shall~~ protect the waste from dispersal into the environment and provide physical security from tampering by unauthorized persons. The interim storage of asbestos-containing waste material is the sole responsibility of the contractor, owner or operator performing the asbestos abatement project.
- (5) All asbestos-containing waste material must~~shall~~ be deposited as soon as possible by the asbestos waste generator at:
 - (a) A waste disposal site authorized by the Department and operated in accordance with this rule; or
 - (b) A Department approved site that converts asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of OAR 340-248-0230 Asbestos to Nonasbestos Conversion Operations.
- (6) Persons disposing of asbestos-containing waste material must~~shall~~ notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator ~~before~~^{prior to} bringing the waste to the disposal site.
- (7) For each waste shipment the following information must~~shall~~ be recorded on a Department form:
 - (a) Waste Generation:
 - (A) The name, address, and telephone number of the asbestos waste generator.
 - (B) The number and type of asbestos-containing waste material containers and volume in cubic yards.
 - (C) A certification that the contents of this consignment are carefully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highways according to applicable regulations.
 - (b) Waste Transportation:
 - (A) The date transported.
 - (B) The name, address, and telephone number of the transporter(s).
 - (c) Waste Disposal:
 - (A) The name and telephone number of the disposal site operator.
 - (B) The name and address or location of the waste disposal site.
 - (C) The quantity of the asbestos-containing waste material in cubic yards.
 - (D) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers.
 - (E) The date asbestos-containing waste is received at disposal site.

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- (8) For the transportation of asbestos-containing waste material:
- (a) The asbestos waste generator must~~shall~~:
 - (A) Maintain the asbestos waste shipment records for at least two years and ensure that all the information requested on the Department form regarding waste generation and transportation has been supplied.
 - (B) Limit access into loading and unloading area to authorized personnel.
 - (C) Mark vehicles, while loading and unloading asbestos-containing waste, with signs (20 in. x 14 in.) that state:

**DANGER
 ASBESTOS DUST HAZARD
 CANCER AND LUNG DISEASE HAZARD
 Authorized Personnel Only**

Alternatively, language that conforms to the requirements of 29 CFR 1926.1101(k)(6) (8/190/94) may be used.

- (b) The waste transporter must~~shall~~:
 - (A) Immediately notify the landfill operator upon arrival of the waste at the disposal site.
 - (B) Provide a copy of the asbestos waste shipment record to the disposal site owners or operators when the asbestos-containing waste material is delivered to the disposal site.
- (9) After initial transport of asbestos-containing waste material the asbestos waste generator must~~shall~~:
 - (a) Receive a copy of the completed asbestos waste shipment record within 35 days, or determine the status of the waste shipment. A completed asbestos waste shipment record must~~will~~ include the signature of the owner or operator of the designated disposal site.
 - (b) ~~Receive~~Have a copy of the completed asbestos waste shipment record within 45 days, or submit to the Department a written report including:
 - (A) A copy of the asbestos waste shipment record ~~for when~~when a confirmation of delivery was not received; and
 - (B) A cover letter signed by the asbestos waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.
 - (c) Keep asbestos waste shipment records, including a copy signed by the owner or operator of the designated waste disposal site, for at least three years. Make all disposal records available upon request to the Department. For an asbestos abatement project conducted by a contractor licensed under OAR 340-248-0120, the records must~~shall~~ be retained by the licensed contractor. For any other asbestos abatement project, the records must~~shall~~ be retained by the facility owner.
- (10) Each owner or operator of an active asbestos-containing waste disposal site must~~shall~~ meet the following standards:
 - (a) For all asbestos-containing waste material received:
 - (A) Ensure that off-loading of asbestos-containing waste material is done under the direction and supervision of the landfill operator or their authorized agent, and that it is accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents the release of visible emissions to the air.

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- (B) Ensure that off-loading of asbestos-containing waste material occurs at the immediate location where the waste ~~will~~^{is to} be buried and restrict public access to off-loading area until waste is covered in accordance with paragraph (H), of this subsection.
- (C) Maintain asbestos waste shipment records for at least 2 years and ensure that all information requested on the Department form regarding waste disposal has been supplied.
- ~~(D) Retain a copy of asbestos waste shipment records for at least three years.~~
- ~~(DE)~~ Immediately notify the Department by telephone, followed by a written report to the Department the following working day, of the presence of improperly enclosed or uncovered waste. Submit a copy of the asbestos waste shipment record along with the report.
- ~~(EF)~~ As soon as possible, and no ~~more~~^{longer} than 30 days after receiving~~pt~~ of the waste, send a copy of the signed asbestos waste shipment record to the asbestos waste generator.
- ~~(FG)~~ Upon discovering a discrepancy between the quantity of waste designated on the asbestos waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the asbestos waste generator. Report in writing to the Department ~~within the 15th day after receiving the waste~~ any discrepancy between the quantity of waste designated on the asbestos waste shipment records and the quantity actually received ~~that which~~ cannot be reconciled between the asbestos waste generator and the waste disposal site within 15 days after receiving the waste. Describe the discrepancy and attempts to reconcile it, and submit a copy of the asbestos waste shipment record along with the report. ~~Include~~^{Identify} the Department assigned asbestos project number in the discrepancy report.
- ~~(GH)~~ Select the waste burial site in an area of minimal work activity that is not subject to future excavation.
- ~~(H)~~ Cover all asbestos-containing waste material deposited at the disposal site with at least 12 inches of soil or six inches of soil plus 12 inches of other waste before running compacting equipment ~~runs~~ over it but not later than the end of the operating day.
- (b) Maintain, until site closure, record of the location, depth and area, and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.
- (c) Excavation or disturbance of asbestos-containing waste material, that has been deposited at a waste disposal site and is covered, ~~shall be~~^{is} considered an asbestos abatement project. The notification for any such project ~~must~~^{shall} be submitted as specified in OAR 340-248-0260 ~~but modified~~^{except} as follows:
 - (A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.
 - (B) State the Reason for disturbing the waste.
 - (C) Explain the ~~p~~Procedures ~~to be used~~^{to be used} for controlling emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. ~~If deemed necessary,~~ ^{The} Department may require changes in the proposed emission control procedures ~~to be used~~.

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- (D) State the location of any temporary storage site and the final disposal site.
- (d) Upon closure of an active asbestos-containing waste disposal site, each owner or operator must shall:
- (A) Comply with all the provisions for inactive asbestos-containing waste disposal sites.
 - (B) Submit to the Department a copy of records of asbestos waste disposal locations and quantities.
 - (C) ~~Furnish upon request, and make~~ Make available during normal business hours and furnish upon request for inspection by the Department, all records required under this section for inspection by the Department.
- (11) The owner or operator of an inactive asbestos-containing waste disposal site must shall meet the following standards:
- (a) ~~Insure that~~ Maintain a cover of at least two feet of soil or one foot of soil plus one foot of other waste ~~be maintained~~.
 - (b) Grow and maintain a cover of vegetation on the area to prevent erosion of the non asbestos-containing cover of soil or other waste materials. ~~or in~~ In desert areas where vegetation would be difficult to maintain, a layer of at least three inches of well-graded, nonasbestos crushed rock may be placed and maintained on top of the final cover instead of vegetation.
 - (c) For inactive asbestos waste disposal sites for asbestos-containing tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used and maintained to achieve the requirements of subsections (a) and (b) of this section, provided prior written approval of the Department is obtained.
 - (d) Excavation or disturbance at any inactive asbestos-containing waste disposal site ~~shall be considered~~ an asbestos abatement project. The notification for any such project must shall be submitted as specified in OAR 340-248-0260, ~~except but modified~~ as follows:
 - (A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.
 - (B) State the reason for disturbing the waste.
 - (C) Explain the procedures to be used to control emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. ~~If deemed necessary, the~~ The Department may require changes in the proposed emission control procedures to be used.
 - (D) State the location of any temporary storage site and the final disposal site.
 - (e) Within 60 days of a site's becoming inactive, request in writing that the Commission issue an environmental hazard notice for the site. This environmental hazard notice will ~~in perpetuity~~ notify in perpetuity any potential purchaser of the property that:
 - (A) The land has been used for the disposal of asbestos-containing waste material; ~~and~~
 - (B) ~~That~~ the survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required for active asbestos disposal sites have been filed with the Department; and
 - (C) The site is subject to the provisions of OAR 340-248-02405 through 340-248-02980.
- (12) ~~Any waste which contains nonfriable asbestos containing material not subject to this rule shall be handled and disposed of using methods that will prevent the release of airborne asbestos containing material.~~

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- (13) Rather than meet the requirements of this rule, an owner or operator may elect to use an alternative packaging, storage, transport, or disposal methods after which has received ~~prior~~ written approval by the Department.

340-248-0290

Nonfriable Asbestos Disposal Requirements

Work practices and procedures for packaging, storing, transporting, and disposal of nonfriable asbestos-containing waste material: The owner or operator of a facility or an activity covered under the provisions of OAR 340-248-0205 through OAR 340-248-0290 and any other source of nonfriable asbestos-containing waste material must meet the following standards:

- (1) There may be no visible emissions to the atmosphere while collecting, processing, packaging, transporting, or disposing of any nonfriable asbestos-containing waste material that is generated by such source.
- (2) All nonfriable asbestos-containing waste materials must be adequately wetted to ensure that they remain wet until deposited at an authorized landfill, and either:
 - (a) Processed into nonfriable pellets or other shapes; or
 - (b) Packaged in leak-tight containers that allow the nonfriable asbestos-containing waste to remain adequately wet until deposited at an authorized landfill. Such containers must be marked as follows:
 - (A) The name of the asbestos waste generator and the location where the waste was generated; and
 - (B) A warning statement:

DANGER
ASBESTOS-CONTAINING MATERIAL

- (3) Nonfriable asbestos-containing roofing materials that are fully encapsulated in a petroleum-based binder and meet the conditions in OAR 340-248-0250(2)(c) are exempt from 340-248-0290(2).
- (4) The interim storage of nonfriable asbestos-containing waste material must protect the waste from tampering by unauthorized persons. The interim storage of nonfriable asbestos-containing waste material is the sole responsibility of the contractor or the owner or operator performing the nonfriable asbestos abatement project.
- (5) All nonfriable asbestos-containing waste material must be deposited as soon as possible by the asbestos waste generator at:
 - (a) A waste disposal site authorized by the Department and operated in accordance with this rule; or
 - (b) A Department-approved site that converts asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of OAR 340-248-0230, Asbestos to Nonasbestos Conversion Operations.
- (6) Persons disposing of nonfriable asbestos-containing waste material must notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator before bringing the waste to the disposal site.
- (7) For each nonfriable waste shipment, the waste generator must provide the generator information contained in OAR 340-248-0280(7).

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- (8) For the transportation of nonfriable asbestos-containing waste material the waste generator must follow the provisions of OAR 340-248-0280(8).
- (9) After initial transport of nonfriable asbestos-containing waste material, the asbestos waste generator must follow the provisions of OAR 340-248-0280(9).
- (10) Each owner or operator of an active nonfriable asbestos-containing waste disposal site must meet the provisions of OAR 340-248-0280(10).
- (11) The owner or operator of an inactive nonfriable waste disposal site must meet the provisions of OAR 340-248-0280(11).
- (12) Rather than meet the requirements of this rule, an owner or operator may use alternative packaging, storage, transport, or disposal methods after receiving written approval from the Department.

Public Input and the Department's Response

The DEQ held four workshops during August prior to the public hearing. At those workshops objections were voiced about new rule OAR 340-248-0270(9) that requires pre-approval for use of all mechanical equipment used on friable asbestos. The industry commented that no approval should be necessary for equipment used within full negative pressure containment. In response, DEQ modified this rule so that it only applies to asbestos projects done outside of full negative pressure containment.

A hearing was convened on September 18, 2001, and public comment was accepted through September 25, 2001. There was no verbal testimony. The Department received written comments from four people. Those written comments are listed below.

Comment	Department Response
<p>Commenter # 1 Schwabe, Williamson & Wyatt</p> <p>"Our main objection is to the addition of the survey requirement in OAR 340-248-240(1) and -0270(1). These provisions require the owner or operator of a facility to conduct a survey of the facility prior to performing any renovation or demolition activities. This inflexible rule will add an unnecessary layer of cost and delay to many routine projects at facilities, where there is no possibility of environmental harm. We suggest that DEQ revise the survey requirement rules to require the survey only for demolition or renovation activities which occur on a facility or portion thereof that was constructed prior to 1980."</p>	<p>Although the survey regulation in OAR 340-248-0270 is new to the DEQ it is not a new requirement. The EPA has had the public and private building survey required since 1993. In addition Oregon OSHA requires pre-construction surveys to determine the presence of asbestos to protect employees from asbestos exposure. Until 1993 DEQ had delegation of the federal asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP). EPA informed DEQ that its rules were deficient because we did not require asbestos surveys prior to performing renovation or demolition projects. DEQ added the survey requirement for Title V sources to the asbestos rules in 1995 to obtain delegation of the Title V program. DEQ intends to obtain full delegation of the federal asbestos NESHAP as part of the Performance Partnership Agreement with EPA. Because the rules will require an asbestos survey for all demolition and renovation projects, DEQ will give owners a six-month grace period after adoption before enforcing this new requirement. During those six months, DEQ will undertake a major outreach effort to ensure the regulated community knows about the survey rule and has time to comply.</p>
<p>Commenter # 2 Workplace Resources</p> <p>1) OAR 340-248-0260(4)(b) has a reference to the Oregon OSHA competent person qualifications as required in 29 CFR 1926.32(f), (2/10/1994). This reference should read...meets the Oregon OSHA competent person qualifications as required in OAR 437, Division 3 "Construction", Subdivision Z, 1926.1101(b) "Competent person" (2/10/1994).</p> <p>The original reference is for OSHA's general requirements for competent person while the updated reference includes those requirements and adds the additional requirements specific to asbestos, that I believe the DEQ originally intended.</p> <p>2) OAR 340-249-0250(2)(c) has a reference to OAR 437, Division 3 "Construction" and 29 CFR 1926.1101(g)(i) through (iii) (1998) the reference to OSHA methods of removal in this rule should have "Subsection Z" added between the words "Construction" and "29 CFR" for accuracy.</p>	<p>Comment 1: DEQ agrees and has changed the reference.</p> <p>Comment 2: DEQ agrees and has changed the reference. This rule has been renumbered and is now OAR 340-248-0250(2)(d).</p>

<p>3) The addition of the "survey" regulation will bring the Department's rules in closer alignment with the EPA "Model Accreditation Program (MAP) and improve the overall industry. The MAP additionally requires the use of a project designer. I believe the Department should add project designer to its rules.</p>	<p>Comment 3: DEQ does not have authority to require project design regulations. If abatement projects are performed correctly, DEQ does not need to regulate project design.</p>
<p>Commenter # 3 Clayton Group Services</p> <p>1) "Does the definition of an Asbestos Containing Material (ACM) include settled dust? If yes, what analytical methodology will be acceptable to DEQ in determining asbestos content in dust? Would survey of all dust for asbestos be required prior to renovation or demolition?"</p> <p>2) OAR 340-248-0010(30) "Negative pressure enclosure" Would a mini-enclosure or glove bag meet this definition when negative pressure enclosure (NPE) is required in OAR 340-248-0270(7)(d)?</p> <p>3) OAR 340-248-0010(31) "Nonfriable asbestos containing material" should this definition be consistent with the proposed definition of friable ACM, specifically "any material containing asbestos" versus "any asbestos-containing material"?</p> <p>4) Is there a documented risk when ACM is broken into four or more pieces? Can air monitoring be used to document ACM that breaks into four or more pieces that does not result in a release of asbestos fibers?</p> <p>5) Under the Asbestos Hazard Emergency Response Act (AHERA) requirements sampling is not required. An inspector can assume a material contains asbestos and in a few cases, can visually inspect the material and determine that it does not contain asbestos (specifically foam rubber, glass, and wood). Would DEQ require sampling of non-suspect materials as defined by AHERA? Would DEQ allow a presumptive survey?</p>	<p>Comment 1, question 1: Yes, settled dust is included in the definition of ACM.</p> <p>Question 2: The methods of analysis referred to in OAR 340-248-0010(8) or their equivalent should be used.</p> <p>Question 3: A survey is required for the presence of asbestos prior to all demolition and renovation projects. If dust is present and is suspected to contain asbestos it should be tested.</p> <p>Comment 2: Yes, if negative pressure is applied to mini enclosures and if a glove-bag is used following Oregon OSHA standards.</p> <p>Comment 3: Yes the definition should be consistent. DEQ changed the definitions of nonfriable and friable asbestos to be consistent.</p> <p>Comment 4, question 1: The DEQ reviewed studies done on projects where nonfriable ACM was removed using a variety of work practices. Results showed a higher risk the more shattered the material became.</p> <p>Question 2: DEQ has found that air monitoring can be useful to show asbestos exposure but is not totally reliable. The use of appropriate work practices can reduce or eliminate the risk of asbestos fiber exposure while air monitoring may only indicate if a hazard is present.</p> <p>Comment 5, question 1: The survey definition describes the sampling of materials suspected to contain asbestos. If a material is not normally suspected to contain asbestos, it need not be sampled.</p> <p>Question 2: OAR 340-248-0270(12) states the Director may approve an alternative to the asbestos abatement work practices and procedures identified in OAR 340-248-0270. DEQ may approve an alternative where an inspector takes a conservative approach and assumes the presence of asbestos in a building material.</p>

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<p>6) If a building owner has a complete survey performed by an AHERA accredited inspector, will a survey be required prior to the start of each renovation or demolition? Will DEQ allow the sampling of homogeneous areas as defined in 40 CFR 763 AHERA? Since the proposed definition of a survey requires sampling from one material in a building, can it be considered representative of the same homogenous material in another part of the building?</p> <p>7) Would written notifications be required for roof cutting machines as allowed in OR-OSHA? Could a definition for mechanical methods be included in OAR 340-248-0010?</p> <p>8) Clayton recommends the use of National Institute Of Safety and Health (NIOSH) Method 7402 for TEM analysis since it is equivalent in fiber size and reporting concentrations to NIOSH 7400 PCM analysis.</p>	<p>Comment 6, question 1: If the original survey meets the current definition of a survey in OAR 340-248-0010(40) and meets the requirements in OAR 340-248-0240(1) and OAR 340-248-0270(1), no new survey would be required.</p> <p>Question 2: See DEQ's response to comment 5, question 2 above.</p> <p>Question 3: The DEQ may allow sampling of homogeneous areas as part of an approved alternative under OAR 340-248-0270(12). The provision listed in comment 5, question 2 above can apply here. However, one may not assume that a homogeneous area has no asbestos present because a similar looking material within the building does not contain asbestos.</p> <p>Comment 7, question 1: If the roof has material that is in friable condition or nonfriable condition, then notification is required under OAR 340-248-0260.</p> <p>Question 2: DEQ does not see the need for a definition of mechanical methods.</p> <p>Comment 8: DEQ intends to obtain delegation of the federal NESHAP for asbestos. OAR 340-248-0270(13)(c)(E) refers to methods that are referenced in the federal NESHAP rules. The NIOSH 7402 method for TEM analysis is not referenced in the federal NESHAP rules.</p>
<p>Commenter # 4 Portland General Electric Company</p> <p>1) OAR 340-248-0010(25) & (31) For both of these definitions, we suggest referring readers to definition - 0010(8) which allows for material to be considered asbestos containing material "if it contains more than 1% asbestos as determined by polarized light microscopy.</p> <p>2) OAR 340-248-0010(37) "shattered" we find this definition to be vague. There is no description of the size of material this definition applies to. Can DEQ clarify how this definition is going to apply i.e. to material less than 3 square feet or 3 linear feet in length or provide some insight why a hazard would be present at the time the fourth break occurs?</p> <p>3) OAR 340-248-205 we find this rule to be vague. What is an accumulation? Any amount? Is it the amount of material at the end of a work shift? Please clarify.</p>	<p>Comment 1: The definition in OAR 340-248-0010(8) Asbestos-containing material applies to all material that contains asbestos. Providing a reference to this definition in -0010(25) and -0010(31) is not necessary.</p> <p>Comment 2: DEQ intended that there be no size exemption when defining shattered. Materials that are less than 3 square feet or 3 linear feet in size that meet all of the criteria identified in OAR 340-248-0250(2)(d) are exempt from OAR 340-248-0110 through -0180 regardless of whether the material is shattered. See response to Clayton Group Service's comment 4 question 1 above for an explanation on risk and nonfriable asbestos-containing material breakage.</p> <p>Comment 3, question 1: Clarification is provided by the definition of "open accumulation" in OAR 340-248-0010(32).</p> <p>Question 2: Yes any amount of material.</p> <p>Question 3: If the material accumulated at the end of a work shift is left piled up and is not packaged for disposal, it could be considered an open accumulation.</p>

<p>4) For a number of years, DEQ and Oregon OSHA have not been consistent in the establishment of training requirements for asbestos workers. Oregon OSHA allows for four (4) different levels of training for Class I-IV work, while the DEQ basically allows for only two (2) levels of training: a) Asbestos Supervisor and b) Asbestos Worker. We suggest citing the correct Oregon OSHA rule reference for asbestos: OAR 437 Division 3 Construction, 12926.1101(f), then consider working with Oregon OSHA to match the DEQ's asbestos training requirements with the Class I-IV employee training requirements.</p>	<p>Comment 4: The appropriate reference in OSHA rules is OAR 437, Division 3 "Construction", Subdivision Z, 29 CFR 1926.1101(b). Oregon OSHA training requirements are not as protective of the public health as DEQ rules require asbestos workers to be. Therefore we do not intend to match up with Oregon OSHA training requirements. DEQ is merely using the Oregon OSHA information to determine the responsible person at nonfriable asbestos abatement projects. DEQ is required to follow the EPA Model Accreditation Program (MAP) for training of asbestos workers and supervisors.</p>
<p>5) Is DEQ going to expect employers to conduct a new survey for each new renovation project conducted within a building made up of similar areas? If so, this process would seem to go against AHERA sampling principles which allow for a set of samples to represent many areas if assessment factors are equal i.e. age of material, appearance, location, etc.</p>	<p>Comment 5, question 1: Refer to answer in DEQ's reply Clayton Group Services, comment 6 question 1.</p> <p>Question 2: DEQ disagrees that this requirement is inconsistent with AHERA requirements. The goal is to identify the presence of asbestos in buildings to avoid potential contamination. This is also the goal of the AHERA program. Appropriately trained inspectors will use their experience and judgement to determine if a material is suspected to contain asbestos.</p>
<p>6) What guidelines are employers or consultants expected to follow regarding the number of clearance samples to collect within a containment (or regulated) area. I.e. 1 sample/1000 square feet? If a requirement for clearance sampling is going to be established, we suggest providing a reference for everyone to follow other wise the requirement is meaningless.</p>	<p>Comment 6: Guidelines for air clearances have been clarified in OAR 340-248-0270(13) to state that one air clearance sample is required for each project containment where more than 160 square feet or 260 linear feet of friable asbestos is removed.</p>
<p>7) OAR 340-248-0290(6) Please define the term "as soon as possible". Is this expected to mean at the end of the workday or shift? Or the completion of a project?</p>	<p>Comment 7: DEQ disagrees that the term needs further explanation. DEQ policy and industry practice defines it to mean at the end of the abatement project, or when a disposal receptacle (drop box, enclosed storage container, etc.) is filled or stored for more than 30 days. This rule is now renumbered in OAR 340-248-0280(4) & -0290(4).</p>
<p>8) OAR 340-248-0280 & -0290 since the requirements for disposing of both types of material are similar i.e. "keeping materials adequately wet", why develop two separate sets of regulations? Why not develop one set of regulations for asbestos containing materials, with a set of exemptions for nonfriable asbestos.</p>	<p>Comment 8, question 1: DEQ separated the disposal requirements to make it clear how each type of material could be landfilled.</p> <p>Question 2: Previously, the disposal regulations were in one rule and there was confusion about the application of that rule to friable and nonfriable asbestos waste.</p>

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State of Oregon
Department of Environmental Quality

Memorandum

Date: October 15, 2001

To: Environmental Quality Commission

From: Kevin V. McCrann

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: September 18, 2001 at 1500 hours
Hearing Location: DEQ Headquarters, 811 SW 6th, Portland, Oregon, Room 3A
Title of Proposal: Amendment, Clarification, and Housekeeping of Asbestos
Rules

The rulemaking hearing on the above titled proposal was convened at 1500 hours. The hearing was closed at 1700 hours. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing would be recorded.

Five people were in attendance; no one signed up to give comments.

Prior to receiving comments, I briefly explained the specific rulemaking proposal and the procedures to be followed during the hearing.

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

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

Yes, the National Emission Standard for Hazardous Air Pollutants (NESHAP) asbestos regulations.

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

The federal requirements are performance and technology based with the most stringent controlling.

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. The Department's existing asbestos rules encompass legislative concerns that are not specifically addressed in the federal requirements. The proposed rule changes do not make the existing Department asbestos requirements more stringent.

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.

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

There is no specific timeline for this rule making, however this timeline does match with the Performance Partnership Agreement and with other NESHAP rule adoption.

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

N/A

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

Yes.

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

N/A

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

No.

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

Yes.

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.

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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Amendment, Clarification and Housekeeping of Asbestos Rules

Fiscal and Economic Impact Statement

Introduction

The proposed rule changes include a proposed nonfriable disposal rule, a demolition and renovation project survey requirement, the addition of a negative pressure enclosure requirement, and several punctuation, form, reference, and omission corrections that are considered housekeeping changes. The proposed rules listed above also include the following proposed definitions that are intended to enhance the asbestos requirements: "accredited inspector," "negative pressure enclosure," "owner or operator," "shattered," and "survey." There are also additions to the following existing definitions, that will clarify their meaning: "asbestos abatement project," "asbestos-containing material," "friable asbestos-containing material," and "nonfriable asbestos-containing material."

The proposed effective date of the proposed rules is February 01, 2002 following adoption by the EQC on January 25, 2002. The start date of formal enforcement actions for the survey rule (OAR 340-248-0270(1)) will be delayed for 6 months so that the Department can ensure the regulated community knows about the survey rule and can give them time to adjust to the survey requirements. Existing asbestos staff in Medford, Coos Bay, Salem, Bend, Pendleton, and Portland will implement these rule revisions.

General Public

None.

Small Business

The Department is adopting a building survey regulation that would affect small businesses; however, this is an existing federal rule and should not cause an economic impact. There may be a minor economic impact on contractors disposing of nonfriable asbestos-containing material.

Large Business

The Department is adopting building survey regulations that would affect large businesses. However, this is an existing federal regulation and should not cause an additional economic impact. There are also some new rules for licensed asbestos contractors that should have no economic impact but will change how asbestos contractors conduct some abatement projects.

Local Governments

No economic impacts.

State Agencies

- DEQ

Existing staff will implement all new rules. There will be no revenues from these rule changes and there will be minimal increase in expenses.

- Other Agencies

Other agencies will not be affected by these rules.

Assumptions

None.

Housing Cost Impact Statement

The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

State of Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Amendment, Clarification and Housekeeping of Asbestos Rules

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rule changes include a proposed nonfriable disposal rule, a demolition and renovation project survey requirement, the addition of a negative pressure enclosure requirement, and several punctuation, form, reference, and omission corrections that are considered housekeeping changes. The proposed rules listed above also include the following proposed definitions that are intended to enhance the asbestos requirements: "accredited inspector," "negative pressure enclosure," "owner or operator," "shattered," and "survey." There are also additions to the following existing definitions, that will clarify their meaning: "asbestos abatement project," "Asbestos-containing material," "friable asbestos-containing material," and "nonfriable asbestos-containing material."

The proposed effective date of the proposed rules is February 01, 2002 following adoption by the EQC on January 25, 2002. The start date of formal enforcement actions for the survey rule (OAR 340-248-0270(1)) will be delayed for 6 months so that the Department can ensure the regulated community knows about the survey rule and can give them time to adjust to the survey requirements. Existing asbestos staff in Medford, Coos Bay, Salem, Bend, Pendleton, and Portland will implement these rule revisions.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes ☐ No ☒

The Department determined that the asbestos program was not a program that significantly affected land use.

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

N/A

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b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes _____ No _____ (if no, explain):

N/A

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

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

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

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

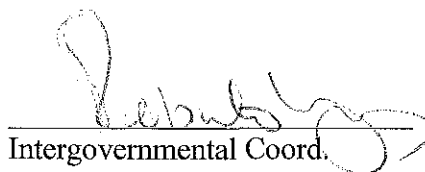
In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

N/A

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.

N/A


Air Quality Division


Intergovernmental Coord.


Date

Implementation Plan for Asbestos Rule Revisions

Updated January 2, 2002

Introduction

DEQ is revising the Oregon asbestos rules contained in OAR 340-248. The asbestos rules identify requirements for contractor licensing, work certification, and work practices for all asbestos abatement projects. Asbestos abatement rules include notification and fee requirements, asbestos abatement work practice requirements, and asbestos waste disposal requirements. Compliance with the asbestos rules is verified through inspections that are scheduled based upon contractor notifications. Compliance or noncompliance is also verified through complaint response. If noncompliance with the asbestos rule is determined, DEQ staff assesses the need for enforcement referral based upon the guidelines contained in the Enforcement Guidance Manual.

DEQ staff began identifying needed rule changes in late 2000. In lieu of an advisory committee, DEQ conducted workshops to discuss the proposed rules in Medford, Bend, Salem and Portland in August 2001. Notice of the workshops was provided to the asbestos industry, building management firms, contractors and landfill operators as well as the general public. Approximately 50 people participated in the workshops. The public comment period on the proposed rules extended from August 15 through September 25, 2001 and a public hearing was held in Portland on September 18, 2001. If adopted by the Environmental Quality Commission on January 25, 2002, the rule changes will take effect starting February 1, 2002. DEQ will implement the rules by educating asbestos abatement contractors, other contractors that may work with materials that contain asbestos, landfill operators and building owners on the new requirements. DEQ will undertake an extensive outreach effort to these audiences as well as homeowners during the first six months after rule amendments become effective. DEQ will delay enforcement of the new survey requirement described below for six months after rule adoption to allow staff time to educate building owners and ensure that building owners have time to learn, understand and comply with the survey requirement.

Proposed rule changes

The proposed amendments make the asbestos rules easier to understand and enhance DEQ's ability to determine compliance and enforce the rules. The proposed amendments:

- Add definitions and expand definitions to make it easier for people to understand what they have to do to comply with the asbestos rules and to make definitions consistent and clearer.
- Separate requirements for nonfriable and friable asbestos waste disposal to eliminate confusion about how to handle the two types of asbestos waste disposal.
- Add a survey requirement to ensure asbestos materials are identified before work begins on any demolition or renovation project to prevent exposure of the public to asbestos. The addition of this rule will also allow DEQ to obtain delegation of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP).

Building survey requirement

DEQ is proposing a building survey requirement to determine the presence of asbestos-containing materials before all demolition or renovation projects. The survey will require facility owners to

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determine if there is asbestos containing material in or on their buildings so they can handle these materials properly before any public exposure occurs.

Residential owners that perform renovation, demolition, or asbestos abatement on their owner occupied home will be exempt from the survey requirement. However, if a contractor is performing demolition or renovation on a single-family residence, the contractor or homeowner must complete a survey before beginning the project.

DEQ's survey rule will also require the use of an accredited inspector. The survey inspector must have taken the EPA training at some time, but does not need to be currently certified. DEQ wants to ensure that the person doing the inspection is qualified and understands what they need to look for to complete a survey. The survey training is in accordance with the Asbestos Hazard Emergency Response Act (AHERA) program regulations and the Model Accreditation Program training rules in 40 CFR Part 763.

There are several companies that provide inspector training that are prepared to offer inspector training classes as soon as the rules become effective to ensure that inspectors are trained and able to conduct asbestos surveys. The training is 3 days and to date there are approximately 160 persons with current accreditation available to perform the surveys and many others that have had the training but are not currently accredited.

Anyone may assume that the material to be removed contains asbestos and have it removed as an asbestos abatement project without conducting a survey beforehand. DEQ has the discretion to approve alternatives to the asbestos requirements under OAR 340-0248-0270(12). An owner or operator that chooses to assume that building materials contain asbestos must inform DEQ before starting their project. There will also be materials that obviously contain asbestos and materials that have never contained asbestos that DEQ may eventually provide blanket exemptions from the survey requirement under OAR 340-0248-0270(12) for those materials. By the end of February 2002, the DEQ asbestos group will develop guidance and handouts that address when a survey is needed. There will be many situations that DEQ asbestos staff must initially evaluate on a case by case basis.

If the rules are adopted by EQC in January, DEQ will delay formal enforcement of the survey regulation for six months. The implementation table on page 5 details how DEQ will implement the rule and meet outreach goals during the first six months after rule amendments are adopted.

If a construction project is done properly but the owner or operator does not do the survey first, then the survey violation is a Class II violation per OAR 340-0012-0050(2)(k) and DEQ would write a notice of noncompliance without referring the case for enforcement. If a person does not perform a survey and the demolition or renovation project results in asbestos exposure, then the survey violation is a Class I violation under OAR 340-0012-0050(1)(p).

Nonfriable waste disposal requirements

A new section is added to the proposed rules clarifying disposal requirements for nonfriable asbestos-containing waste materials (ACWM). This section is being added because staff have identified many situations where materials that are generally considered to be nonfriable (e.g., vinyl floor tile, cement asbestos board, AC water pipe and some other materials), were not being handled properly during

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disposal to ensure that the materials remained in nonfriable condition. In addition, once the nonfriable waste was delivered to the landfill the waste did not remain in nonfriable condition because of normal activities by the landfill operator, such as covering the material with soil or other waste and compaction by heavy equipment.

The proposed rule change creates a nonfriable disposal section in the rule to help prevent the release of asbestos fibers from these materials and give waste generators and landfill operators clear direction regarding the Department's requirements for the disposal of nonfriable ACWM.

A key change is the requirement for nonfriable ACWM to be packaged in a leak-tight container. The waste generator is responsible for this requirement. The solid waste staff suggested that no designation of container type be included in the proposed rules but require containers to remain leak-tight to prevent fiber migration. The package must have a warning statement: "DANGER ASBESTOS-CONTAINING MATERIAL". This statement can be written on the package with a permanent marker or written on a label and attached to the package.

Landfills authorized to receive nonfriable ACWM must ensure that the ACWM is properly packaged, that a waste shipment form (ASN-4) is submitted at the time of disposal, and that the ACWM is covered as specified in rule and that a record is kept that identifies the location, depth and quantity of the nonfriable waste.

Currently landfills authorized to handle friable asbestos waste follow these requirements. Prior to adding this section to the proposed rule, each asbestos inspector queried a number of landfills in their region. Most of the large landfills were already following requirements detailed in the new rule for nonfriable asbestos waste. Many of the disposal problems and violations involved nonfriable waste being received at smaller landfills that predominantly receive only nonfriable waste. The proposed nonfriable disposal rule will clarify necessary requirements making a uniform requirement for all landfills that accept nonfriable asbestos waste.

DEQ plans an education program for operators at landfills that are authorized to handle both friable and nonfriable asbestos to ensure proper handling procedures are followed. The timeline for this education program is detailed in the table starting on page 5.

Other issues

Currently DEQ does not have delegation of the federal NESHAP because of four problems identified in 1995. One of these problems was that our rules are not as stringent as EPA's, because DEQ does not require a survey prior to a demolition or renovation project to determine the presence of asbestos. EPA's rule requires a survey for projects involving more than 160 square or 260 linear feet of asbestos-containing material. DEQ's survey rule is more stringent than the NESHAP because DEQ rules apply to a larger audience. EPA limits application of the survey rule to projects involving more than 160 square or 260 linear feet of asbestos-containing material being removed and apartment complexes greater than 4 dwelling units. DEQ asbestos rules apply to all projects where more than 3 square or 3 linear feet of asbestos is being removed and in any structure except work done by an owner occupant in their single family residence. In addition, the self-audit privilege law and a couple of other minor issues prevented EPA from delegating the NESHAP to DEQ. Legislative changes during the last session corrected the audit privilege problem that prevented delegation of any federal air quality requirements to Oregon. The

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proposed rule revisions correct the other deficiencies. DEQ expects to request delegation of the federal asbestos NESHAP upon completion of this rule making. EPA Region 10 staff reviewed the proposed rules and agrees that the rules contain the necessary language to grant delegation.

OSHA also requires a survey requirement to protect any employees working on materials that may contain asbestos materials so the DEQ survey requirement is only more stringent than the combined EPA/OSHA requirements in those cases where a sole proprietor contractor is removing materials less than EPA's thresholds.

DEQ had intended to add a rule that required residential owner-occupants to provide a notification when performing asbestos removal work on the outside of their residences. During the rule adoption process reviewers had a concern that DEQ had not done sufficient outreach to residential homeowners to justify introducing a new rule requiring notifications. DEQ decided to remove the requirement from the rule package and do more outreach to residential owners in lieu of a rule change. The residential outreach effort and its timeline are detailed in the table beginning on page 5.

Current educational guidance available

For the past three years, DEQ has focused its education and technical assistance efforts on residential homeowners, small general and construction contractors, and projects where non-friable asbestos-containing materials were being removed. DEQ targeted many of the groups listed below with mass mailings, provided expertise and information at home remodeling shows, and made presentations to associations and other industry groups. DEQ created advisories that detail the potential danger from asbestos exposure and the rule requirements for handling and disposal of asbestos materials for mailings to the following groups:

Advisory documents

- Homeowners (translated into Korean, Russian, and Spanish)
- Flooring contractors
- Contractors that work with asbestos containing water pipe
- Furnace contractors
- Manufactured home dealers and contractors
- Roofing contractors
- Demolition contractors
- Permitted sources
- Building owners and operators
- General construction contractors
- Landfill operators
- Siding contractors

In addition to these advisories DEQ created guidance documents for residential owner occupants to instruct them on the safest way they may remove friable asbestos materials. DEQ also created several nonfriable removal documents that are made available to any person that chooses to perform a nonfriable asbestos abatement project. All of these documents are being revised to include the new requirements and will be available beginning March 1, 2002 at DEQ regional offices or on DEQ's website.

IMPLEMENTATION PLAN SCHEDULE OF TASKS

Asbestos staff will carry out most implementation tasks. Review and input is being sought from the AQ Division outreach representative, Elizabeth Vowels and the Office of Communication and Outreach (OCO). Asbestos inspectors will work with solid waste permit writers to ensure that nonfriable asbestos disposal requirements are incorporated into solid waste permits and will conduct some joint visits to landfills as needed with solid waste inspectors. No new staff will be needed to implement the revised rules. These implementation efforts will take place during the first part of 2002 and replace existing education and outreach efforts and perhaps some inspections that otherwise would be conducted by asbestos staff. FTE are calculated based upon a biennial basis (0.01 FTE equals roughly one week's effort by one person).

NUM	TASK	LEAD STAFF	TIMELINE	FTE
1	EQC adopts rule changes at January 25, 2002 meeting	Dave Wall presents rule amendments to EQC	December 1, 2001 to January 25, 2002	0.02
2	Provide technical assistance to building owners in lieu of enforcement of the survey requirement to ensure that building owners and contractors learn, understand and comply with the new survey requirement. Technical assistance means phone discussions, meetings, and other opportunities to inform building owners and contractors of the new survey requirement. Targeted outreach activities are identified below. The activities identified here reflect individual inspector time spent working with individual building owners or contractors.	Dave Wall (0.05 FTE) Kevin McCrann (0.05 FTE) Steve Croucher (0.05 FTE) Martin Abts (0.05 FTE) Frank Messina (0.05 FTE) Dottie Boyd (0.05 FTE) Tom Hack (0.05 FTE)	February 1, 2002 to August 31, 2002	0.35
3	Conduct a statewide asbestos team meeting to finalize all implementation efforts, review revised documents, make additional assignments and discuss implementation issues identified to date. Invite Elizabeth Vowels from AQ as well as OCO staff. DEQ and LRAPA asbestos staff will meet 2 to 3 times per year to discuss how the asbestos rules are being implemented to maintain consistency throughout the program.	Jane Hickman, OCE Dottie Boyd, WR Salem Martin Abts, WR Coos Bay Steve Croucher, WR Medford Frank Messina, ER Bend Tom Hack, ER Pendleton Kevin McCrann, NWR Elizabeth Vowels and OCO staff	Audrey O'Brien, NWR John Ruscigno, WR Salem John Becker, WR Medford Peter Brewer, ER Bend Susan Patterson, NWR Dave Wall, NWR	Half day meeting the week of January 14, 2002 0.016

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NUM	TASK	LEAD STAFF	TIMELINE	FTE
4	Discuss implementation tasks with DEQ's Office of Communication and Outreach. Obtain review and input on guidance documents, fact sheets and advisories. Obtain input on the most effective ways for each region to reach out to the regulated community.	NWR Dave Wall – OCO Marcia Danab ER Frank Messina and Tom Hack – OCO Phil Hodgen WR Dottie Boyd, Steven Croucher, Martin Abts – OCO Jennifer Boudin	Discuss region specific efforts during January 2002. Marcia Danab is reviewing draft implementation plan and will provide comments prior to 1/14/02	0.01
5	Create and update information packages and advisories that detail what individuals and businesses need to do to comply with all of the asbestos rules. Information packages and advisories to be available through each DEQ regional office and on the DEQ website.	Dottie Boyd – WR Salem Janice Fischer – AQ	From 11/7/2001 through 2/28/2002	0.05
6	Hold workshops and give presentations for contractor associations and other groups that request our assistance relaying rule information in detail. Prepare generic Power Point presentation that each region can use or modify to suit their audiences.	Dave Wall – NWR Dottie Boyd – WR Salem Each region's asbestos people may give presentations as asked.	Draft presentation by 1/14/2002. Final By 2/1/02	0.02
7	Prepare press releases to share with local newspapers. Prepare articles for various construction contractor associations. Prepare articles for the Construction Contractors Board newsletter that details the new requirements and give information about whom to contact when questions about the asbestos rules arise. Work with appropriate OCO contacts to approach newspapers around the state.	Dave Wall will work with Marcia Danab to draft a generic press release for each regional office to use. Dave will create a list of various association newsletters that we would like to publish articles in. Dave and Dottie Boyd will draft generic articles for inclusion in newsletters	From 1/14/02 through 2/28/02	0.04
8	Work with OCO to develop public service announcements for TV, radio and other broadcast media.	Dave Wall – NWR Dottie Boyd – WR Salem Phil Hodgen – ER , radio announcements	From 1/1/02 through 2/15/02	0.06

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NUM	TASK	LEAD STAFF	TIMELINE	FTE
9	Place more Yellow Pages ads in phone books in areas outside Portland, Medford, Bend, and Salem.	Dave Wall – NWR Tom Hack – ER Pendleton	2/1/2002 through 3/31/2002	0.02
10	DEQ asbestos staff will make themselves available to associations and other groups to make presentations that discuss the asbestos rule changes and how they may affect each group using the generic presentation prepared above or modifying it to be region specific.	All asbestos staff	Ongoing basis with special emphasis to try to do this between 2/1/2002 and 8/31/2002	0.1
11	DEQ asbestos staff in each region will contact local building codes and planning offices to encourage them to handout information about asbestos requirements to persons that apply for their permits.	Martin Abts – WR Coos Bay will investigate and determine a workable and consistent approach for this contacting other governmental offices.	From 1/14/2002 through 2/28/2002	0.01
12	The asbestos team will work with the solid waste staff in each region to ensure that each landfill is contacted about the new disposal requirements and at landfill operator training sessions.	Regional asbestos and solid waste staff	From 2/1/2002 through 8/32/2002	0.1
13	Develop and promote movie theater ads about the dangers and proper handling of asbestos containing materials during renovation or demolition projects.	NWR Dave Wall Elizabeth Vowels AQ Bill Knight/Marcia Danab OCO	2/1/2002 through 4/30/2002	0.05
14	Develop additional fact sheets and guidance documents for homeowners and building owners explaining the risks of asbestos and the appropriate methods for handling asbestos containing materials. Develop additional outreach efforts to contact these audiences.	Dottie Boyd – initial guidance documents. All Asbestos Staff to develop additional outreach efforts	Initial guidance documents by 2/28/2002. Additional outreach – ongoing effort.	0.05

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NUM	TASK	LEAD STAFF	TIMELINE	FTE
15	Develop program to provide asbestos information materials to retail outlets that may sell materials that replace asbestos-containing materials. (e.g., cement siding, ceiling and floor tiles, other flooring, etc.). Expand existing efforts with Home Depot to other large retailers/hardware stores and building material suppliers.	Flush out initial approach at January 2002 all asbestos staff meeting. Identify individuals to follow up with this task.	Follow up from 2/1/2002 through 4/30/2002	0.05
16	Develop and implement a landfill education program designed to inform landfill owners and operators about the new disposal requirements and the nonfriable disposal rules.	Dottie Boyd and Martin Abts – Asbestos Staff Don Bramhill and Mark Reeves – Solid Waste Staff	2/01/2002 through 8/31/2002	0.05
17	Develop guidance and handouts that address when a survey is needed, what must be surveyed, what training an inspector must have and what DEQ will accept in lieu of a survey. This guidance was discussed initially Nov. 7, 2001.	Dave Wall with input from the asbestos staff.	February 1, 2002	0.04
18	Other – DEQ asbestos staff and managers expect to identify new tasks and activities to expand education, outreach and technical assistance efforts to contractors, building owners and the public as implementation of the revised rules continues.	Asbestos staff	Ongoing	??

Work Off the Plate

Approximately 10-30% of regional asbestos staff time is spent providing technical assistance and education and outreach to home owners, building owners, contractors and others that request information or assistance in interpreting the asbestos rules. This implementation plan assumes that many of the tasks identified here will be completed as part of that ongoing technical assistance and educational work. The plan also assumes that that effort will be expanded at least for the first six months after the rule amendments become effective to reach out to persons DEQ has not contacted in the past such as homeowners in general and insurance adjusters. Compliance and inspection work makes up approximately 35-40% of a regional person's time. Staff will trade off and not complete as many inspections during the first six months after rule amendments are adopted. DEQ consistently exceeds its EPA commitment to annually inspect 15% of the notified asbestos abatement projects. DEQ anticipates it will aim to just meet the 15% inspection commitment level while diverting resources to implement the rule changes.

Solid waste staff have been briefed about the upcoming asbestos rule changes and have informed asbestos staff that permitting issues will be straightforward and that joint outreach to landfill operators is something that solid waste staff are willing to undertake. Staff from the Office of Communication and Outreach has provided initial feedback on the implementation tasks identified to date and are gearing up to assist with implementation efforts. Coordination with LRAPA has been ongoing and will continue. Jane Hickman in the Office of Compliance and Enforcement has been intimately involved in these rule revisions and her input will continue in the form of comments at statewide meeting and review of guidance documents and other outreach efforts. This is considered part of her ongoing asbestos duties and should not require that other work come off her plate so she can assist with implementation efforts.

Ongoing Implementation

As noted in #17 in the table above, the asbestos team anticipates that new ideas and tasks will be identified as implementation of the rule revisions gets underway. As new tasks are identified, individuals will be assigned to carry them out and identify timelines for completion. This plan is a working document that is expected to change over time as DEQ learns what activities and tasks work best, as new ideas and tasks are identified and as tasks are completed and checked off.

1/25/02 CAC Meeting, Item D

Errata Sheet for Attachment A of Agenda Item D, "General Clarification and Enhancement of Asbestos Rules"

The proposed amendments to OAR 340-248-0250(2)(a)(A) and (2)(b) should read as follows. These changes are incorporated in Attachment A-2, which replaces Attachment A of the Department's staff report for Agenda Item D.

340-248-0250

Asbestos Abatement Projects

(2)...

(a) Asbestos abatement conducted inside a single private residence:

(A) by the owner is exempt from OAR 340-248-0270(1), if the residence is not a rental property, a commercial business, or intended to be demolished; or ...

(b) Asbestos abatement conducted outside of a single private residence by the owner is exempt from OAR 340-248-0260 and -0270(1), if the residence is not a rental property, a commercial business, or intended to be demolished.

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DIVISION 248

ASBESTOS REQUIREMENTS

340-248-0005

Applicability

OAR 340-248-0010 through 340-248-0290 applies to asbestos milling, manufacturing, fabricating, abatement, disposal, or any situation where a potential for exposure to asbestos fibers exists.

340-248-0010

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) "Accredited inspector" means a person that has completed training and received accreditation under 40 CFR Part 763 Subpart E, Appendix C (Model Accreditation Plan), Section B (Initial Training), Subsection 3 (Inspector), (1994).
- (24) "Accredited trainer" means a provider of asbestos abatement training courses authorized by the Department to offer training courses that satisfy requirements for worker training.
- (32) "Adequately wet" means to sufficiently mix or penetrate asbestos-containing material with liquid to prevent the release of particulate asbestos materials. An asbestos-containing material is not adequately wetted if visible emissions originate from that material. Precipitation The absence of visible emissions is not an appropriate method for sufficient evidence of being adequately wetting asbestos-containing material.
- (43) "Agent" means an individual who works on an asbestos abatement project for a contractor but is not an employee of the contractor.
- (54) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.
- (65) "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling, disturbance, or disposal of any asbestos-containing material with the potential of releasing asbestos fibers from asbestos containing material into the air. Emergency fire fighting is not an asbestos abatement project.
- (76) "Asbestos manufacturing operation" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos with any other material(s) including commercial asbestos, and the processing of this combination into a product as specified in OAR 340-248-0210(3).
- (87) "Asbestos-containing material" means any material, including particulate material, that contains more than one-percent asbestos as determined using the method specified in 40 CFR Part 763 Appendix E, Subpart E, Section 1, Polarized Light Microscopy by weight, including particulate asbestos material.
- (98) "Asbestos mill" means any facility engaged in the conversion or any intermediate step in the conversion of asbestos ore into commercial asbestos.

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- (109) "Asbestos tailings" mean any solid waste product of asbestos mining or milling operations that which contains asbestos.
- (110) "Asbestos ~~w~~Waste generator" means any person performing an asbestos abatement project or any owner or operator of a source subject to OAR 340-248-00405 through 248-02980 whose act or process generates asbestos-containing waste material.
- (124) "Asbestos-containing waste material" means any waste that which contains asbestos tailings or any commercial asbestos, and is generated by a source subject to OAR 340-244-0200 and OAR 340-248-0210 through 340-248-02980. This term includes, but is not limited to, filters from control devices, asbestos abatement project waste, and bags or containers that previously contained commercial asbestos.
- (132) "Asbestos waste shipment record" means the shipment document, required to be originated and signed by the asbestos waste generator; used to track and substantiate the disposition of asbestos-containing waste material.
- (143) "Certified supervisor" means a person who has a current Oregon supervisor certification card.
- (154) "Certified worker" means a person who has a current Oregon worker certification card.
- (165) "Contractor" means a person that undertakes for compensation an asbestos abatement project for another person. As used in this Division, "compensation" means wages, salaries, commissions and any other form of remuneration paid to a person for personal services.
- (176) "Commercial asbestos" means asbestos that which is produced by extracting asbestos from asbestos ore.
- (187) "Commission" means the Environmental Quality Commission.
- (198) "Demolition" means the wrecking or removal of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.
- (2049) "Department" means the Department of Environmental Quality.
- (210) "Director" means the Director of the Department of Environmental Quality.
- (224) "EPA" means the U.S. Environmental Protection Agency.
- (232) "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.
- (243) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.
- (254) "Friable ~~asbestos-containing m~~Material" means any asbestos-containing material that hand pressure can be crumbled, pulverized or reduced to powder by hand pressure when dry. Friable asbestos material includes any asbestos-containing material that is shattered or subjected to sanding, grinding, sawing, abrading or has the potential to release asbestos fibers.
- (265) "HEPA filter" means a high efficiency particulate air filter capable of filtering 0.3 micron particles with 99.97 percent efficiency.
- (276) "Inactive asbestos-containing waste disposal site" means any disposal site for asbestos-containing waste where the operator has allowed the Department's solid waste permit to lapse, has gone out of business, or no longer receives asbestos-containing waste.

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- (287) "Interim storage of asbestos-containing material" means the storage of asbestos-containing waste material ~~that~~which has been placed in a container outside a regulated area until transported to an authorized landfill.
- (298) "Licensed" means a contracting entity has met the Department's training and experience requirements to offer and perform asbestos abatement projects and has a current asbestos abatement contractor license. For purposes of this definition, a license is not a permit subject to OAR Chapter 340, Division 14.
- (30) "Negative pressure enclosure" means any enclosure of an asbestos abatement project area where the air pressure outside the enclosure is greater than the air pressure inside the enclosure and the air inside the enclosure is changed at least four times an hour by exhausting it through a HEPA filter.
- (3129) "Nonfriable asbestos-containing material" means any asbestos-containing material containing more than one percent (1%) asbestos as determined by weight that when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure. Nonfriable asbestos-containing material does not include material that has been subjected to shattering, sanding, grinding, sawing, or abrading or that has the potential to release asbestos fibers.
- (320) "Open accumulation" means any accumulation, including interim storage, of friable asbestos-containing material or asbestos-containing waste material other than material securely enclosed and stored as required by this chapter~~OAR 340-248-0280~~.
- (33) "Owner or operator" means any person who owns, leases, operates, controls or supervises a facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.
- (344) "Particulate asbestos material" means any finely divided particles of asbestos material.
- (352) "Person" means individuals, estates, trusts, corporations, associations, firms, partnerships, joint stock companies, municipal corporations, political sub-divisions, the state and any agencies thereof, and the ~~f~~Federal ~~g~~Government and any agencies thereof.
- (363) "Renovation" means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or removed are excluded.
- (37) "Shattered" means the condition of an asbestos-containing material that has been broken into four (4) or more pieces from its original whole condition.
- (384) "Small-scale, short-duration activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:
- (a) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;
 - (b) Replacement of an asbestos-containing gasket on a valve;
 - (c) Installation or removal of a small section of wallboard;
 - (d) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those ~~that~~which can be contained in a single glove bag;
 - (e) Minor repairs to damaged thermal system insulation ~~that~~which does not require removal;
 - (f) Repairs to asbestos-containing wallboard;
 - (g) Repairs, involving encapsulation, enclosure, or removal, ~~to~~f small amounts of friable asbestos-containing material in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those ~~that~~which can be contained in a single prefabricated mini-enclosure. Such an enclosure ~~must~~shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

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- (395) "Structural member" means any load-supporting member of a facility, such as beams and load-supporting walls; or any non-supporting member, such as ceilings and non-load-supporting walls.
- (40) "Survey" means to conduct a detailed inspection of a building, structure, or facility for the presence of asbestos-containing material. The survey must be conducted by an accredited inspector and include sampling of materials suspected to contain asbestos, analysis of those samples to determine asbestos content, and evaluation of the materials in order to assess their condition.
- (4136) "Training Day" means a day of classroom instruction that consists of at least seven hours of actual classroom instruction and hands-on practice.

Asbestos Licensing and Certification Requirements

340-248-0100

Applicability

- (1) OAR 340-248-01005 through 340-248-0180:
- (a) Apply to asbestos contractor licensing, worker and supervisor certification, asbestos abatement trainer accreditation, and the Department's administration and enforcement by the Department;
 - (b) Apply to any asbestos abatement project as defined in 340-248-0010(4); and
 - (c) Provide training, licensing, and certification standards for implementation of OAR 340-248-02050 through 340-248-0280, Emission Standards and Procedural Requirements for Asbestos.
- (2) OAR 340-248-01005 through 340-248-0180 do not apply to:
- (a) An asbestos abatement project exempted by OAR 340-248-0250(24)(a); and
 - (b) PTE persons performing vehicle brake and clutch maintenance or repair.

340-248-0110

General Provisions

- (1) ~~Any p~~Persons performing engaged in an asbestos abatement project must be certified, unless exempted by OAR 340-248-0100(23).
- (2) An owner or operator of a facility ~~may shall~~ not allow any persons other than those employees of the facility owner or operator who are appropriately certified or a licensed asbestos abatement contractor to perform an asbestos abatement project in or on that facility. ~~Facility owners and operators are not required to be licensed to perform asbestos abatement projects in or on their own facilities.~~
- (3) ~~Any~~Each contractor ~~that performs~~ engaged in an asbestos abatement project must be licensed by the Department under the provisions of OAR 340-248-0120.
- (4) ~~Any~~Each person acting as the supervisor for any asbestos abatement project must be certified by the Department as a supervisor under the provisions of OAR 340-248-0130.
- (5) ~~Any~~Each person engaged in or working on any asbestos abatement project must be certified by the Department as a worker or as a supervisor under the provisions of OAR 340-248-0130.
- (6) A certified supervisor is required to be present on each asbestos abatement project other than a small-scale short-duration activity.

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- (7) Each training provider for asbestos abatement certification must be accredited by the Department under the provisions of OAR 340-248-0140.
- (8) Each person licensed, certified, or accredited by the Department under the provisions of this Division ~~must~~ shall comply with OAR 340-248-00405 through 340-248-02980 and. Such persons shall maintain a current address on file with the Department. Failure to comply with this paragraph will, or be subject such persons to suspension or revocation of license, certification, or accreditation.
- (9) ~~The Department may accept evidence of violations of this Division from representatives of federal, state, or local agencies.~~
The Department may require training providers to ask applicants to provide their social security number and to retain records of those numbers for the Department's use in identifying and tracking workers and supervisors. Trainers must notify each applicant that providing their social security number is voluntary and explain how the Department proposes to use the social security number.
- (10) A regional air pollution authority which has been delegated authority under OAR 340-244-0020(2) may inspect for and enforce against violations of licensing and certification regulations. A regional air pollution authority may not approve, deny, suspend or revoke a training provider accreditation, contractor license, or worker certification, but may refer violations to the Department and recommend denials, suspensions, or revocations.
- (11) ~~Any person who conducts an asbestos abatement project shall insure accessibility for the Department to perform inspections.~~

340-248-0120**Contractor Licensing**

- (1) ~~Any cContractors performing an asbestos abatement project must~~ shall be licensed by the Department to perform asbestos abatement.
- (2) Application for licenses ~~must~~ shall be submitted on forms prescribed by the Department and ~~must~~ shall be accompanied by the following:
 - (a) Documentation that the contractor, or the contractor's employee representative, is a certified supervisor;
 - (b) Certification that the contractor has read and understands the applicable Oregon and federal rules and regulations on asbestos abatement and agrees to comply with the rules and regulations;
 - (c) A list of all certificates or licenses, issued to the contractor by any other jurisdiction, that have been suspended or revoked during the past year, and a list of any asbestos-related enforcement actions taken against the contractor during the past year;
 - (d) A list of additional project supervisors for asbestos abatement projects and their certification numbers;
 - (e) A summary of all asbestos abatement projects conducted by the contractor during the past 12 months;
 - (f) A license application fee.
- (3) The Department will review the application for completeness. If the application is incomplete, the Department ~~will~~ shall notify the applicant in writing of the deficiencies.
- (4) The Department shall deny, in writing, a license to a contractor who has not satisfied the license application requirements.

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- (5) The Department ~~will~~shall issue a license to the applicant after the license is approved.
- (6) ~~The Department shall grant~~ A license is valid for a period of 12 months but will. Licenses may be extended pending during the Department's review of a renewal application provided the renewal application is filed before the expiration date of the contractor's license.
- (7) Renewals:
 - (a) License renewals must be applied for in the same manner as required for the initial license;
 - (b) For renewal, the contractor or employee representative must have a valid certified supervisor card;
 - (c) The complete renewal application ~~must~~shall be submitted no later than 60 days before ~~prior to the~~ license expiration date.
- (8) The Department may suspend or revoke a license if the licensee:
 - (a) Fraudulently obtains or attempts to obtain a license; or
 - (b) Fails at any time to satisfy the qualifications for a license; or
 - (c) Fails to meet any applicable state or federal standard relating to asbestos abatement; or
 - (d) Permits an untrained or uncertified worker to work on an asbestos abatement project; or
 - (e) Employs a worker who fails to comply with applicable state or federal rules or regulations relating to asbestos abatement; or
 - (f) Fails to make current certification cards readily available at worksites for inspection by the Department; or
 - (g) Fails to pay delinquent application fees, notification fees, ~~or~~ and civil penalty assessments.
- (9) A contractor whose license has been revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

340-248-0130**Certification**

- (1) ~~Any pPersons working on an asbestos abatement projects must~~shall be either an Oregon certified supervisor or certified worker. at one or more of the following levels:
 - ~~(a) Certified supervisor. A certified supervisor may work as a certified worker without having separate certification as a worker;~~
 - ~~(b) Certified worker.~~
- (2) Application for Certification-General Requirements:
 - (a) ~~Any pPersons applying wishing to become a certified supervisors or persons relying on prior training, as provided described in OAR 340-248-0160 must~~shall submit applications to the Department, through the training provider, for certification;
 - (b) ~~Any pPersons applying for worker certification without prior training and any certified workers taking a refresher courses must~~shall apply directly to the accredited training provider using Department-approved forms.
- (3) ~~An~~ application to be a certified supervisor must~~shall~~ include:
 - (a) Documentation that the applicant has successfully completed the supervisor supervisor-level training and examination as specified in OAR 340-248-0150 and the Department's **Asbestos Training Guidance Document**; and
 - (b) Documentation that the applicant has:

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- (A) Been certified as a worker and has at least three months of asbestos abatement experience, including time on powered air purifying respirators and experience on at least five separate asbestos abatement projects; or
- (B) ~~SHas~~ successfully completed certified worker training and six months of general construction, environmental or maintenance supervisory experience demonstrating skills to independently plan, organize and direct personnel in conducting an asbestos abatement project. The Department ~~will~~ shall have the authority to determine if any applicant's experience satisfies those requirements.
- (4) An application to be a certified worker ~~must~~ shall include documentation that the applicant ~~applying to be a certified worker~~ has successfully completed the level of training and examination as specified in OAR 340-248-0150 and the Department's **Asbestos Training Guidance Document**.
- (5) A typed certification card and a certificate of course completion ~~will~~ shall be issued by the training course provider to an applicant who has fulfilled the requirements of certification.
- (6) Certification at all levels is valid for ~~a period of~~ one year after the date of issue.
- (7) Annual Recertification:
 - (a) ~~Previously c~~ Certified Oregon workers and supervisors must be approved by a training provider before apply through the training provider to take a recertification refresher courses;
 - (b) ~~Training providers must ensure a~~ Applicants for re-certification must possess a valid certification card in order to take the before granting refresher course admission;
 - (c) All c Certified supervisors and workers must complete an their annual recertification course during the three months before prior to the expiration date of their certification card. A c Certified supervisors ~~and or~~ workers may reinstate certification by taking the appropriate refresher course up to one year after the expiration date of the current Oregon certification card. After that time, such persons must take the initial course to be recertified.
- (8) A current worker certification card ~~must~~ shall be readily available for inspection by the Department at each asbestos abatement project for each worker or supervisor engaged in asbestos abatement activities.
- (9) Suspensions and Revocations: The Department may suspend or revoke a person's certification ~~if for~~ the person:
 - (a) ~~Failure~~ to comply with state or federal asbestos abatement regulations; or
 - (b) ~~Performing~~ asbestos removal without having physical possession of a current certification card; or
 - (c) ~~Permitting~~ the use or duplication of one's certification card or certificate by another; or
 - (d) ~~Obtaining~~ certification from a training provider that does not have the Department's or the EPA's approval to offer training for the particular discipline ~~from the Department or EPA~~; or
 - (e) ~~Failure~~ to pay delinquent application fees, ~~or~~ and civil penalties.
- (10) A person whose certification has been revoked may not apply for recertification until 12 months after the revocation date.

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(1) General:

- (a) Any person may apply to become an Oregon accredited asbestos training provider ~~courses or certification requiring accreditation under this Division may be provided by any person;~~
- (b) Only training providers accredited by the Department may offering training in Oregon to satisfy these certification requirements contained in this Division ~~must be accredited by the Department;~~
- (c) The Department will accredit each individual training course ~~shall be individually accredited by the Department;~~
- (d) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles;
- (e) The Department may require any accredited training provider to use examinations developed by the Department in lieu of the examinations offered by the training provider;
- (f) Training course providers must shall permit representatives of the Department or its designee to attend, evaluate and monitor any training course without charge. The Department is not required to give advance notice of its inspection. The Department may suspend or withdraw approval of a training course based upon the grounds criteria specified in OAR 340-248-0140(4);
- (g) All initial worker and supervisor certification training, or refresher training involving persons wishing to be certified in Oregon using prior training from an EPA approved accreditation or certification course, must take place in Oregon.
- (g) The Department may require accredited training providers to pay a fee equivalent to cover the reasonable travel expenses for one Department representative to audit for compliance with this Division any accredited refresher course that which is not offered in the State of Oregon for compliance with this Division. This fee is an condition shall be an addition to the standard accreditation application fee.

(2) Application for Accreditation:

- (a) Applications for accreditation must shall be submitted to the Department in writing on forms provided by the Department and include the information required by this section ~~attachments as stated in OAR 340-248-0140(2)(A) through 340-248-0140(2)(B).~~ Such applications shall, at a minimum, contain the following information:
 - (A) Name, address, telephone number of the firm, individual(s), or sponsors conducting the course, including the name under which the training provider intends to conduct the training;
 - (B) The type of course(s) for which approval is requested;
 - (C) A detailed course outline showing topics covered and the amount of time given to each topic, and includesing working with asbestos-substitute materials, fitting and using respirators, use of glove-bag, donning protective clothing and constructing a decontamination unit, the number of students to be accommodated, the number of instructors; and the amount of time for hands-on skill training;
 - (D) A copy of the course manual, instructor notebooks and all printed material to be distributed in the course;
 - (E) A description of teaching methods to be employed, including description of audio-visual materials to be used. Upon tThe Department's may, at its discretion, request

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- that applicant must provide copies of the materials ~~be provided for review~~. Any audio-visual materials provided to the Department will be returned to the applicant;
- (F) A description of the hands-on facility to be utilized including protocol for instruction ~~which includes working with asbestos substitute materials, fitting and using respirators, use of glove bag, donning protective clothing and constructing a decontamination unit, the number of students to be accommodated, the number of instructors; and the amount of time for hands-on skill training;~~
 - (G) A description of the equipment that will be used during ~~both~~ classroom lectures and hands-on training;
 - (H) A list of all personnel involved in course preparation and presentation and a description of the background, special training and qualification of each, as well as the subject matter covered by each;
 - (I) A copy of each written examination to be given including the scoring methodology to be used in grading the examination; and a detailed statement about the development and validation of the examination;
 - (J) A list of the tuition or other fees required;
 - (K) A sample of the certificate of completion;
 - (L) A description of the procedures and policies for re-examination of students who do not successfully complete the training course examination;
 - (M) A list of any states or accrediting systems that approve the training course;
 - (N) A description of student evaluation methods (other than written examination to be used) associated with the hands-on skill training and course evaluation methods used by students, as applicable;
 - ~~(O) A description of course evaluation methods used by students;~~
 - ~~(OP)~~ Any restriction on attendance such as class size, language, affiliation, and/or target audience of class;
 - ~~(PQ)~~ A description of the procedure for issuing replacement certification cards to workers who were issued a certification card ~~or certification card label~~ by the training provider within the previous 12 months and whose cards have been lost or destroyed;
 - ~~(QR)~~ Any additional information or documentation ~~as may be required by the~~ Department may require in order to evaluate the adequacy of the application;
 - ~~(RS)~~ Accreditation application fee.
- (b) The training provider ~~must~~shall retain a copy of the application materials listed above for at least three years. Such applications ~~must~~shall be made available for inspection by the Department or its designees upon request.
 - (c) Application for initial training course accreditation and course materials ~~must~~shall be submitted to the Department at least 45 days ~~before~~prior to the requested approval date;
 - (d) Upon approval of an initial or refresher asbestos training course, the Department will issue a certificate of accreditation. The certificate is valid for one year from the date of issuance;
 - (e) Application for renewal of accreditation must follow the procedures described for the initial accreditation. In addition, course instructors must demonstrate that they have maintained proficiency in their instructional specialty and adult training methods during the 12 months ~~before~~prior to renewal.

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- (3) Training Provider Administrative Tasks. Accredited training providers ~~must~~shall perform the following as a condition of accreditation:
- (a) Administer the training course only to those persons who have been approved by the Department, ~~and/or~~ have surrendered their expired certification cards to the trainer and others who are otherwise qualified according to these rules. Such persons ~~may~~are allowed to take the examination to complete the training course.
 - (b) Issue a numbered certificate and a photo certification card to each student who successfully passes the training course examination and meets all other requirements for certification. Each certificate and photo certification card ~~must~~shall include:
 - (A) A unique certificate number;
 - (B) Name of certified person;
 - (C) Training course completed;
 - (D) Dates of the training course;
 - (E) Date of the examination;
 - (F) An expiration date of one year after the date upon which the person successfully completed the course and examination;
 - (G) The name, address, and telephone number of the training provider that issued the certificate;
 - (H) A statement that the person receiving the certificate has completed the requisite training for asbestos certification as specified in OAR-340-248-0130.
 - (c) Provide the Department with advance payment for each certificate to be issued;
 - (d) Utilize and distribute as part of the course information or training aides furnished by the Department;
 - (e) Provide the Department with a monthly class schedule at least one week before the schedule begins. Notification ~~must~~shall include time and location of each course. Training providers ~~must~~shall obtain approval from ~~notify~~ the Department before any class taking place that is not on their monthly schedule, and if the trainer wishes to hold a class with less than one week advanced notice ~~within three days whenever any unscheduled class is given;~~
 - (f) ~~Recordkeeping Requirements for Training Providers~~ must comply with the following recordkeeping requirements:
 - (A) Maintain the training records required by this subsection for a minimum of three years and make them readily available for inspection by the Department or its designee.
 - (BA) ~~Training providers must~~ Retain copies of all instructional materials used during each classroom course.
 - (CB) ~~Training providers must~~ Retain copies of all instructor resumes and instructor approvals issued by either the Department or US EPA. ~~Trainers must also record the instructors that taught each part of the course for each date that an accredited course is offered;~~
 - (DC) ~~Training providers must~~ Document various the following information for each accredited course:
 - (i) The date the exam was given;
 - (ii) Training course for which the exam was given;
 - (iii) The name of the exam proctor;

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- (iv) The name and score of each person taking the exam and a single copy of the exam;
- (v) Attendance record;
- (vi) Course evaluation form.
- (vii) The names of the instructors for each part of the course offered.
- (ED) ~~Training providers shall maintain records of certificates issued to students, including the following information. Such records shall contain:~~
 - (i) Name, address, telephone number, social security number of person receiving the certificate;
 - (ii) Certificate numbers given to each person;
 - (iii) Photographs of each persons;
 - (iv) Discipline for which the certificate was given;
 - (v) Dates of training and certificate expiration.
- (FE) ~~Training providers shall maintain training records, as specified above, for a minimum of three years. Such records shall readily be available for inspection by the Department or its designee. If a training provider is not accredited, or ceases to give asbestos worker certification training, the training provider must notify and allow the Department to take possession of the records for lawful disposition.~~
- (G) ~~Training providers must submit certification class information to as required by the Department within 340 days after the end of each training class or as directed by the Department.~~
- (g) Notify the Department ~~before~~ prior to issuing a replacement certification card;
- (h) ~~Accredited training providers must have their~~ current accreditation certificates at the training location where they are conducting training.
- (4) Denial, Suspension or Revocation of Accreditation. The Director may deny, suspend, or revoke an application or current accreditation for any of the reasons contained in this section upon finding of sufficient cause. The Department will issue a notice of denial, suspension, or revocation specifying the reasons for the action. ~~Applicants and certificate holders shall also be advised of the duration of suspension or revocation and any conditions that must be met before the certificate will be issued or reinstated.~~ Applicants may have the right to appeal the Director's determination by requesting a contested case hearing through an administrative hearing in accordance with pursuant to the provisions of OAR Chapter 340 Division 11. The following are ~~may be~~ considered grounds for denial, revocation or suspension:
 - (a) ~~Misrepresentation of the extent of a training course's approval by a State or the EPA;~~
 - (b) ~~Failing~~ are to submit required information or notifications in a timely manner;
 - (c) ~~Failing~~ are to report to the Department any change in staff or program which substantially deviates from the information contained in the application;
 - (d) ~~Failing~~ are to maintain requisite records;
 - (e) ~~Falsification of accreditation records, instructor qualifications, or other accreditation information;~~
 - (f) ~~Failing~~ are to adhere to the training standards and requirements of this Division;
 - (g) ~~Failing~~ are to comply with the administrative tasks and any other requirement of this Division;

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- (h) Providing ~~concurrent~~ training for either initial or refresher courses in combination for supervisors and asbestos workers;
- (i) ~~Failing~~ to pay delinquent application fees, notification fees, ~~and~~ civil penalties;
- (j) ~~In addition to the criteria listed above, the~~ Department may also suspend or withdraw a training course's approval ~~if where an approved training course instructor, or other person with supervisory authority over the delivery of training has been found in violation of any~~ of other asbestos regulations administered by the Department or other agencies.

340-248-0150

General Training Standards

- (1) The training provider ~~must~~ shall limit each class to a maximum of 25 participants unless the Department ~~granted~~ an exception in writing by the Department. The student to instructor ratio for hands-on training ~~must~~ shall be equal to or less than ten to one (10:1). To apply for an exception allowing class size to exceed 25, the course sponsor must submit the following information in writing to the Department for evaluation and receive approval before prior to expanding the class size:
 - (a) The new class size limit;
 - (b) The teaching methods and techniques for training the proposed larger class;
 - (c) The protocol for conducting the written examination; and
 - (d) Justification for a larger class size.
- (2) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles.
- (3) The Department may require any accredited training provider to use examinations developed by the Department in lieu of the examinations offered by the training provider.
- (4) ~~The Department may require accredited training providers to pay a fee equivalent to reasonable travel expenses for one Department representative to audit any accredited course which is not offered in the State of Oregon for compliance with this Division. This condition shall be an addition to the standard accreditation application fee.~~
- (45) Courses of instruction required for certification ~~must~~ shall be specific for each of the certificate categories and shall be in accordance with the Department's ~~guidelines~~ requirements. The topics or subjects of course instruction which a person must receive to meet the training requirements must be presented through a combination of lectures, demonstrations, and hands-on practice.
- (56) Courses requiring hands-on training ~~must~~ shall be presented in an environment suitable to ~~permit~~ provide participants to have actual experience performing tasks associated with asbestos abatement. Demonstrations not involving individual participation ~~shall~~ are ~~unacceptable as a not~~ substitute for hands-on training.
- (67) Any person seeking certification as a supervisor ~~must~~ shall successfully complete an accredited training course of at least five training days that satisfies the elements contained as ~~outlined in the Department~~ **Asbestos Training Guidance Document**. The training course ~~must~~ shall include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit testing, course review, and a written examination consisting of multiple choice questions. To successfully complete the course, the training shall candidate must attend the lectures and demonstrations, fully participate in the hands-on training, and be

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~~demonstrated by achieving a passing score on the closed book examination, course attendance, and full participation in the hands-on training.~~

- (78) Any person seeking certification as a worker ~~must~~ shall successfully complete an accredited training course of at least four training days as outlined in the Department **Asbestos Training Guidance Document**. The training course shall include lectures, demonstrations, at least 14 hours of actual hands-on training, individual respirator fit testing, course review, and an examination of multiple choice questions. ~~To sSuccessfully completion of the course, the candidate must~~ shall attend the lectures and demonstrations, fully participate in the hands-on training, and be demonstrated by achieving a passing score on the closed book examination, course attendance, and full participation in the hands-on training.
- (89) Refresher training ~~consists of~~ shall be one training day for certified supervisors and workers. The refresher courses ~~must~~ shall include a review of key areas of initial training, updates, and an examination of multiple choice questions as outlined in the Department **Asbestos Training Guidance Document**. ~~To sSuccessful completion of the course, the candidate must attend the course, fully participate in any hands-on training, and shall be demonstrated by achieving a passing score on the closed book examination, course attendance, and full participation in any hands-on training.~~

340-248-0160

Prior Training

A candidate may rely on ~~sSuccessful~~ Successful completion of a ~~prior~~ training course accredited by a governmental agency other than the Department ~~may be used to satisfy the training and examination requirements of OAR 340-248-0130 and 340-248-0140 if provided that all of the following conditions are met:~~

- (1) The Department determines that the course and examination requirements are equivalent to or exceed the requirements of OAR 340-248-0130 and 340-248-0140 and the Department's **Asbestos Training Guidance Document**, for the level of certification sought ~~or the Department has a reciprocity agreement with the other jurisdiction. State and local requirements may vary.~~
- (2) ~~For an applicant. To~~ qualify for a refresher course and certification, prior training must have occurred during the within two years preceding of the date the application applies to the Department. Applicants must have a currently certification from EPA or an equivalently certificationed from in another at least one state when applying for consideration under this section.
- (3) ~~The applicant who has received recognition from the Department for alternate initial training successfully completes an Oregon accredited refresher course and refresher course examination for the level of certification sought.~~

340-248-0170

Reciprocity

The Department may develop reciprocity agreements with other jurisdictions regarding all activities under this Division.

340-248-0180

Fees

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- (1) ~~The Department may assess the following fees shall be assessed to provide revenues to operate the asbestos control program. Fees are assessed for the following:~~
- (a) ~~Contractor Licenses: A non-refundable license application fee of \$1000 for a one-year Asbestos Abatement Contractor license;~~
 - (b) ~~Worker and Supervisor Certifications: A non-refundable fee of \$65 for a one-year certification as an asbestos supervisor and \$45 for a one-year certification as an asbestos worker;~~
 - (c) ~~Training Provider Accreditation: A non-refundable accreditation application fee of:~~
 - (i) ~~\$320 for a one-year accreditation to provide a course for training asbestos supervisors;~~
 - (ii) ~~\$320 for a one-year accreditation to provide a course for training asbestos workers;~~
 - (iii) ~~\$320 each for a one-year accreditation to provide a course for refresher training for any level of Oregon asbestos certification;~~
 - (d) ~~Asbestos Abatement Project Notifications as required in OAR 340-248-0260.~~
- (2) ~~Contractors shall pay a non-refundable license application fee of \$1,000 for a one year Asbestos Abatement Contractor license.~~
- (3) ~~Workers shall pay a non-refundable certification fee of:~~
- (a) ~~\$65 for a one-year certification as a certified supervisor;~~
 - (b) ~~\$45 for a one-year certification as a certified worker.~~
- (4) ~~Training Providers shall pay a non-refundable accreditation application fee of:~~
- (a) ~~\$320 for a one-year accreditation to provide a course for training supervisors;~~
 - (b) ~~\$320 for a one-year accreditation to provide a course for training workers;~~
 - (c) ~~\$320 for a one-year accreditation to provide a course for refresher training for any level of certification.~~
- (25) Requests for waiver of fees ~~must~~ shall be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

Asbestos Emission Standards and Procedural Requirements**340-248-0200****Applicability**

~~OAR 340-248-02010 through 340-248-02980 apply to asbestos milling, manufacturing, fabricating, abatement, and disposal.~~

340-248-0205**General Provisions**

- (1) No person may openly accumulate friable asbestos-containing material or asbestos-containing waste material.
- (2) Contractors working on asbestos abatement projects at secure facilities must insure that all security clearance requirements are completed before asbestos abatement projects at secure facilities start so Department inspectors may gain immediate access to perform required asbestos project inspections.

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Asbestos Emission Standards and Procedural Requirements for Mills, Roadways and Parking lots, and Manufacturing operations Asbestos

- (1) Emission standard for asbestos mills. No person ~~may~~shall cause or allow to be discharged into the atmosphere any visible emissions, including fugitive emissions, from any asbestos milling operation, ~~including fugitive emissions~~, except as provided under OAR 340-248-02750(244) Air Cleaning. For purposes of this rule, the presence of uncombined water in the emission plume ~~shall not be cause for failure to meet a violation of~~ the visible emission requirement. Outside storage of asbestos materials is not ~~considered a part of an asbestos mill operation~~. ~~The~~Each owner or operator of an asbestos mill ~~must~~shall meet the following requirements:
 - (a) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operations. The monitoring ~~must~~shall be by visual observation of at least 15 seconds duration per source of emissions;
 - (b) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis ~~according to this subsection~~, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, ~~a the following: (A) mMaintenance schedule; and (B) rRecordkeeping plan.~~
 - (c) Maintain records of the results of visible emissions monitoring and air cleaning device inspections using a format approved by the Department ~~and which includes~~ the following information:
 - (A) Date and time of each inspection;
 - (B) Presence or absence of visible emissions;
 - (C) Condition of fabric filters, including presence of any tears, holes, and abrasions;
 - (D) Presence of dust deposits on clean side of fabric filters;
 - (E) Brief description of corrective actions taken, including date and time;
 - (F) Daily hours of operation for each air cleaning device.
 - (d) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section;
 - (e) Retain a copy of all monitoring and inspection records for at least two years;
 - (f) Submit a copy of visible emission monitoring records to the Department quarterly. The quarterly reports ~~must~~shall be postmarked by the 30th day following the end of the calendar quarter;
 - (g) Asbestos-containing waste material produced by any asbestos milling operation ~~must~~will be disposed of according to OAR 340-248-0280 and -0290.
- (2) Roadways and Parking Lots. No person may construct or maintain, or allow to be constructed or maintained a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless (for asbestos tailings):
 - (a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine); or

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- (b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at a ~~minimum frequency of least once per calendar year or within 12 months of road construction~~ to prevent dust emissions; or
 - (c) It is encapsulated in asphalt concrete meeting the specifications contained in **Section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-85, 1985**, or their equivalent.
- (3) Manufacturing. No person ~~may~~shall cause ~~or allow~~ to be discharged into the atmosphere any visible emissions, except as provided in OAR 340-248-02750(24), from any building or structure in which manufacturing operations utilizing commercial asbestos are conducted, or directly from any such manufacturing operations if they are conducted outside buildings or structures, or from any other fugitive emissions. All asbestos-containing waste material produced by any manufacturing operation ~~must~~shall be disposed of according to OAR 340-248-0280 and -0290. Visible emissions from boilers or other points not producing emissions directly from the manufacturing operation; and having no possible asbestos material in the exhaust gases ~~are~~shall not be considered a violation for purposes of this rule. The presence of uncombined water in the exhaust plume ~~shall not be cause for failure to meet a violation of the visible emission requirements~~.
- (a) Applicability. Manufacturing operations ~~subject to~~considered for purposes of this rule are as follows:
- (A) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials;
 - (B) The manufacture of cement products;
 - (C) The manufacture of fire proofing and insulating materials;
 - (D) The manufacture of friction products;
 - (E) The manufacture of paper, millboard, and felt;
 - (F) The manufacture of floor tile;
 - (G) The manufacture of paints, coatings, caulks, adhesives, or sealants;
 - (H) The manufacture of plastics and rubber materials;
 - (I) The manufacture of chlorine, using asbestos diaphragm technology;
 - (J) The manufacture of shotgun shell wads;
 - (K) The manufacture of asphalt concrete;
 - (L) Any other manufacturing operation ~~that~~which results or may result in the release of asbestos material to the ambient air.
- (b) ~~The owner or operator of the manufacturing operation must m~~Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment. ~~Monitoring must be done~~at least once each day during daylight hours for visible emissions to the outside air during periods of operation and. ~~The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions~~;
- (c) ~~The owner or operator of the manufacturing operation must i~~Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in

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filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis ~~according to this subsection~~, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, ~~the following:~~ (A) ~~a maintenance schedule;~~ (B) ~~and a recordkeeping plan.~~

- (d) ~~The owner or operator of a manufacturing operation must maintain~~ records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department ~~and which includes~~ the following information:
- (A) Date and time of each inspection;
 - (B) Presence or absence of visible emissions;
 - (C) Condition of fabric filters, including presence of any tears, holes and abrasions;
 - (D) Presence of dust deposits on clean side of fabric filters;
 - (E) Brief description of corrective actions taken, including date and time;
 - (F) Daily hours of operation for each air cleaning device.
- (e) ~~The owner or operator of a manufacturing operation must furnish~~ upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section;
- (f) ~~The owner or operator of a manufacturing operation must retain~~ a copy of all monitoring and inspection records for at least two years;
- (g) ~~The owner or operator of a manufacturing operation must submit~~ quarterly a copy of the visible emission monitoring records to the Department if visible emissions occurred during the report period. Quarterly reports ~~must~~ be postmarked by the 30th day following the end of the calendar quarter;
- (h) Asbestos-containing waste material produced by any asbestos ~~manufacturing~~ ~~milling~~ operation shall be disposed of according to OAR 340-248-0280 and -0290.
- ~~(4) Open accumulation of friable asbestos containing material or asbestos containing waste material is prohibited.~~

340-248-0220**Reporting Requirements for Asbestos Sources Using Air Cleaning Devices**

- (1) New sources covered by this rule ~~must~~ submit the requested information 90 days ~~before~~ prior to initial startup. Existing sources covered by this rule ~~must~~ comply by March 1, 1996. Changes in the information provided to the Department ~~must~~ be submitted within 30 days after the change.
- (2) Sources covered by OAR 340-248-0210(1) Mills, 340-248-0210(3) Manufacturing, 340-248-0275(14) Fabricating, and 340-248-0230 Asbestos to Nonasbestos Conversion Operations, ~~must~~ provide the following information to the Department.
- (a) A description of the emission control equipment used for each process; and
 - (b) If a fabric filter device is used to control emissions:
 - (A) The airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$) if the fabric filter device uses a woven fabric, and, if the fabric is synthetic, whether the fill yarn is spun or not spun; and
 - (B) If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$).
 - (c) If a HEPA filter is used to control emissions, the certified efficiency.

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- (3) For sources covered by this rule and subject to OAR 340-248-0280(1) through 340-248-0280(9) and -0290(1) through -0290(9) Asbestos Disposal Requirements:
 - (a) A brief description of each process that generates asbestos-containing waste material; ~~and~~
 - (b) The average volume of asbestos-containing waste material disposed of, measured in m³/day (yd³/day); ~~and~~
 - (c) The emission control methods used in all stages of waste disposal; and
 - (d) The type of disposal site or incineration site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.
- (4) For sources covered by this rule and subject to OAR 340-248-0280(10) and -0290(10) Active Disposal Sites and 340-248-0280(11) and -0290(11) Inactive Disposal Sites:
 - (a) A brief description of the site; and
 - (b) The method or methods used to comply with the standard, or alternative procedures ~~to be~~ used.

340-248-0230**Asbestos To Nonasbestos Conversion Operations**

- (1) 40 CFR Part 61.155 (July 1, 20011995) is by this reference adopted and incorporated herein.
- (2) The following substitutions ~~are~~shall be made in 40 CFR Part 61.155:
 - (a) "Administrator" means "Department";
 - (b) §61.150 means OAR 340-248-0280;
 - (c) §61.152 means OAR 340-248-0270(13);
 - (d) §61.154 means OAR 340-248-0280;
 - (e) §61.154(e) means OAR 340-248-0280(10)(a)(C)-(G);
 - (f) §61.154(f) means OAR 340-248-0280(10)(b).

340-248-0240**Asbestos Inspection Requirements for Oregon Title V Operating Permit Program Sources**

This rule applies to renovation and demolition activities at major sources subject to the Oregon Title V Operating Permit program as defined in OAR 340-200-0020.

- (1) To determine applicability of the "Department's asbestos regulations, the owner or operator of a renovation or demolition project ~~must~~shall thoroughly ~~survey~~inspect, using an accredited ~~inspector~~, the affected area for the presence of asbestos, including nonfriable asbestos. A copy of that survey report ~~must~~remain on site during any demolition or renovation activity.
- (2) For demolition projects where no asbestos-containing material is present, written notification ~~must~~shall be submitted to the Department on an approved form. The notification ~~must~~shall be submitted by the owner or operator or by the demolition contractor as follows:
 - (a) Submit the notification, as specified in section (3) of this rule, to the Department at least ten days before beginning any demolition project.
 - (b) ~~Failure to notify~~ tThe Department shall be notified ~~before~~prior to any changes in the scheduled starting or completion dates or other substantial changes ~~or~~renders the notification of demolition ~~will be~~ void.
- (3) The following information ~~must~~shall be provided for each notification of demolition:
 - (a) Name, address, and telephone number of the person conducting the demolition.
 - (b) Contractor's Oregon demolition license number, if applicable.

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- (c) Certification that no asbestos was found during the predemolition asbestos survey inspection and that if asbestos-containing material is uncovered during demolition the procedures found in OAR 340-248-0250 through OAR 340-248-02980 will be followed.
- (d) Description of building, structure, facility, installation, vehicle, or vessel to be demolished, including:
 - (A) The age, and present and prior use of the facility;
 - (B) Address or location of where the scheduled demolition project is to be accomplished.
- (e) Major source owner's or operator's name, address and phone number.
- (f) Scheduled starting and completion dates of demolition work.
- (g) Any other information requested on the Department form.

340-248-0250**Asbestos Abatement Projects**

- (1) Any person who conducts or provides for the conduct of an asbestos abatement project must ~~shall~~ comply with the provisions of OAR 340- Division 248 except as provided in this rule -0260 and 340-248-0270(1) through (11).
- (2) The following asbestos abatement projects are exempt from certain provisions of this Division as listed in this Section OAR 340-248-0260, 340-248-0270(1) through (11), and 340-248-0100 through 340-248-0180:
 - (a) Asbestos abatement conducted inside a single private residence:
 - (A) by the owner is exempt from OAR 340-248-0270(1), if the residence is not a rental property, a commercial business, or intended to be demolished; or
 - (B) by the owner-occupant which is occupied by the owner and the owner-occupant performs the asbestos abatement is exempt from OAR 340-248-0110 through -0270.
 - (b) Asbestos abatement conducted outside of a single private residence by the owner is exempt from OAR 340-248-0260 and -0270(1), if the residence is not a rental property, a commercial business, or intended to be demolished.
 - (c) Residential buildings with four or fewer dwelling units that were constructed after 1987 are exempt from the provisions of OAR 340-248-0270(1).
 - (d) Projects involving the removal of mastic and roofing products that are fully encapsulated with a petroleum-based binder and that are not hard, dry, and brittle are exempt from OAR 340-248-0110 through -0280 and -0290(1), (2), (8), and (9) provided shall end whenever these materials are not made burned, shattered, crumbled, pulverized, or reduced to dust friable.
 - (e) Projects involving the removal of less than three square feet or three linear feet of asbestos-containing material are exempt from OAR 340-248-0110 through -0180 provided that the removal of asbestos is not the primary objective, is part of a needed repair operation, and the methods of removal are in compliance with OAR 437 Division 3 "Construction" Subsection Z and 29 CFR 1926, 1101(g)(i) through (iii) (1998)). An asbestos abatement projects may ~~shall~~ not be subdivided into smaller sized units in order to qualify for this exemption.
 - (f) Projects involving the removal of asbestos-containing materials that which are sealed from the atmosphere by a rigid casing are exempt from OAR 340-248-0110 through -0270 and -0290(2) through (4) and (7) through (9), provided that the casing is not broken

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or otherwise altered such that asbestos fibers could be released during removal, handling, and transport to an authorized disposal site.

- (2) ~~Accumulation of asbestos-containing material or asbestos-containing waste material is prohibited.~~
- (3) Any person who removes non-friable asbestos-containing material not exempted under OAR 340-248-0250(2) ~~must~~ shall comply with the following:
- (a) Submit asbestos removal notification and the appropriate fee to the Department Business Office on a Department form in accordance with OAR 340-248-0260.
 - (b) ~~Removal of nonfriable asbestos-containing materials in a manner that ensures the material remains nonfriable are not shattered, crumbled, pulverized or reduced to dust until delivered to an authorized disposal site is exempt from OAR 340-248-0270(10) and OAR 340-248-0110.~~
 - (c) A nonfriable asbestos abatement project is exempt from the asbestos licensing and certification requirements under OAR 340-248-0100 through -0180 ~~OAR 340-248-0270(10) and OAR 340-248-0110. The exemption shall end~~ whenever the asbestos-containing material becomes friable or has the potential to ~~and~~ releases asbestos fibers into the environment.

340-248-0260

Asbestos Abatement Notifications Requirements

Except as provided for in OAR 340-248-0250, written notification of any asbestos abatement project must ~~shall~~ be provided to the Department on a Department form prepared by and available from the Department, accompanied by the appropriate fee. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in sections (1), (2), or (3) of this rule except as provided in sections (5), (6), ~~or~~ (7).

- (1) Submit the notifications as specified in section (4) of this rule and the project notification fee to the Department at least ten days before beginning any friable asbestos abatement project and at least five days before beginning any non-friable asbestos abatement project.
 - (a) The project notification fee ~~is~~ shall be:
 - (A) \$35 for each project less than 40 linear feet or 80 square feet of asbestos-containing material, a residential building, or a non-friable asbestos abatement project.
 - (B) \$70 for each project greater than or equal to 40 linear feet or 80 square feet but less than 260 linear feet or 160 square feet of asbestos-containing material.
 - (C) \$275 for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos-containing material.
 - (D) \$375 for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or 1600 square feet of asbestos-containing material.
 - (E) \$650 for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.
 - (F) \$750 for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.
 - (G) \$1,200 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.

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- (H) \$2,000 for each project greater than or equal to 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- (I) \$2,500 for each project greater than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- (J) \$260 for annual notifications for friable asbestos abatement projects involving removal of 40 linear feet or 80 square feet or less of asbestos-containing material removal.
- (K) \$350 for annual notifications for non-friable asbestos abatement projects performed at schools, colleges, and facilities.
- (b) Project notification fees ~~must~~shall be payable with the completed ~~accompany the project notification form. No notification has not~~will be considered to have occurred until the completed notification form and appropriate notification fee is received by the Department submitted.
- (c) The Department may waive the ten-day notification requirement in section (1) of this rule may be temporarily waived in emergencies that~~which~~ directly affect human life, health, and property. This includes:
 - (A) Emergencies where there is an imminent threat of loss of life or severe injury; or
 - (B) Emergencies where the public is exposed to air-borne asbestos fibers; or
 - (C) Emergencies where significant property damage will occur if repairs are not made immediately.
- (d) The Department may waive the ten-day notification requirement in section (1) of this rule may be temporarily waived for asbestos abatement projects that~~which~~ were not planned, resulted from unexpected events, and which if not immediately performed will cause damage to equipment or impose unreasonable financial burden if not performed immediately. This includes the non-routine failure of equipment.
- (e) In either subsection (c) or (d) of this section persons responsible for such asbestos abatement projects ~~must~~shall notify the Department by telephone ~~before~~prior to commencing work, or by 9:00 am of the next working day if the work was performed on a weekend or holiday. In any case notification as specified in section (4) of this rule and the appropriate fee ~~must~~shall be submitted to the Department within three days of commencing emergency or unexpected event asbestos abatement projects.
- (f) ~~Failure to notify~~ The Department shall be notified prior to~~before~~ any changes in the scheduled starting or completion dates or other substantial changes will ~~or~~render the notification ~~will be~~ void.
- (g) If an asbestos project, equal to or greater than 2,600 linear feet or 1,600 square feet continues for more than one year from the original start date of the project, a new notification and fee ~~must~~shall be submitted annually thereafter until the project is complete.
- (h) Residential buildings ~~shall~~include: site built homes, modular homes constructed off site, mobile homes, condominiums, and duplexes or other multi unit residential buildings consisting of four units or less.
- (2) Annual notification for small-scale friable asbestos abatement projects. This notification ~~may~~shall only be used only for projects where no more than 40 linear or 80 square feet of asbestos-containing material is removed. The small-scale friable asbestos projects ~~may~~shall

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only be conducted at ~~multiple one or more~~ facilities by a single licensed asbestos contractor, or at a single facility that has owner with a centrally controlled asbestos operation and maintenance program where the facility owner uses appropriately trained and certified personnel to remove asbestos.

- (a) Establish eligibility for use of this notification procedure with the Department prior to use;
 - (b) Maintain on file with the Department a general asbestos abatement plan. The plan ~~must~~shall contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible;
 - (c) Provide to the Department a summary report of all asbestos abatement projects conducted ~~using the annual notification procedure~~, in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report ~~must~~shall include the information specified in subsections (4)(i) through (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan; and a description of asbestos abatement projects anticipated for the next quarter when possible;
 - (d) Provide to the Department, upon request, a list of asbestos abatement projects ~~that~~which are scheduled or are being conducted at the time of the request;
 - (e) Submit project notification and fee prior to use of this ~~annual~~ notification procedure;
 - (f) Failure to provide payment for use of this notification procedure ~~will~~shall void the general asbestos abatement plan and each subsequent abatement project ~~will~~shall be individually assessed a project notification fee.
- (3) Annual non-friable asbestos abatement projects ~~may~~shall only be performed at schools, colleges, and facilities where the removal work is done by certified asbestos abatement workers. Submit the notification as follows:
- (a) Establish eligibility for use of this notification procedure with the Department prior to use;
 - (b) Maintain on file with the Department a general non-friable asbestos abatement plan. The plan ~~must~~shall contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible;
 - (c) Provide to the Department a summary report of all non-friable asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report ~~must~~shall include the information specified in subsections (4)(i) through (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan, and a list describing the non-friable asbestos abatement projects anticipated for the next quarter, ~~when~~re possible;
 - (d) Submit project notification and fee prior to use of this notification procedure;
 - (e) Failure to provide payment for use of this notification procedure ~~will~~shall void the general non-friable asbestos abatement plan and each subsequent non-friable abatement project ~~will~~shall be individually assessed a project notification fee.
- (4) The following information ~~must~~shall be provided for each notification:
- (a) Name and address of person conducting asbestos abatement.
 - (b) ~~The Oregon asbestos abatement contractor's Oregon asbestos abatement license number, if applicable and certification number of the supervisor for the asbestos~~

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- abatement or certification number or the trained worker for a project ~~or which does not have a supervisor~~ for nonfriable asbestos abatement projects, the name of the supervising person that meets Oregon OSHA's competent person qualifications as required in OAR 437, Division 3 "Construction", Subdivision Z, 1926.1101(b) "Competent person", (2/10/1994).
- (c) Method of asbestos abatement to be employed.
 - (d) Procedures to be employed to insure compliance with OAR 340-248-0270 ~~through and~~ 340-248-02980.
 - (e) Names, addresses, and phone numbers of waste transporters.
 - (f) Name and address or location of the waste disposal site where the asbestos-containing waste material will be deposited.
 - (g) Description of asbestos disposal procedure.
 - (h) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including:
 - (A) The age, present and prior use of the facility;
 - (B) Address or location where the asbestos abatement project is to be accomplished, including building, floor, and room numbers.
 - (i) Facility owner's or operator's name, address and phone number.
 - (j) Scheduled starting and completion dates of asbestos abatement work.
 - (k) Description of the asbestos type, approximate asbestos content (percent), and location of the asbestos-containing material.
 - (l) Amount of asbestos to be abated: linear feet, square feet, thickness.
 - (m) For facilities described in OAR 340-248-0270(85) provide the name, title and authority of the State or local government official who ordered the demolition, date the order was issued, and the date demolition is to begin.
 - (n) Any other information requested on the Department form.
- (5) The project notification fees specified in this section ~~will shall~~ be increased by 50% when an asbestos abatement project is commenced without filing of a project notification ~~and/or~~ submittal of a notification fee or when notification of less than ten days is provided under subsections (1)(c) and (d) of this rule.
 - (6) The Director may waive part or all of a project notification fee. Requests for waiver of fees ~~must shall~~ be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship.
 - (7) Pursuant to ORS 468A.135, a regional authority may adopt project notification fees for asbestos abatement projects in different amounts than are set forth in this rule. The fees ~~will shall~~ be based upon the costs of the regional authority in carrying out the delegated asbestos program. The regional authority may collect, retain, and expend such project notification fees for asbestos abatement projects within its jurisdiction.

340-248-0270**Asbestos Abatement Work Practices and Procedures**

Except as provided for in OAR 340-248-0250, the following procedures ~~must shall~~ be employed by any person who conducts or provides for the conduct of during an asbestos abatement project to prevent emissions of particulate asbestos material into the ambient air:

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- (1) Prior to performing a demolition or renovation activity on a facility the owner or operator of a facility must have an accredited inspector thoroughly survey the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos-containing material, including nonfriable asbestos-containing material.
- (2) The owner or operator of a facility that requires a survey pursuant to OAR 340-248-0270(1) must keep a copy of the survey report onsite at the facility during any demolition or renovation activity.
- (3+) Remove all asbestos-containing materials before any activity begins ~~wrecking or dismantling~~ that would break up, dislodge, or disturb the materials or preclude access to the materials for subsequent removal. ~~A~~ However, asbestos-containing materials need not be removed before demolition if:
 - (a) They are on a facility component that is encased in concrete or other similar material and are adequately wetted whenever exposed during demolition;
 - (b) They were not discovered before demolition and cannot be removed because of unsafe conditions as a result of the demolition.
- (4) Upon discovery of asbestos materials found during demolition the owner or operator performing the demolition ~~must~~ shall:
 - (~~a~~A) Stop demolition work immediately;
 - (~~b~~B) Notify the Department immediately of the occurrence;
 - (~~c~~C) Keep the exposed asbestos-containing materials and any asbestos-contaminated waste material adequately wet at all time until a licensed asbestos abatement contractor begins removal activities;
 - (~~d~~D) Have the licensed asbestos abatement contractor remove and dispose of the asbestos-containing waste material.
- (52) Asbestos-containing materials ~~must~~ shall be adequately wetted when they are being removed. In renovation, maintenance, repair, and construction operations, where wetting would unavoidably damage equipment or is incompatible with specialized work practices, or presents a safety hazard, adequate wetting is not required if the owner or operator:
 - (a) Obtains prior written approval from the Department for dry removal of asbestos-containing material;
 - (b) Keeps a copy of the Department's written approval available for inspection at the work site;
 - (c) Adequately wraps or encloses any asbestos-containing material during handling to avoid releasing fibers;
 - (d) Uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the asbestos abatement project.
- (63) When a facility component covered or coated with asbestos-containing materials is being taken out of the facility as units or in sections:
 - (a) Adequately wet any asbestos-containing materials exposed during cutting or disjointing operation;
 - (b) Carefully lower the units or sections to ground level, not dropping them or throwing them;
 - (c) Asbestos-containing materials do not need to be removed from large facility components such as reactor vessels, large tanks, steam generators, but excluding beams if the following requirements are met:

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- (A) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the regulated asbestos-containing material; and
 - (B) The component is encased in leak-tight wrapping; and
 - (C) The leak-tight wrapping is labeled according to OAR 340-248-0280(2)(b) during all loading and unloading operations and during storage.
- (74) For friable asbestos-containing materials being removed or stripped:
- (a) Adequately wet the materials to ensure that they remain wet until they are disposed of in accordance with OAR 340-248-0280;
 - (b) Carefully lower the materials to the floor, not dropping or throwing them;
 - (c) With prior written approval from the Department, transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped above ground level and were not removed as units or in sections.
 - (d) Enclose the area where friable asbestos materials are to be removed with a negative pressure enclosure prior to abatement unless written approval for an alternative is granted by the Department.
 - (e) A minimum of one viewing window will be installed in all enclosures, including negative pressure enclosures, in accordance with the following:
 - (A) Each viewing window must be a minimum of two feet by two feet and be made of a material that will allow a clear view inside the enclosure.
 - (B) For large enclosures, including negative pressure enclosures, install one viewing window for every 5,000 square feet of area when spatially feasible.
- (85) Any person that demolishes a facility is being demolished under an order of the State of Oregon or a local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse, the requirements of sections (1), (2), (3), (4), and (6) of this rule shall not apply, provided that the portion of the facility that contains asbestos-containing materials is adequately wetted during the wrecking operation must comply with the following:-
- (a) Obtain written approval from the Department for an ordered demolition procedure before that demolition takes place; and
 - (b) Send a copy of the order and an asbestos abatement project notification (as described in OAR 340-248-0260) to the Department before commencing demolition work; and
 - (c) Keep a copy of the order, Department's approval, and the notification form at the demolition site during all phases of demolition until final disposal of the project waste at an authorized landfill; and
 - (d) Keep asbestos-containing materials and asbestos contaminated debris adequately wet during demolition and comply with the disposal requirements set forth in OAR 340-248-0280 and -0290.
- (9) Persons performing asbestos abatement outside full negative pressure containment must obtain written approval from the Department before using mechanical equipment to remove asbestos-containing material.
- (106) Before a facility is demolished by intentional burning, all asbestos-containing material must be removed and disposed of in accordance with OAR 340-248-002410 through 340-248-02980.
- (117) None of the operations in sections (1) through (4) of this rule may cause any visible emissions. Any local exhaust ventilation and collection system or vacuuming equipment used

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during an asbestos abatement project, ~~must~~ shall be equipped with a HEPA filter or other filter of equal or greater collection efficiency.

(128) The Director may approve, on a case-by-case basis, requests to use an alternative to ~~thea~~ public health protection requirements as provided by ~~contained in this rule for an asbestos abatement project.~~ The contractor or facility owner or operator must submit in advance a written description of the proposed alternative and procedure which demonstrates to the Director's satisfaction that the proposed alternative ~~procedure~~ provides public health protection equivalent to the protection that would be provided by the specific ~~requirement provision~~, or that such level of protection cannot be obtained for the asbestos abatement project.

(139) Final Air Clearance Sampling Requirements apply to projects involving more than 160 square feet or 260 linear feet of asbestos-containing material. Before ~~a~~ containment around such an area is removed, the person(s), ~~contractor or facility owner/operator~~ performing the abatement ~~must~~ shall have at least one air sample collected that documents that the air inside the containment has no more than 0.01 fibers per cubic centimeter of air. The air sample(s) collected ~~may~~ shall not exceed 0.01 fibers per cubic centimeter of air. The Department may grant a waiver to this section or exceptions to the following requirements upon receiving an advanced written request:

- (a) The air clearance samples ~~must~~ shall be performed and analyzed by a party who is National Institute of Occupational Safety and Health (NIOSH) 582 certified and financially independent from the person(s) conducting the asbestos abatement project;
- (b) Before final air clearance sampling is performed the following ~~must~~ shall be completed:
 - (A) All visible asbestos-containing material and asbestos-containing waste material debris ~~must~~ shall be removed according to the requirements of this section;
 - (B) The air and surfaces within the containment ~~must~~ shall be sprayed with an encapsulant;
 - (C) Air sampling may commence when the encapsulant has settled sufficiently so that the filter of the sample is not clogged by airborne encapsulant;
 - (D) Air filtration units ~~must~~ shall remain on during the air-monitoring period.
- (c) Air clearance sampling inside containment areas ~~must~~ shall be aggressive and comply with the following procedures:
 - (A) Immediately ~~before~~ prior to starting the sampling pumps, direct exhaust from a minimum one horse power forced air blower against all walls, ceilings, floors, ledges, and other surfaces in the containment;
 - (B) Then place stationary fans in locations ~~that~~ which will not interfere with air monitoring equipment and then directed toward the ceiling. Use one fan per 10,000 cubic feet of room space;
 - (C) Start sampling pumps and sample an adequate volume of air to detect concentrations of 0.01 fibers of asbestos per cubic centimeter according to NIOSH 7400 method;
 - (D) When sampling is completed turn off the pump and then the fan(s);
 - (E) As an alternative to meeting the requirements of paragraphs (A) through (D) of this subsection, air clearance sample analysis may be performed according to Transmission Electron Microscopy Analytical Methods prescribed by **40 CFR 763.99, Appendix A to Subpart E (Interim Transmission Electron Microscopy Analytical Methods)**.

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- (d) The person performing asbestos abatement projects requiring air clearance sampling ~~must~~shall submit the clearance results to the Department on a Department form. The clearance results must be received by the Department within 30 days after the completion date of the asbestos abatement project.

340-248-0275**Asbestos Standards for Air Cleaning, Spraying, Molded Insulation, and Fabricating**

The following methods must be employed for air cleaning, fabricating, and sprayed-on and molded insulation applications; ~~and fabricating:~~

- (12) Options for Air Cleaning. Rather than meet the no visible emissions requirements of OAR 340-248-0210(1) and (3), owners and operators may elect to use methods specified in Section ~~(2+3)~~.
- (2+3) Air Cleaning. All persons electing to use air cleaning methods rather than comply with the no visible emission requirements ~~must~~shall meet one of the provisions of subsections (a) through (d) of this section and all of the requirements specified in subsections (e) and (f) of this section:
- (a) Fabric filter collection devices must be used, except as provided in subsections (b) and (c) of this section. Such devices must be operated at a pressure drop of no more than four inches (10.16 cm) water gauge as measured across the filter fabric. The air flow permeability, as determined by ASTM Method D737-75, must not exceed 30 ft.³/min./ft.² (9 m³/min./m²) for woven fabrics or 35 ft.³/min./ft.² (11 m³/min./m²) for felted fabrics with the exception that airflow permeability of 40 ft.³/min./ft.² (12 m³/min./m²) for woven and 45 ft.³/min./ft.² (14 m³/min./m²) for felted fabrics ~~must~~shall be allowed for filtering air emissions from asbestos ore dryers. Each square yard of felted fabric must weigh at least 14 ounces (475 grams per square meter) and be at least 1/16 inch (1.6 mm) thick throughout. Any synthetic fabrics used must not contain fill yarn other than that which is spun;
 - (b) If the use of fabric filters creates a fire or explosion hazard, the ~~d~~Department may authorize the use of wet collectors designed to operate with a unit contacting energy of at least 40 inches (101.6 cm) of water gauge pressure;
 - (c) If High Efficiency Particulate Air (HEPA) filters are used to control emissions the certified efficiency ~~must~~shall be at least 99.97 percent for particles 0.3 microns or greater;
 - (d) The Department may authorize the use of filtering equipment other than that described in subsection (a), (b), or (c) of this rule if such filtering equipment is satisfactorily demonstrated to provide filtering of asbestos material equivalent to that of the described equipment;
 - (e) All air cleaning devices authorized by this section must be properly installed, operated, and maintained. Devices to bypass the air cleaning equipment may be used only during upset and emergency conditions, and then only for such time as is necessary to shut down the operation generating the particulate asbestos material;
 - (f) For fabric filters collection devices installed after January 10, 1989, ~~must be provide for~~ must be provided for faulty bags.
- (3+4) Spraying:

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- (a) No person ~~may~~shall cause or allow to be discharged into the atmosphere any visible emissions from any spray-on application of materials containing more than one percent asbestos on a dry weight basis used to insulate or fireproof equipment or machinery, except as provided in section (2+3) of this rule. Spray-on materials used to insulate or fireproof buildings, structures, pipes, and conduits ~~must~~shall contain less than one-percent asbestos on a dry weight basis. ~~In the case of any city or area of local jurisdiction having ordinances or regulations for spray application materials more stringent than those in this section, the provisions of such ordinances or regulations shall apply;~~
- (b) ~~Twenty days before~~ Any person intending to sprays asbestos materials to insulate or fireproof buildings, structures, pipes, conduits, equipment, or machinery ~~must~~that person ~~shall~~ notify the Department in writing 20 days before the spraying operation begins. The notification ~~must~~shall contain the following:
 - (A) Name and address of person intending to conduct the spraying operation;
 - (B) Address or location of the spraying operation;
 - (C) The name and address of the owner of the facility being sprayed.
- (c) The spray-on application of materials in which the asbestos fibers are encapsulated with a bituminous or resinous binder during spraying and which are not friable after drying is exempted from the requirements of subsections (a) and (b) of this section.
- (+4) Fabricating. Except as provided in section (2) of this rule ~~No person may~~shall cause or allow to be discharged into the atmosphere any visible emissions, including fugitive emissions, ~~except as provided in section (13) of this rule, from any fabricating operations including the following:~~
 - (a) Applicability. This section applies to the following fabricating operations using commercial asbestos:
 - (A) The fabrication of cement building products;
 - (B) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles;
 - (C) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.
 - (b) The owner or operator of a fabricating operation must m~~Monitor~~ each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices and, process equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring ~~must~~shall be by visual observation of at least 15 seconds duration per source of emissions; and
 - (c) The owner or operator of a fabricating operation must i~~Inspect~~ each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this subsection, submit to the department, revise as necessary, and implement a written maintenance plan to include, at a minimum, ~~the following:~~ (A) a m~~Maintenance schedule and;~~ (B) r~~Recordkeeping plan.~~

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- (d) ~~The owner or operator of a fabricating operation must m~~Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department ~~that which~~ includes the following information:
 - (A) Date and time of each inspection;
 - (B) Presence or absence of visible emissions;
 - (C) Condition of fabric filters, including presence of any tears, holes, and abrasions;
 - (D) Presence of dust deposits on clean side of fabric filters;
 - (E) Brief description of corrective actions taken, including date and time;
 - (F) Daily hours of operation for each air cleaning device.
- (e) ~~The owner or operator of a fabricating operation must f~~Furnish upon request and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section;
- (f) ~~The owner or operator of a fabricating operation must r~~Retain a copy of all monitoring and inspection records for at least two years;
- (g) ~~The owner or operator of a fabricating operation must s~~Submit a copy of the visible emission monitoring records to the Department quarterly. The quarterly report ~~must~~shall be postmarked by the 30th day following the end of the calendar quarter.
- (45) Insulation. ~~No owner or operator of a facility may install or reinstall on a facility component any~~Molded insulating materials which are friable and wet-applied insulating materials which are friable after drying, installed after October 21, 1982, ~~shall that~~ contain no commercial asbestos ~~if the materials are either molded and friable or wet-applied and friable after drying.~~ The provisions of this section do not apply to insulating materials regulated under~~which are~~ spray-applied pursuant to section (311) of this rule.

340-248-0280**Friable Asbestos Disposal Requirements**

Work practices and procedures for packaging, storing~~age~~, transporting, and disposing~~at~~ of friable asbestos-containing waste material: The owner or operator of a ~~facility~~source or an activity covered under the provisions of OAR 340-248-0210~~5~~ through OAR 340-248-0280 or any other source of friable asbestos-containing waste material ~~must~~shall meet the following standards:

- (1) There ~~may~~shall be no visible emissions to the atmosphere, ~~except as provided in section (12) of this rule, during the collection; processing, including incineration; packaging; transporting; or deposition of any asbestos-containing waste material that which is generated by a~~ facility~~such source.~~
- (2) All asbestos-containing waste materials shall be adequately wetted to ensure that they remain wet until delivered to an authorized landfill~~disposed of~~, and:
 - (a) Processed into nonfriable pellets or other shapes; or
 - (b) Packaged in leak-tight containers such as two plastic bags each with a minimum thickness of 6 mil., or fiber or metal drum. Containers are ~~must~~to be labeled as follows:
 - (A) The name of the asbestos waste generator and the location ~~at where~~the waste was generated; and
 - (C) A warning label that states:

DANGER
Contains Asbestos Fibers

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Avoid Creating Dust Cancer and Lung Disease Hazard Avoid Breathing Airborne Asbestos Fibers

Alternatively, warning labels specified by 29 CFR 1926.1101(k)(7) (8/190/94) may be used.

- (3) ~~If~~ Where the asbestos-containing materials are not removed from a facility ~~before~~ prior to demolition as described in OAR 340-248-0270(5), adequately wet ~~the~~ asbestos-containing waste material at all times after demolition and keep it wet during handling and loading for transport to a disposal site. Such asbestos-containing waste materials must, ~~shall~~ be transported in lined and covered containers for bulk disposal.
- (4) The interim storage of asbestos-containing waste material must~~shall~~ protect the waste from dispersal into the environment and provide physical security from tampering by unauthorized persons. The interim storage of asbestos-containing waste material is the sole responsibility of the contractor, owner or operator performing the asbestos abatement project.
- (5) All asbestos-containing waste material must~~shall~~ be deposited as soon as possible by the asbestos waste generator at:
 - (a) A waste disposal site authorized by the Department and operated in accordance with this rule; or
 - (b) A Department approved site that converts asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of OAR 340-248-0230 Asbestos to Nonasbestos Conversion Operations.
- (6) Persons disposing of asbestos-containing waste material must~~shall~~ notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator ~~before~~ prior to bringing the waste to the disposal site.
- (7) For each waste shipment the following information must~~shall~~ be recorded on a Department form:
 - (a) Waste Generation:
 - (A) The name, address, and telephone number of the asbestos waste generator.
 - (B) The number and type of asbestos-containing waste material containers and volume in cubic yards.
 - (C) A certification that the contents of this consignment are carefully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highways according to applicable regulations.
 - (b) Waste Transportation:
 - (A) The date transported.
 - (B) The name, address, and telephone number of the transporter(s).
 - (c) Waste Disposal:
 - (A) The name and telephone number of the disposal site operator.
 - (B) The name and address or location of the waste disposal site.
 - (C) The quantity of the asbestos-containing waste material in cubic yards.
 - (D) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers.

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- (E) The date asbestos-containing waste is received at disposal site.
- (8) For the transportation of asbestos-containing waste material:
- (a) The asbestos waste generator must ~~shall~~:
 - (A) Maintain the asbestos waste shipment records for at least two years and ensure that all the information requested on the Department form regarding waste generation and transportation has been supplied.
 - (B) Limit access into loading and unloading area to authorized personnel.
 - (C) Mark vehicles, while loading and unloading asbestos-containing waste, with signs (20 in. x 14 in.) that state:

DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
Authorized Personnel Only

Alternatively, language that conforms to the requirements of 29 CFR 1926.1101(k)(6) (8/190/94) may be used.

- (b) The waste transporter must ~~shall~~:
 - (A) Immediately notify the landfill operator upon arrival of the waste at the disposal site.
 - (B) Provide a copy of the asbestos waste shipment record to the disposal site owners or operators when the asbestos-containing waste material is delivered to the disposal site.
- (9) After initial transport of asbestos-containing waste material the asbestos waste generator must ~~shall~~:
 - (a) Receive a copy of the completed asbestos waste shipment record within 35 days, or determine the status of the waste shipment. A completed asbestos waste shipment record must ~~will~~ include the signature of the owner or operator of the designated disposal site.
 - (b) ~~Receive~~ Have a copy of the completed asbestos waste shipment record within 45 days, or submit to the Department a written report including:
 - (A) A copy of the asbestos waste shipment record ~~for when~~ when a confirmation of delivery was not received; and
 - (B) A cover letter signed by the asbestos waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.
 - (c) Keep asbestos waste shipment records, including a copy signed by the owner or operator of the designated waste disposal site, for at least three years. Make all disposal records available upon request to the Department. For an asbestos abatement project conducted by a contractor licensed under OAR 340-248-0120, the records must ~~shall~~ be retained by the licensed contractor. For any other asbestos abatement project, the records must ~~shall~~ be retained by the facility owner.
- (10) Each owner or operator of an active asbestos-containing waste disposal site must ~~shall~~ meet the following standards:
 - (a) For all asbestos-containing waste material received:
 - (A) Ensure that off-loading of asbestos-containing waste material is done under the direction and supervision of the landfill operator or their authorized agent, and that it

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- is accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents the release of visible emissions to the air.
- (B) Ensure that off-loading of asbestos-containing waste material occurs at the immediate location where the waste ~~will~~is to be buried and restrict public access to off-loading area until waste is covered in accordance with paragraph (H), of this subsection.
 - (C) Maintain asbestos waste shipment records for at least 2 years and ensure that all information requested on the Department form regarding waste disposal has been supplied.
 - ~~(D) Retain a copy of asbestos waste shipment records for at least three years.~~
 - ~~(DE)~~ Immediately notify the Department by telephone, followed by a written report to the Department the following working day, of the presence of improperly enclosed or uncovered waste. Submit a copy of the asbestos waste shipment record along with the report.
 - ~~(EF)~~ As soon as possible, and no more~~longer~~ than 30 days after receiving~~get~~ of the waste, send a copy of the signed asbestos waste shipment record to the asbestos waste generator.
 - ~~(FG)~~ Upon discovering a discrepancy between the quantity of waste designated on the asbestos waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the asbestos waste generator. Report in writing to the Department ~~within the 15th day after receiving the waste~~ any discrepancy between the quantity of waste designated on the asbestos waste shipment records and the quantity actually received ~~that which~~ cannot be reconciled between the asbestos waste generator and the waste disposal site within 15 days after receiving the waste. Describe the discrepancy and attempts to reconcile it, and submit a copy of the asbestos waste shipment record along with the report. ~~Include~~Identify the Department assigned asbestos project number in the discrepancy report.
 - ~~(GH)~~ Select the waste burial site in an area of minimal work activity that is not subject to future excavation.
 - ~~(HI)~~ Cover all asbestos-containing waste material deposited at the disposal site with at least 12 inches of soil or six inches of soil plus 12 inches of other waste before running compacting equipment ~~runs~~ over it but not later than the end of the operating day.
 - (b) Maintain, until site closure, record of the location, depth and area, and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.
 - (c) Excavation or disturbance of asbestos-containing waste material, that has been deposited at a waste disposal site and is covered, ~~shall be~~is considered an asbestos abatement project. The notification for any such project ~~must~~shall be submitted as specified in OAR 340-248-0260 ~~but modified except~~ as follows:
 - (A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.
 - (B) State the r~~Reason~~ for disturbing the waste.
 - (C) Explain the p~~Procedures to be used to~~for controlling emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste

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- material. ~~If deemed necessary, t~~The Department may require changes in the proposed emission control procedures ~~to be used~~.
- (D) State the location of any temporary storage site and the final disposal site.
- (d) Upon closure of an active asbestos-containing waste disposal site, each owner or operator must ~~shall~~:
- (A) Comply with all the provisions for inactive asbestos-containing waste disposal sites.
 - (B) Submit to the Department a copy of records of asbestos waste disposal locations and quantities.
 - (C) ~~Furnish upon request, and m~~Make available during normal business hours and furnish upon request for inspection by the Department; all records required under this section for inspection by the Department.
- (11) The owner or operator of an inactive asbestos-containing waste disposal site must ~~shall~~ meet the following standards:
- (a) ~~Insure that~~Maintain a cover of at least two feet of soil or one foot of soil plus one foot of other waste ~~be maintained~~.
 - (b) Grow and maintain a cover of vegetation on the area to prevent erosion of the non asbestos-containing cover of soil or other waste materials, ~~or i~~In desert areas where vegetation would be difficult to maintain, a layer of at least three inches of well-graded, nonasbestos crushed rock may be placed and maintained on top of the final cover instead of vegetation.
 - (c) For inactive asbestos waste disposal sites for asbestos-containing tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used and maintained to achieve the requirements of subsections (a) and (b) of this section, provided prior written approval of the Department is obtained.
 - (d) Excavation or disturbance at any inactive asbestos-containing waste disposal site ~~is~~shall be considered an asbestos abatement project. The notification for any such project must ~~shall~~ be submitted as specified in OAR 340-248-0260, ~~except but modified~~ as follows:
 - (A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.
 - (B) State the rReason for disturbing the waste.
 - (C) Explain the procedures to be used to control emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. ~~If deemed necessary, t~~The Department may require changes in the proposed emission control procedures to be used.
 - (D) State the location of any temporary storage site and the final disposal site.
 - (e) Within 60 days of a site's becoming inactive, request in writing that the Commission issue an environmental hazard notice for the site. This environmental hazard notice will ~~in perpetuity~~ notify in perpetuity any potential purchaser of the property that:
 - (A) The land has been used for the disposal of asbestos-containing waste material; ~~and~~
 - (B) ~~That~~ the survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required for active asbestos disposal sites have been filed with the Department; and
 - (C) The site is subject to the provisions of OAR 340-248-0205 through 340-248-02980.

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- (12) ~~Any waste which contains nonfriable asbestos-containing material not subject to this rule shall be handled and disposed of using methods that will prevent the release of airborne asbestos-containing material.~~
- (13) Rather than meet the requirements of this rule, an owner or operator may elect to use an alternative packaging, storage, transport, or disposal methods ~~after which has received~~ prior written approval by the Department.

340-248-0290

Nonfriable Asbestos Disposal Requirements

Work practices and procedures for packaging, storing, transporting, and disposal of nonfriable asbestos-containing waste material: The owner or operator of a facility or an activity covered under the provisions of OAR 340-248-0205 through OAR 340-248-0290 and any other source of nonfriable asbestos-containing waste material must meet the following standards:

- (1) There may be no visible emissions to the atmosphere while collecting, processing, packaging, transporting, or disposing of any nonfriable asbestos-containing waste material that is generated by such source.
- (2) All nonfriable asbestos-containing waste materials must be adequately wetted to ensure that they remain wet until deposited at an authorized landfill, and either:
 - (a) Processed into nonfriable pellets or other shapes; or
 - (b) Packaged in leak-tight containers that allow the nonfriable asbestos-containing waste to remain adequately wet until deposited at an authorized landfill. Such containers must be marked as follows:
 - (A) The name of the asbestos waste generator and the location where the waste was generated; and
 - (B) A warning statement:

DANGER ASBESTOS-CONTAINING MATERIAL

- (3) Nonfriable asbestos-containing roofing materials that are fully encapsulated in a petroleum-based binder and meet the conditions in OAR 340-248-0250(2)(c) are exempt from 340-248-0290(2).
- (4) The interim storage of nonfriable asbestos-containing waste material must protect the waste from tampering by unauthorized persons. The interim storage of nonfriable asbestos-containing waste material is the sole responsibility of the contractor or the owner or operator performing the nonfriable asbestos abatement project.
- (5) All nonfriable asbestos-containing waste material must be deposited as soon as possible by the asbestos waste generator at:
 - (a) A waste disposal site authorized by the Department and operated in accordance with this rule; or
 - (b) A Department-approved site that converts asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of OAR 340-248-0230, Asbestos to Nonasbestos Conversion Operations.

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- (6) Persons disposing of nonfriable asbestos-containing waste material must notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator before bringing the waste to the disposal site.
- (7) For each nonfriable waste shipment, the waste generator must provide the generator information contained in OAR 340-248-0280(7).
- (8) For the transportation of nonfriable asbestos-containing waste material the waste generator must follow the provisions of OAR 340-248-0280(8).
- (9) After initial transport of nonfriable asbestos-containing waste material, the asbestos waste generator must follow the provisions of OAR 340-248-0280(9).
- (10) Each owner or operator of an active nonfriable asbestos-containing waste disposal site must meet the provisions of OAR 340-248-0280(10).
- (11) The owner or operator of an inactive nonfriable waste disposal site must meet the provisions of OAR 340-248-0280(11).
- (12) Rather than meet the requirements of this rule, an owner or operator may use alternative packaging, storage, transport, or disposal methods after receiving written approval from the Department.

State of Oregon

Department of Environmental Quality

Memorandum

Date: January 4, 2002

To: Environmental Quality Commission

From: Stephanie Hallock, Director *S. Hallock*

Subject: Agenda Item E, Rule Adoption: Water Quality 20% NPDES and WPCF Permit Fee Increase
January 25, 2002 EQC Meeting

**Department
Recommendation**

The Department recommends the Commission adopt the proposed rule revisions to the following as presented in Attachment A:

- OAR 340-045-0070 *Regulations Pertaining to NPDES and WPCF Permits: Permit Fees*
- OAR 340-045-0075 *Regulations Pertaining to NPDES and WPCF Permits: Permit Fee Schedule*
- OAR 340-071-0140 *On-site Sewage Disposal: Fees – General*
- OAR 340-071-0162 *On-site Sewage Disposal: Permit Application Procedures – WPCF Permits*

**Need for
Rulemaking**

The proposed revisions are necessary to allow the Department to proceed with collection of additional revenue in a timely manner and continue operation of the Water Quality Division's Wastewater Permitting Program at its current service level.

Effect of Rule

The rule revisions would:

- Increase National Pollutant Discharge Elimination System (NPDES) and Water Pollution Control Facilities (WPCF) permit fees by 20% as approved by the 2001 Legislature in Senate Bill (SB) 5517, and
- Clarify other water quality permit program requirements through formatting and text revisions.

20% increase of NPDES and WPCF permit fees

The proposed rule revisions would uniformly increase all fees in the Wastewater Permitting Program by 20%. The fee categories remain the same and were not evaluated because program activities have not been altered. The fees to be increased include, but are not limited to the following:

- Application filing fees
- Application processing fees (new, renewal and modification fees)
- Annual compliance determination fees
- Technical services fees for plan review
- Pretreatment fees
- Population based fees for sewage treatment plants
- WPCF on-site sewage system permit fees

The estimated revenue to be generated by the fee increase is the amount needed to maintain current staffing levels in the permitting program and will restore 5 FTE to the program that would otherwise be lost. Fees were last increased for industrial permittees in 1997 and for domestic (sewage treatment plant) permittees in 1992.

Additional formatting and text revisions for program clarification

- Incorporation of existing footnotes into the text of OAR 340-045-0075 and OAR 340-071-0140 to make these rules easier to read.
- Reinsertion of the domestic waste annual compliance determination fee schedule. This portion of the fee schedule was previously referenced and not printed with the official rule because its format was inconsistent with Oregon Administrative Rule numbering requirements. The numbering on this schedule has been reformatted to allow reinsertion into the official Secretary of State publication.
- Correction of OAR 340-071-0162(9) to allow WPCF on-site permits to be issued for a period of 10 years. This update is to maintain consistency with revisions made to OAR Chapter 340, Division 045 in October 2000. The revision to OAR 340-071-0162(9) was inadvertently omitted from this previous rulemaking effort.

**Commission
Authority**

The Commission has authority to take this action under ORS 468.020 and 468.065(2).

**Stakeholder
Involvement**

Department water quality staff developed the proposed rule revisions. The Department worked with a variety of associations representing business and local government interests during the legislative process. In addition to these efforts, the Department discussed fee increases, workload and process improvements with its standing Wastewater Advisory Committee before and after passage of SB 5517. The Wastewater Advisory Committee did recommend an "across the board" increase rather than revising the fee assessment methodology.

Public Comment Overview of public comment period and hearings

A public comment period from September 26, 2001 to November 16, 2001, was provided and included public hearings in Medford, Eugene, Bend, Pendleton, and Portland (see Attachment C). There was no one in attendance at the Medford, Bend and Pendleton hearings. Three people attended the Eugene hearing and two people attended the Portland hearing. No one provided oral or written comment at the hearings.

Summary of comments

Eight people submitted written comment. Generally, two commenters supported the fee increase and six commenters opposed. Of those opposed, several expressed specific concerns that the fee for WPCF on-site sewage system permits is too high for smaller systems. The Department plans to conduct a comprehensive review of its on-site sewage system regulations in the near future to address such issues. No changes were made to the proposed rules in response to these comments because fee categories were not evaluated for this rulemaking effort.

Results of public input are provided in Attachment B.

Key Issues

Applicability of SB 5516 (on-site sewage system fee rollback) to WPCF on-site permits

The 2001 Legislature passed SB 5516 to reduce site evaluation fees, plan review fees and construction-installation permit fees for certain on-site sewage disposal systems. SB 5516 also reduced the annual compliance fee for certified sewage holding tanks. This rollback was in response to concerns by the Legislative Fiscal Office that the Department did not properly implement a fee increase approved by the 1999 Legislature.

SB 5516 did not rollback all fees associated with operating permits for certain on-site sewage systems. There are some systems, typically larger or more complex systems, that require WPCF permits to regulate their ongoing operation. The application and annual compliance fees for these WPCF permits were not increased during the 1999 session so they were not affected by SB 5516. The Department is now proposing to increase these WPCF permit fees by 20%.

Note: Permanent rulemaking for the rollback of fees as directed by SB 5516 occurred at the Commission's December 2001 meeting.

No proposed increase in fees for wastewater permits administered by Oregon Department of Agriculture (ODA)

House Bill 2156 provided ODA with additional permitting authority to prevent water pollution from livestock and other animal-based agricultural operations. ODA currently relies on the Water Quality Division's fee schedule and will do so until it adopts its own permit fees. Fees for ODA's permits were *not* increased because the 20% increase allowed by the Legislature was based on revenue generated from the Wastewater Permitting Program and ODA's permits are not part of this program.

Coordination with the Air Quality Division's proposed permit fee increase

The Air Quality Division is also increasing its permit fees (scheduled for rulemaking at the Commission's March 2002 meeting). The Water Quality Division has coordinated its efforts with the Air Quality Division to better communicate with permittees that hold both air and water quality permits. This included a letter to water quality permittees informing them of the Air Quality Division's proposal, and mention of this proposal in the public notice for the Water Quality Division's proposed 20% permit fee increase.

Economic impact (see Attachment E for more information)

The Department has received formal and informal comment that it should not pursue fee increases during a recession. Unfortunately, the process of obtaining approval by the Legislature for this fee increase and implementing the increase through rulemaking is lengthy, and the Department had no way to anticipate the current economic state. Generally, the fee increase will impact the following:

- Local governments with wastewater treatment facilities will see the greatest increase in annual compliance fees due to increases in pretreatment and population-based fees that are added to their base annual fee. The total annual compliance fee for each of these permittees was not estimated because of the variability in pretreatment and population fees, but base annual fees for larger facilities (>10 million gallons/day) would increase \$2,200 from \$11,020 to \$13,220.
- Industrial wastewater dischargers needing a permit for the first time will experience the largest increase in new application processing fees, as much as \$6,280 from \$31,400 to \$37,680 for "major" permits.
- Residential development and small business may be impacted if a WPCF permit for an on-site sewage disposal system is required. Typically, new application fees will increase \$80 from \$400 to \$480; renewal fees will increase \$40 from \$200 to \$240; and annual compliance determination fees will increase \$50 from \$250 to \$300. While these increases are much smaller than those discussed for local governments and industrial

wastewater dischargers, they can be significant for homeowners and small business owners.

- Building costs could also be affected if an NPDES permit is needed for storm water runoff from construction activities that disturb at least five or more acres (one or more acres starting December 1, 2002). However, the \$110 increase from \$560 to \$670 for new applications and \$55 increase from \$275 to \$330 for annual fees is not considered significant when compared to overall construction costs.

Next Steps

The rule revisions would become effective upon filing with the Secretary of State. The Rule Implementation Plan is available upon request. The following provides more detail on specific steps that will be taken after rule adoption:

Supplemental invoicing for FY02 annual compliance fees

Since the 20% increase in permit fees was approved for the Department's 2001-2003 biennium, the increase in annual compliance determination fees for Fiscal Year 2002 (July 1, 2001 to June 30, 2002) will be collected through supplemental invoicing in February 2002. This supplemental invoicing is necessary because the Department invoiced for Fiscal Year 2002 in May 2001, but did not include the 20% increase since it was not yet approved. Annual compliance determination fees are assessed by fiscal year for permits that are active during that fiscal year; these fees are not prorated. All permittees with permits that are active for any period of time during a fiscal year receive annual invoices.

Invoicing for FY03 annual compliance fees

Invoicing for Fiscal Year 2003 (July 1, 2002 to June 30, 2003) will occur as regularly scheduled in May 2002.

Effective date for new, renewal, and modification application fees, and other fees

All other fees, such as application processing fees for new or renewal permits or fees for technical services or plan review, will become effective on the date the revised rules are filed with the Secretary of State's office.

Training and communication strategy

Since categories within the fee schedule have not been changed and fees were increased uniformly, no major training of DEQ staff is necessary. Staff will be notified by e-mail of the fee increase and rule amendments. Communication of the increase will occur through a press release to the public and with individual notifications to stakeholder groups.

Attachments

- A. Proposed Rule Revisions
 - 1. Summary of Rule Revisions
 - 2. Proposed Rule Revisions
- B. Public Input and Department's Response
- C. Presiding Officer's Report on Public Hearings
- D. Relationship to Federal Requirements
- E. Fiscal and Economic Impact Statement
- F. Land Use Evaluation Statement
- G. 20% Fee Increase Comparison Tables

Available Upon Request

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Written Comment Received
- 4. Rule Implementation Plan

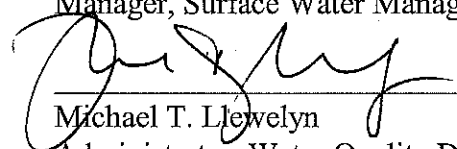
Approved:

Section:



Michael H. Korten
Manager, Surface Water Management

Division:



Michael T. Llewellyn
Administrator, Water Quality Division

Report Prepared By: Ranei Nomura

Phone: (503) 229-5657

Attachment A-1 Summary of Rule Revisions

The proposed rule revisions will:

1. 20% increase in NPDES and WPCF permit fees

NPDES and WPCF permit fees in OAR 340-045-0075 and 340-071-0140(5) are being increased by 20%. Note that dollar amounts are being rounded down to the nearest 0 or 5 to simplify the fee amounts. For example, \$378 is rounded to \$375 and \$1,272 is rounded to \$1,270.

2. Fee clarification for permits administered by ODA (p. 10)

A new section, OAR 340-045-0075(2), was created to clarify the fees for permits administered by the Oregon Department of Agriculture (ODA). OAR 340-045-0075(2) compiles existing fees into one section for easier reading. *These fees exist in the current fee schedule; they are not new fees and were not increased.* They were not increased because the 20% increase allowed by the Legislature was based on revenue generated from the Department's Wastewater Permitting Program and the ODA permits are not part of this program. OAR 340-045-0070(8) was also added to clarify that the fees are applicable until superseded by a fee schedule established by ODA.

3. OAR 340-045-0075(3) for footnotes 1, 2 and 3 describing fee qualifying factors (p. 10)

Footnotes 1, 2 and 3 in the previous version of this rule that describe qualifying factors for determining "major" industries and "major" and "minor" domestic categories when assessing fees have been moved to OAR 340-045-0075(3) to make the rule easier to read.

4. Clarification for qualifying factors in OAR 340-045-0075(3) (p. 10)

A note has been added to OAR 340-045-0075(3) to clarify that the factors for determining the facility classification (e.g., "major" or "minor") are only for fee purposes and not for determining a facility's classification under the NPDES program when reporting to the federal Environmental Protection Agency.

5. Additional footnotes in OAR 340-045-0075 incorporated into text

Additional changes have been made to make the rule easier to read:

- ✓ Footnote 4 for technical activities fee qualifying factors was inserted into the technical activities fee schedule, OAR 340-045-0075(6). (p. 12)
- ✓ Footnote 5 clarifying fees for WPCF General Permit #800 administered by ODA was rewritten as OAR 340-045-0075(2)(a). (p. 10)
- ✓ Footnote 6 indicating that on-site sewage systems fees are found in OAR Chapter 340, Division 71 was moved to OAR 340-045-0075(1). (p. 10)

6. Domestic waste annual compliance determination fee reinserted into rule (p. 13)

The annual compliance determination fee schedule for domestic waste sources (sewage treatment plants) has been reinserted into what has been renumbered as OAR 340-045-0075(7)(a). This portion of the fee schedule was previously referenced and not printed with the official rule because its format was inconsistent with Oregon Administrative Rule

numbering requirements. The numbering on this schedule has been reformatted to allow reinsertion into the official Secretary of State publication of the rule.

7. Duration of WPCF on-site sewage system permits (p. 21)

OAR 340-071-0162(9) has been revised to allow WPCF on-site permits to be issued for a period of 10 years. This update is to maintain consistency with revisions made to OAR Chapter 340, Division 045 in October 2000. The revision to OAR 340-071-0162(9) was inadvertently omitted from this previous rulemaking effort.

Attachment A-2

(strikeout indicates deleted text; underline indicates proposed revisions)

**AMENDMENTS TO DIVISION 045
REGULATIONS PERTAINING TO
NPDES AND WPCF PERMITS**

340-045-0070

Permit Fees

(1) All persons required to have a Water Pollution Control Facilities Permit or NPDES Waste Discharge Permit shall be subject to a three-part fee consisting of a uniform non-refundable filing fee, an application processing fee, and an annual compliance determination fee which are obtained from OAR 340-045-0075. The amount equal to the filing fee, application processing fee, and the first year's annual compliance determination fee shall be submitted as a required part of any application for a new NPDES or WPCF permit. The amount equal to the filing fee and application processing fee, if applicable, shall be submitted as a required part of any application for renewal or modification of a NPDES or WPCF permit.

(2) The annual compliance determination fee, as listed in OAR 340-045-0075(47), must be paid for each year a disposal system is in operation or during which a discharge to public waters occurs. The fee period shall correspond with the state's fiscal year (July 1 through June 30) and shall be paid annually during the month of July. Any annual compliance determination fee submitted as part of an application for a new NPDES or WPCF permit shall apply to the fiscal year the permitted facility is put into operation. For the first year's operation, the full fee shall apply if the facility is placed into operation on or before May 1. Any new facility placed into operation after May 1 shall not owe a compliance determination fee until the following July. The Director may alter the due date for the annual compliance determination fee upon receipt of a justifiable request from a permittee. The Commission may reduce or suspend the annual compliance determination fee in the event of a proven hardship.

(3) Modifications of existing, unexpired permits which are instituted by the Department due to changing conditions or standards, receipts of additional information or any other reason pursuant to applicable statutes and do not require refileing or review of an application or plans and specifications shall not require submission of the filing fee or the application processing fee.

(4) Upon the Department accepting an application for filing, the filing fee shall be non-refundable.

(5) The application processing fee may be refunded in whole or in part when submitted with an application if either of the following conditions exist:

- (a) The Department determines that no permit will be required;
- (b) The Department determines that the wrong application has been filed.

(6) All fees shall be made payable to the Department of Environmental Quality.

(7) The fee schedule for on-site sewage disposal systems, including those that require WPCF permit, is found in OAR Chapter 340, Division 071.

(8) The fee schedule in OAR 340-045-0075 for permits administered by the Oregon Department of Agriculture is applicable until superseded by a fee schedule established by the Oregon Department of Agriculture.

Stat. Auth.: ORS 454.626, ORS 454.780 & ORS 468.020

Stats. Implemented: ORS 468.065(2)

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 27-1994, f. & cert. ef. 11-15-94

340-045-0075

Permit Fee Schedule⁶

(1) The fee schedule for on-site sewage disposal systems, including those requiring WPCF permit, is found in OAR Chapter 340, Division 071.

(2) For permits administered by the Oregon Department of Agriculture, the following fees are applicable until superseded by a fee schedule established by the Oregon Department of Agriculture:

(a) WPCF General Permits #800 for Confined Animal Feeding Operations Filing Fee – \$50

(b) Other General Permits:

(A) Filing Fee – \$50

(B) New Applications – \$235

(C) Permit Renewals – \$35

(D) Annual Compliance Determination Fee – \$275

(c) Individual Permits:

(A) Filing Fee – \$50

(B) New Applications – \$6,280

(C) Permit Renewals (including request for effluent limit modifications) – \$3,140

(D) Permit Renewals (without request for effluent limit modifications) – \$1,416

(E) Permit Modifications (involving increase in effluent limit modifications) – \$3,140

(F) Permit Modifications (not involving an increase in effluent limitations) – \$500

(G) Annual Compliance Determination Fee for dairies and other confined feeding operations – \$705

(H) Annual Compliance Determination Fee for facilities not elsewhere classified with disposal of process wastewater - \$1,885

(I) Annual Compliance Determination Fee for facilities not elsewhere classified that dispose of non-process wastewater (i.e., small cooling water discharges, boiler blowdown, filter backwash, log ponds, etc.) - \$1,180

(J) Annual Compliance Determination Fee for facilities that dispose of wastewater only by evaporation from watertight ponds or basins - \$705

(3) The Department shall take the following qualifying factors into consideration when determining the facility classification for fee purposes (Note: These factors are only for determining the appropriate fee. A different process is used to determine a facility's classification under the NPDES program when reporting to the federal Environmental Protection Agency.):

(a) Major industries

- (A) Discharges large biochemical oxygen demand loads, or
- (B) Is a large metals facility, or
- (C) Has significant toxic discharges, or
- (D) Has a treatment system that will have a significant adverse impact on the receiving stream if not operated properly, or
- (E) Any other industry which the Department needs special regulatory control.

(b) Major domestic

- (A) Serving more than 10,000 people, or
- (B) Serving industries that can have a significant impact on the treatment system.

(c) Minor domestic

- (A) Do not meet major domestic qualifying factors, or
- (B) Are facilities in categories Da and Db and discharge to surface waters, or
- (C) Are facilities in categories E and F that do not discharge to surface waters and are under a Water Pollution Control Facilities permit.

(44) **Filing Fee.** Unless waived by this rule, a filing fee of \$50-60 shall accompany any application for issuance, renewal, modification, or transfer of an NPDES permit or WPCF permit, including registration for a General Permit pursuant to OAR 340-045-0033 and request for a Special Permit pursuant to OAR 340-014-0050. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed. The following filing fees are waived:

- (a) Small gold mining suction dredges ~~which~~that qualify for General Permit 700, and with an intake hose diameter of four inches or less;
- (b) Small gold mining operations ~~which~~that qualify for General Permit 600, and ~~which~~ can process no more than five cubic yards of material per day.

(25) **Application Processing Fee.**[§] Unless waived by this rule, an application processing fee shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) New Applications:

- (A) Major industries¹ – ~~\$31,400;~~\$37,680
- (B) Minor industries – ~~\$6,280;~~\$7,535
- (C) Major domestic² – ~~\$20,000;~~\$24,000
- (D) Minor domestic³:
 - (i) Categories Da, Db – ~~\$4,000;~~\$4,800
 - (ii) Category E – ~~\$2,000;~~\$2,400
 - (iii) Category F – ~~\$500;~~\$600
- (E) Agricultural – ~~\$6,280;~~\$7,535

(b) Permit Renewals (including request for effluent limit modification):

- (A) Major industries⁴ – ~~\$15,700;~~\$18,840
- (B) Minor industries – ~~\$3,140;~~\$3,765
- (C) Major domestic³ – ~~\$10,000;~~\$12,000
- (D) Minor domestic³:
 - (i) Categories Da, Db – ~~\$2,000;~~\$2,400
 - (ii) Category E – ~~\$1,000;~~\$1,200
- (E) Agricultural – ~~\$3,140;~~\$3,765

(c) Permit Renewals (without request for effluent limit modification):

- (A) Major industries¹ – ~~\$7,850;~~\$9,420
- (B) Minor industries – ~~\$1,180;~~\$1,415
- (C) Major domestic² – ~~\$5,000;~~\$6,000
- (D) Minor domestic³:
 - (i) Categories Da, Db – ~~\$750;~~\$900
 - (ii) Category E – ~~\$500;~~\$600
 - (iii) Category F – ~~\$200;~~\$240
- (E) Agricultural – ~~\$1,180;~~\$1,415
- (d) Permit Modifications (involving increase in effluent limitations):
 - (A) Major industries¹ – ~~\$15,700;~~\$18,840
 - (B) Minor industries – ~~\$3,140;~~\$3,765
 - (C) Major domestic² – ~~\$10,000;~~\$12,000
 - (D) Minor domestic³:
 - (i) Categories Da, Db – ~~\$2,000;~~\$2,400
 - (ii) Category E – ~~\$1,000;~~\$1,200
 - (E) Agricultural – ~~\$3,140;~~\$3,765
- (e) Permit Modifications (not involving an increase in effluent limits): All categories – ~~\$500;~~\$600;
- (f) Special WPCF Permits issued pursuant to OAR 340-045-0061 – ~~\$250;~~\$300
- (g) Modifications of septage alkaline stabilization facilities permits – ~~\$200;~~\$240
- (h) New General Permits, by permit number:
 - (A) 100, 200, 400, 500, 600 (over 1,500 cubic yards per year), 900, 1000, ~~1200D, 1200S,~~ 1400A – ~~\$80;~~\$95
 - (B) 300, ~~1200F,~~ 1300, 1400B, 1500, 1600 – ~~\$155;~~\$185
 - (C) All other 1200, 1700 – ~~\$235;~~\$280
 - (D) Others not elsewhere specified – ~~\$235;~~\$280
 - (E) In addition, the following fees shall be added to ~~categories~~paragraphs (5)(b)(A) through (D) of this rule when the listed activities are a required part of the application review process:
 - (i) Disposal system plan review – ~~\$315;~~\$375
 - (ii) Site inspection and evaluation – ~~\$785;~~\$940
- (i) Renewal of General Permits, as listed in subsection (2)(h) of this rule – ~~\$35;~~\$40
- (j) Application processing fees described in subsections (2)(h) and (i) of this rule are waived for specific categories as follows:
 - (A) Small gold mining operations ~~which~~that qualify for General Permit 600, and ~~which~~ can process no more than five cubic yards of material per day, or more than five cubic yards of material per day but less than 1,500 cubic yards of material per year;⁵
 - (B) Small gold mining suction dredges ~~which~~that qualify for General Permit 700.

(36) Technical Activities Fee.^{4,5} All permittees shall pay a fee for NPDES and WPCF permit-related technical activities. A fee will be charged for initial submittal of engineering plans and specifications. Fees will not be charged for revisions and resubmittals of engineering plans and specifications and for facilities plans, design studies, reports, change orders or inspections. The fee is as follows:

- (a) New or substantially modified sewage treatment facility – ~~\$4,600;~~\$5,520
- (b) Minor sewage treatment facility modifications and pump stations – ~~\$500;~~\$600
- (c) Pressure sewer system, or major sewer collection system expansion – ~~\$350;~~\$420
- (d) Minor sewer collection system expansion or modification – ~~\$100;~~\$120

(e) New or substantially modified water pollution control facilities utilizing alkaline agents to stabilize septage – ~~\$500;~~\$600

(47) Annual Compliance Determination Fee Schedule. ~~Unless waived by this rule, annual compliance determination fees are as follows:~~⁵~~[Schedule not included. See ED. NOTE.]~~

~~(a) Domestic Waste Sources – Initial and Annual Compliance Determination Fee is based on Dry Weather Design Flow, Population Served by Facility, Type of Facility and Applicable Special Fees as follows: Category Fees:~~

~~(A) Category A1: Sewage Disposal – 50 MGD or more – \$42,410;~~\$50,890

~~(B) Category A2: Sewage Disposal – At least 25 MGD but less than 50 MGD – \$24,510;~~\$29,410

~~(C) Category A3: Sewage Disposal – At least 10 MGD but less than 50 MGD – \$11,020;~~\$13,220

~~(D) Category Ba: Sewage Disposal – At least 5 MGD but less than 10 MGD – \$6,700;~~\$8,040

~~(E) Category Bb: Sewage Disposal – At least 5 MGD but less than 10 MGD – Systems where treatment occurs in lagoons that discharge to surface waters – \$3,070;~~\$3,680

~~(F) Category C1a: Sewage Disposal – At least 2 MGD but less than 5 MGD – \$4,175;~~\$5,010

~~(G) Category C1b: Sewage Disposal – At least 2 MGD but less than 5 MGD – Systems where treatment occurs in lagoons that discharge to surface waters – \$1,825;~~\$2,190

~~(H) Category C2a: Sewage Disposal – At least 1 MGD but less than 2 MGD – \$2,510;~~\$3,010

~~(I) Category C2b: Sewage Disposal – At least 1 MGD but less than 2 MGD – Systems where treatment occurs in lagoons that discharge to surface waters – \$1,060;~~\$1,270

~~(J) Category Da: Sewage Disposal – Less than 1 MGD, and not otherwise categorized under category E – \$955;~~\$1,145

~~(K) Category Db: Sewage Disposal – Less than 1 MGD – Systems where treatment occurs in lagoons that discharge to surface waters which that are not otherwise categorized under Category E – \$625;~~\$750

~~(L) Category E: Sewage Disposal systems where treatment is limited to lagoons which that do not discharge to surface waters – \$600;~~\$720

~~(M) Category F: Septage alkaline stabilization facilities – \$200;~~\$240

~~(N) Category G: Sources determined by the Department to administer a pretreatment program pursuant to federal pre-treatment program regulations (40 CFR, Part 403; January 28, 1981) shall pay an additional \$1,000;~~\$1,200 per year plus ~~\$335;~~\$400 for each significant industrial user specified in their annual report for the previous year;

~~(O) Category H: Population Based Fee – All permittees shall pay an annual fee computed as follows: population served by the facility multiplied by a rate of 0.08038;~~0.09645.

~~(P) In addition to applicable fees specified above, special Annual Compliance Fees for Tualatin Basin Pollution Abatement Activities will be applied to the following permittees until Fiscal Year 1998:~~

~~(i) Unified Sewerage Agency – Durham – \$26,720~~

~~(ii) Unified Sewerage Agency – Rock Creek – \$22,995~~

~~(iii) Unified Sewerage Agency – Forest Grove – \$5,450~~

~~(iv) Unified Sewerage Agency – Hillsboro – \$4,240~~

~~(v) Unified Sewerage Agency – Banks – \$185~~

~~(vi) City of Portland – Tryon Creek – \$910~~

~~(b) Industrial, Commercial and Agricultural Sources (Source and Initial and Annual Fee): (For multiple sources on one application select only the one with highest fee.) as follows:~~

~~(A) Major pulp, paper, paperboard, hardboard, and other fiber pulping industry – \$9,420;~~\$11,300

- (B) Major sugar beet processing, potato and other vegetable processing, and fruit processing industry – ~~\$9,420;~~\$11,300
- (C) Seafood Processing Industry:
- (i) Bottom fish, crab, and/or oyster processing – ~~\$1,060;~~\$1,270
 - (ii) Shrimp processing – ~~\$1,060;~~\$1,270
 - (iii) Salmon and/or tuna processing – ~~\$1,885;~~\$2,260
 - (iv) Surimi processing – ~~\$1,885;~~\$2,260
- (D) Electroplating industry (excludes facilities ~~which~~that do anodizing only):
- (i) Rectifier output capacity of 15,000 amps, or more – ~~\$9,420;~~\$11,300
 - (ii) Rectifier output capacity of less than 15,000 amps but more than 5000 amps – ~~\$4,710;~~\$5,650
- (E) Primary Aluminum Smelting – ~~\$9,420;~~\$11,300
- (F) Primary smelting and/or refining of non-ferrous metals utilizing sand chlorination separation facilities – ~~\$9,420;~~\$11,300
- (G) Primary smelting and/or refining of ferrous and non-ferrous metals not elsewhere classified above – ~~\$4,710;~~\$5,650
- (H) Alkalies, chlorine, pesticide, or fertilizer manufacturing with discharge of process waste waters – ~~\$9,420;~~\$11,300
- (I) Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process wastewater – ~~\$9,420;~~\$11,300
- (J) Cooling water discharges in excess of 20,000 BTU/sec – ~~\$4,710;~~\$5,650
- (K) Milk products processing industry ~~which~~that processes in excess of 250,000 pounds of milk per day – ~~\$9,420;~~\$11,300
- (L) Major mining operations (over 500,000 cubic yards per year) – ~~\$9,420;~~\$11,300
- (M) Minor mining and/or processing operations:
- (i) Medium (100,000 to 500,000 cubic yards per year) mechanical processing – ~~\$3,140;~~\$3,765
 - (ii) Medium using froth flotation – ~~\$4,710;~~\$5,650
 - (iii) Medium using chemical leaching – ~~\$6,280;~~\$7,535
 - (iv) Small (less than 100,000 cubic yards per year) mechanical processing – ~~\$785;~~\$940
 - (v) Small using froth flotation – ~~\$1,570;~~\$1,880
 - (vi) Small using chemical leaching – ~~\$3,140;~~\$3,765
- (N) All facilities not elsewhere classified with disposal of process wastewater – ~~\$1,885;~~\$2,260
- (O) All facilities not elsewhere classified ~~which~~that dispose of non-process wastewater (i.e., small cooling water discharges, boiler blowdown, filter backwash, log ponds, etc.) – ~~\$1,180;~~\$1,415
- (P) Dairies and other confined feeding operations on individual permits – ~~\$705;~~\$845
- (Q) All facilities ~~which~~that dispose of wastewater only by evaporation from watertight ponds or basins – ~~\$705;~~\$845
- (R) General permits, as listed under paragraphs (25)(h)(A) through ~~(2)(h)(D)~~ of this rule, ~~except as follows:~~ – ~~\$275;~~\$330, except as follows:
- (i) 1400A – ~~\$155;~~\$185
 - (ii) Annual compliance determination fees are waived for gold mining activities ~~which~~that qualify for General Permit Categories 600 and 700.

FOOTNOTES:

[†] *Major Industries Qualifying Factors:*

~~1~~ Discharges large BOD loads; or

~~2~~ Is a large metals facility; or

- ~~-3- Has significant toxic discharges; or~~
- ~~-4- Has a treatment system which, if not operated properly, will have a significant adverse impact on the receiving stream; or~~
- ~~-5- Any other industry which the Department determines needs special regulatory control.~~

~~² Major Domestic Qualifying Factors:~~

- ~~-1- Serving more than 10,000 people; or~~
- ~~-2- Serving industries which can have a significant impact on the treatment system.~~

~~³ Minor Domestic Qualifying Factors:~~

- ~~-1- Do not meet major domestic qualifying factors;~~
- ~~-2- Categories Da, Db discharge to surface waters;~~
- ~~-3- Categories E and F do not discharge to surface waters, and are under Water Pollution Control Facilities (WPCF) Permit.~~

~~⁴ Technical Activities Fee Qualifying Factors:~~

- ~~-1- Fee charged for initial submittal of engineering plans and specifications;~~
- ~~-2- Fee not charged for revisions and resubmittals of engineering plans and specifications;~~
- ~~-3- Fee not charged for facilities plans, design studies, reports change orders or inspections.~~

~~⁵ Confined Animal Feeding Operations: Sections (2), (3), and (4) of this rule do not apply to General Permit 800, confined animal feeding operations, administered by the Oregon Department of Agriculture.~~

~~⁶ On-site Sewage Disposal Systems: Fees for on-site sewage disposal systems, including those requiring WPCF permits, are found in OAR Chapter 340, Division 71.~~

~~[ED. NOTE: The schedule referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]~~

~~[Publications: The publication(s) referenced in this rule are available from the agency.]~~

Stat. Auth.: ORS 468.020 & ORS 468.065(2)

Stats. Implemented: ORS 468B.050 & ORS 468.065

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 9-1987, f. & ef. 6-3-87; DEQ 18-1990, f. & cert. ef. 6-7-90; DEQ 10-1991, f. & cert. ef. 7-1-91; DEQ 9-1992, f. & cert. ef. 6-5-92; DEQ 10-1992, f. & cert. ef. 6-9-92; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 20-1994, f. & cert. ef. 10-7-94; DEQ 4-1998, f. & cert. ef. 3-30-98; Administrative correction 10-22-98; DEQ 15-2000, f. & cert. ef. 10-11-00

AMENDMENTS TO DIVISION 071 ON-SITE SEWAGE DISPOSAL

340-071-0140 FEES — GENERAL

(1) ON-SITE SEWAGE DISPOSAL SYSTEMS —MAXIMUM FEE

Except as provided in section (4) of this rule, the following non-refundable fees are required to accompany applications for site evaluations, permits, licenses and services provided by the Department.

(a) New Site Evaluation:

(A) Single Family Dwelling:

- (i) First Lot \$ 425
- (ii) Each Additional Lot Evaluated During Initial Visit \$ 425

(B) Commercial Facility System:

- (i) For First One Thousand (1,000) Gallons Projected Daily Sewage Flow..... \$ 425
 - (ii) For systems with projected sewage flows greater than one thousand (1,000) gallons but not more than 2,500 gallons, the site evaluation application fee shall be \$425 plus an additional \$110 for each 500 gallons or part thereof above 1,000 gallons.
- (C) Site Evaluation Report Review \$ 400
- (D) Fees for site evaluation applications made to an agreement county shall be in accordance with that county's fee schedule;
- (E) Each fee paid for a site evaluation report entitles the applicant to as many site inspections on a single parcel or lot as are necessary to determine site suitability for a single system. The applicant may request additional site inspections within ninety (90) days of the initial site evaluation, at no extra cost;
- (F) Separate fees shall be required if site inspections are to determine site suitability for more than one (1) system on a single parcel of land.
- (b) Construction-Installation Permit:
 - (A) For First One Thousand (1,000) Gallons Projected Daily Sewage Flow:
 - (i) Standard On-Site System..... \$ 630
 - (ii) Alternative System:
 - (I) Aerobic System \$ 630
 - (II) Capping Fill..... \$ 950
 - (III) Cesspool \$ 630
 - (IV) Disposal Trenches in Saprolite \$ 630
 - (V) Evapotranspiration-Absorption \$ 630
 - (VI) Gray Water Waste Disposal Sump..... \$ 280
 - (VII) Pressure Distribution..... \$ 950
 - (VIII) Redundant..... \$ 630
 - (IX) Sand Filter \$ 950
 - (X) Seepage Pit \$ 630
 - (XI) Seepage Trench \$ 630
 - (XII) Steep Slope..... \$ 630
 - (XIII) Tile Dewatering..... \$ 950
 - (iii) At the discretion of the Agent, the permittee may be assessed a re-inspection fee, not to exceed \$235, when a pre-cover inspection correction notice requires correction of improper construction and, at a subsequent inspection, the Agent finds system construction deficiencies have not been corrected. The Agent may elect not to make further pre-cover inspections until the re-inspection fee is paid;
 - (iv) With the exceptions of sand filter and pressure distribution systems, a \$40 fee may be added to all permits that specify the use of a pump or dosing siphon.
 - (B) For systems with projected daily sewage flows greater than one thousand (1,000) gallons, the Construction-Installation permit fee shall be equal to the fee required in paragraph (1)(b)(A) of this rule plus \$60 for each five hundred (500) gallons or part thereof above one thousand (1,000) gallons;

NOTE: Fees for construction permits for systems with projected daily sewage flows greater than two thousand five hundred (2,500) gallons shall be in accordance with the fee schedule for WPCF permits.

- (C) Commercial Facility System, Plan Review:
 - (i) For a system with a projected daily sewage flow of less than six hundred (600) gallons, the cost of plan review is included in the permit application fee;
 - (ii) For a system with a projected daily sewage flow of six hundred (600) gallons, but not more than one thousand (1,000) gallons projected daily sewage flow \$ 230;
 - (iii) For a system with a projected sewage flow greater than 1,000 gallons, the plan review fee shall be \$250, plus an additional \$40 for each five hundred (500) gallons or part thereof above one thousand (1,000) gallons, to a maximum sewage flow limit of two thousand five hundred (2,500) gallons per day.
 - (D) Permit Transfer, Reinstatement or Renewal:
 - (i) If Field Visit Required..... \$ 325
 - (ii) No Field Visit Required \$ 95
 - (E) Alteration Permit:
 - (i) Major \$ 345
 - (ii) Minor \$ 165
 - (F) Repair Permit:
 - (i) Single Family Dwelling:
 - (I) Major \$ 345
 - (II) Minor \$ 165
 - (ii) Commercial Facility:
 - (I) Major — The appropriate fees identified in paragraphs (1)(b)(A), (B), and (C) of this rule apply;
 - (II) Minor \$ 290
 - (G) Permit Denial Review \$ 220
 - (c) Authorization Notice:
 - (A) If Field Visit Required..... \$ 390
 - (B) No Field Visit Required \$ 100
 - (C) Authorization Notice Denial Review \$ 400
 - (d) Annual Evaluation of Alternative System (Where Required)..... \$ 330
 - (e) Evaluation of Temporary or Hardship Mobile Home \$ 330
 - (f) Variance to On-Site System Rules \$ 1,300
- NOTE:** The variance application fee may be waived if the applicant meets the requirements of OAR 340-071-0415(5).
- (g) Rural Area Consideration pursuant to OAR 340-071-0410:
 - (A) Site Evaluation \$ 425

NOTE: In the event there is on file a site evaluation report for that parcel that is less than ninety (90) days old, the site evaluation fee shall be waived.

 - (B) Construction-Installation Permit — The appropriate fee identified in subsection (1)(b) of this rule applies.
 - (h) Sewage Disposal Service:

- | | | |
|------|---|----------|
| (A) | New Business License..... | \$ 425 |
| (B) | Renewal of Existing and Valid Business License..... | \$ 320 |
| (C) | Transfer of or Amendments to License..... | \$ 200 |
| (D) | Reinstatement of Suspended License..... | \$ 250 |
| (E) | Pumper Truck Inspection, First Vehicle: | |
| (i) | Each Inspection..... | \$ 100 |
| (ii) | Each Additional Vehicle, Each Inspection..... | \$ 50 |
| (i) | Experimental Systems Permit..... | \$ 5,850 |
| (j) | Existing System Evaluation Report..... | \$ 400 |
| (k) | Innovative or Alternative Technology or Material Review | \$ 1,000 |
| (l) | Material Plan Review | \$ 300 |
- (2) Contract County Fee Schedules, General:
- (a) Each county having an agreement with the Department under ORS 454.725 shall adopt a fee schedule for services rendered and permits to be issued. The county fee schedule shall not include the Department's surcharge fee identified in section 3 of this rule;
- (b) A copy of the fee schedule and any subsequent amendments to the schedule shall be forwarded to the Department;
- (c) Fees shall not exceed actual costs for efficiently conducted services.
- (3) Surcharge. In order to offset a portion of the administrative and program oversight costs of the statewide on-site sewage disposal program, a surcharge of \$40 for each site evaluated, for each construction installation permit and all other activities for which an application is submitted, shall be levied by the Department and by each Agreement County. Proceeds from surcharges collected by the Department and Agreement Counties shall be accounted for separately. Each Agreement County shall forward the proceeds to the Department as negotiated in the memorandum of agreement (contract) between the county and the Department.
- EXCEPTION:** The surcharge shall not apply to:
- (a) Sewage Disposal Service License applications;
- (b) Pumper Truck Inspections.
- (4) Refunds. A refund may be made of all or a portion of a fee accompanying an application if the applicant withdraws the application before any field work or other substantial review of the application has been done.
- (5) Fees for WPCF Permits. The following fee schedule shall apply to WPCF Permits for on-site sewage disposal systems issued pursuant to OAR 340-071-0162:
- | | | |
|-----|--|---------------|
| (a) | Application filing fee (all categories) | \$ 50 60 |
| (b) | Permit processing fees for sewage lagoons and other on-site disposal systems over 1,200 gpd: | |
| (A) | New Applications..... | \$2,000 2,400 |
| (B) | Permit Renewals (including request for effluent limit modifications)..... | \$1,000 1,200 |
| (C) | Permit Renewal (without request for effluent limit modifications)..... | \$ 500 600 |
| (D) | Permit modification (involving increase in effluent limits)..... | \$1,000 1,200 |
| (E) | Permit modification (not involving an increase in effluent limits)..... | \$ 500 600 |
| (c) | Permit processing fees for on-site systems of 1,200 gpd or less: | |

(A)	New Applications	\$ 400 480
(B)	Permit Renewals (involving request for effluent limit modifications) \$	200 240
(C)	Permit Renewals (without request for effluent limit modifications) ...\$	400 120
(D)	Permit Modifications (involving increase in effluent limitations).....\$	450 180
(E)	Permit Modifications (not involving an increase in effluent limits)\$	400 120
(d)	Registration fee for General Permits	\$ 450 180
(e)	Site Evaluation Fee:	
(A)	Facilities with design flow of 5,000 gpd or less, same as section (1)(a) of this rule;	
(B)	Facilities with design flow greater than 5,000 gpd	\$1,200 \$1,440
(f)	Site Evaluation Confirmation Fee	\$ 350 \$420
NOTE: A Site Evaluation Confirmation Fee is required if the site evaluation is performed by a qualified consultant but, through the site evaluation review process, a site visit is still required by the Department or Agent.		
(g)	Plan Review Fee:	
(A)	Commercial Facilities with design flows less than 5,000 gpd same as paragraph (1)(b)(C) of this rule;	
(B)	Commercial Facilities with design flows of 5,000 gpd or More.....\$	500 600
(C)	Non-commercial Facilities	\$ 400 120
NOTE: A plan review fee is required when engineered plans must be reviewed for a facility which that requires a WPCF permit.		
(h)	Annual Compliance Determination Fee:	
(A)	On-site sewage lagoon with no discharge	\$ 600 720
(B)	On-site subsurface systems with individual WPCF Permit or general permit:	
(i)	Standard or alternative subsurface system not listed below, with design flow of 20,000 gpd or more.....\$	500 600
(ii)	Standard or alternative subsurface system not listed below with design flow less than 20,000 gpd.....\$	250 300
(iii)	Aerobic systems, 1,500 gpd or more	\$ 500 600
(iv)	Aerobic systems, less than 1,500	\$ 250 300
(v)	Recirculating Gravel Filter, 1,500 gpd or more	\$ 500 600
(vi)	Recirculating Gravel Filter, less than 1,500 gpd	\$ 250 300
(vii)	Sand Filter, 1,500 gpd or more.....\$	500 600
(viii)	Sand Filter, less than 1,500 gpd	\$ 250 300
(ix)	Holding tanks	\$ 200 240
(I)	The owner of a holding tank regulated under a WPCF permit submitting an annual written certification, on a Department approved form, that the holding tank has been operated the previous year in full compliance with the permit and that the previous year service log for the holding tank is available for inspection by the Department.....\$	25

Stat. Auth.: ORS 454.625, ~~& 468.020~~, & ORS 468.065(2)

Stats. Implemented: ORS 454.745, ~~& 468.065~~, & 468B.050

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 13-1986, f. & ef.

6-18-86; DEQ 15-1986, f. & ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 11-1991, f. & cert. ef. 7-3-91; DEQ 18-1994, f. 7-28-94, cert. ef. 8-1-94; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; Administrative correction 1-28-98; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99

340-071-0162

Permit Application Procedures -- WPCF Permits

(1) Any person wishing to obtain a new, modified, or renewal WPCF permit shall submit a written application on forms provided by the Department. Applications must be submitted at least 60 days before a permit is needed. All application forms must be signed by the applicant or the applicant's legally authorized representative, and accompanied by the specified number of copies of all required exhibits. The name of the applicant must be the legal name of the owner of the facilities, the owner's agent, or the lessee responsible for the operation and maintenance. Some of the required exhibits, but not necessarily all of them, which must accompany the application are:

- (a) A land use compatibility statement from the local land use planning agency indicating that the site is approved for the activity for which the applicant is applying (if the activity is approved only upon condition of a conditional use permit, a copy of the issued conditional use permit shall be one of exhibits);
- (b) A copy of a favorable site evaluation report indicating that the site is approved for the type and quantity of wastes to be disposed;
- (c) Evidence that the permit processing fees and the first year's annual compliance determination fee have been paid to the Department or Agent, as directed;
- (d) A site diagram meeting the requirements of OAR 340-071-0160(3)(c).

(2) Applications that are obviously incomplete, unsigned, improperly signed or that do not contain the required exhibits clearly identified will not be accepted by the Department for filing and will be returned for completion. Applications that are correctly signed and appear administratively complete will be considered timely upon receipt. A request for further information under section (3) of this rule will not effect the timeliness of an application.

(3) Within 45 days after receipt of the application, the Department will preliminarily review the application to determine the adequacy of the information submitted. Failure to complete this review within 45 days does not preclude the Department from later requesting further information from the applicant as provided in this section.

- (a) If the Department determines that additional information is needed, it will promptly request in writing the needed information from the applicant. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request.
- (b) If the Department determines that additional measures are necessary to gather facts regarding the application, the Department will notify the applicant what measures will be instituted, and the timetable and procedures to be followed. The application will be considered withdrawn if the applicant fails to comply with the additional measures.

(4) Following determination that the application is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with the provisions of all applicable statutes and rules of the Commission.

(5) Draft Permit Review. If the Department makes a preliminary determination to issue a permit, a permit will be drafted and sent to the applicant for review. The applicant will have up to 14 calendar days to comment on the draft permit.

(6) Public Participation. For on-site sewage disposal systems public participation will be in accordance with OAR Chapter 340, Division 045 as it applies to WPCF permits.

(7) Final Department Action. The Department must take final action on the permit application within 45 days of the close of the public comment period if a comment period is required. The Department will consider all timely comments and any other information obtained that may be pertinent to the permit action.

(8) Applicant's Appeal Rights. The Department's decision is effective 20 days from the date of service of the notice of the Department's final action unless within that time the Department receives a request for a hearing from the applicant. The request for a hearing must be in writing and state the grounds for the request. Any hearing will be conducted as a contested case hearing pursuant to ORS 183.413 through 183.470 and OAR Chapter 340, Division 011.

(9) Permit Term. A permit issued pursuant to this rule shall be for a period not to exceed ~~5~~10 years. The expiration date shall be recorded on each permit issued. At least 60 days prior to the expiration of the permit, a permit renewal application, on forms provided by the Department, shall be filed with the Department to obtain renewal of the permit.

(10) For systems which are proposed to be or which are operating under a WPCF permit, no person shall construct, alter or repair the absorption facility, or any part thereof, unless that person is licensed under ORS 454.695, or is the permittee.

(11) No person shall connect to or use any system authorized by a WPCF permit, unless the system has been inspected and certified as per OAR Chapter 340, Division 052, and that certification has been received and accepted by the Department.

(12) Renewal of a Permit. The procedures for issuance of a permit shall apply to renewal of a permit. If a completed application for renewal of a permit is filed with the Department 60 days before the expiration date of the permit, the permit will not expire until final action has been taken on the renewal application.

(13) In the event it becomes necessary for the Department to institute modification of a permit due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes, the modification will be in accordance with OAR Chapter 340, Division 045 as it applies to WPCF permits.

(14) A permit termination or revocation will be in accordance with OAR Chapter 340, Division 045 as it applies to WPCF permits.

(15) A transfer of a WPCF Permit will be in accordance with OAR Chapter 340, Division 045 as it applies to WPCF permits.

(16) General Permits.

(a) The Department may issue general permits for certain categories of on-site sewage disposal systems where an individual WPCF permit is not necessary in order to adequately protect public health and the environment. Prior to issuing the general permit, the Department shall follow the public participation procedures in accordance with OAR Chapter 340, Division 045 as applicable to WPCF permits. In order to be covered by a general permit issued by the Department, a person shall:

(A) Submit a registration application on a form provided by the Department or Agent, along with the necessary attachments, including but not limited to favorable site evaluation and land use compatibility statement;

(B) Demonstrate that the on-site disposal facility fits into the category of sources covered by the general permit;

(C) Submit applicable fees.

(b) Any person covered by a general permit may request to be covered by an individual WPCF, in lieu of the general permit, upon submission of the required application and fees;

(c) The Department may revoke a general permit as it applies to any person's on-site sewage disposal system and require such person to apply for and obtain an individual WPCF permit, if:

(A) The covered source or activity is a significant contributor of pollution or creates other environmental problems;

(B) The permittee is not in compliance with the terms and conditions of the general permit; or

(C) Conditions or standards have changed so that the source or activity no longer qualifies for a general permit.

(d) The Department's Agent may distribute and receive registration applications for general permits for on-site sewage disposal systems and may distribute general permits, if the procedure is established in an agreement between the Department and the Agent.

(17) Rules Which Do Not Apply to WPCF Applicants or Permittees.

(a) Because the permit review, issuance, and appeal procedures for WPCF permits are different from those of other on-site permits regulated by these rules, the following portions within this Division do not apply to WPCF applicants or permittees: OAR 340-071-0116; 340-071-0155; 340-071-0160(6), (8), (9), and (10); 340-071-0165(1); 340-071-0170; 340-071-0175; 340-071-0185; 340-071-0195; 340-071-0200; 340-071-0205; 340-071-0210; 340-071-0215(1), (2), (3); 340-071-0270; 340-071-0275(4)(c)(A); 340-071-0295(1); 340-071-0305; 340-071-0320; 340-071-0325; 340-071-0330; 340-071-0345; 340-071-0360(2)(b)(B); 340-071-0410; 340-071-0415; 340-071-0420; 340-071-0425; 340-071-0430; 340-071-0435; 340-071-0440; 340-071-0445; and 340-071-0500;

(b) Permit applicants and permittees are not subject to any WPCF permit-related fees other than those specifically contained within OAR 340-071-0140;

(c) The following portions of OAR Chapter 340, Division 073, do not apply to WPCF applicants or permittees: OAR 340-073-0030(1); 340-073-0065; 340-073-0070; and 340-073-0075.

Stat. Auth.: ~~ORS 454.625~~ & ORS 468.020 & ORS 468.065(2)

Stats. Implemented: ORS 468.065, ORS 468.070, ORS 468B.050 & ORS 468B.055

Hist.: DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 15-2000, f. & cert. ef. 10-11-00

Attachment B
Public Input and Department's Response

State of Oregon

Department of Environmental Quality

Memorandum

To: Mike Llewelyn
Water Quality Division Administrator

Date: November 20, 2001

From: Ranei Nomura through Mike Kortenhof
Surface Water Management, Water Quality Division

Subject: Summary of comments and response to comments received for proposed Water Quality 20% NPDES and WPCF Permit Fee Increase Rule Amendments

**Overview of
comment
period and
public hearings**

A public comment period from September 26, 2001, to November 16, 2001, was provided for the proposed Water Quality 20% National Pollutant Discharge Elimination System (NPDES) and Water Pollution Control Facilities (WPCF) Permit Fee Increase Rule Amendments. Public hearings were held on:

- November 1 in Medford
- November 2 in Eugene
- November 6 in Bend
- November 7 in Pendleton
- November 13 in Portland

**Summary of
comment
received**

A total of five people attended the hearings; no one provided oral or written comment at the hearings. Eight people submitted written comment. Generally, two commenters supported the fee increase and six commenters opposed. Of those opposed, several expressed specific concerns that the fee for WPCF on-site sewage system permits is too high for smaller systems.

**Process of
reviewing
comments and
providing
responses**

Due to the similar nature of the comments, individual comments are not provided here. Comments are summarized in categories and responses provided. To focus on the comment rather than who made it, numbers are cited in the summaries that reference the people who provided comment.

**List of
Commenters**

The list of people providing comment and their corresponding reference numbers follow at the end of this memo.

Comment A:
*Reconsider fee
increases due to
downturn in
economy*

Comment: One commenter (8) suggested that the Department reconsider the fee increases because of the downturn in the economy. This commenter urged the Department to encourage business development and not create barriers to providing jobs.

Response: The Department agrees that the timing of the fee increase is not ideal due to the slowing of the economy. However, the Department's Wastewater Permitting Program focuses on protecting and enhancing water quality in the State of Oregon. These goals reflect the concerns, needs and responsibilities of the people who work, live and raise families in Oregon. Without the fee increase, the Department will lose five positions. Such a reduction in staff would decrease permit issuance activities, reduce technical assistance and compliance activities, and negatively affect a program that is already experiencing an increase in backlogged permit renewals and longer application processing times. Such reductions and delays directly influence Oregon's ability to attract new businesses and keep existing ones. No changes were made to the proposed rules in response to this comment.

Comment B:
*Support for fee
increase and
process
improvements*

Comment: Two commenters (5, 6) supported the fee increase. One of these commenters (6) suggested that with the fee increase the Department would now have an incentive to reduce the permit backlog since the funding of the permit programs will now be linked to permit fees. This commenter also encouraged the Department to find and implement process improvements for increasing permitting efficiency without reducing or sacrificing the level of consideration required when issuing permits.

Response: The Department appreciates the support provided by these commenters. Permit fees for NPDES and WPCF permit have always been used for activities performed by the Wastewater Permitting Program. As such, the 20% fee increase provides no additional "incentive" to reduce the permit backlog. The increase does not allow the Department to add additional staff to the program so a quicker reduction in the permit backlog is not expected. The Department is actively identifying and implementing process improvements to increase permitting efficiency and help relieve the expired permit backlog. Progress made in this area will be tracked and reported. No changes were made to the proposed rules in response to these comments.

Comment C:
*Review fees
every biennium*

Comment: One commenter (6) asked that the Department look for a mechanism to review fees for increase each biennium rather than increasing fees by 20% every decade.

Response: The Department has explored the concept of tying fees to an inflationary index and will continue to examine alternatives to the current process. With respect to fee increases, the Department does review the appropriateness of its fees on a more frequent schedule than once every 10 years. However, due to budgetary decisions made the Legislature, increases have not always occurred as proposed. No changes were made to the proposed rules in response to this comment.

Comment D:
*Permit fees
should pay for
services
rendered*

Comment: Several commenters (1, 3, 4) expressed concern that the Department is not utilizing the permit fees that they pay specifically for inspection or regulation of their systems and that fees should be based on the service provided by the Department. One commenter (1) suggested that the Department would hire new staff with the fee increases. Another commenter (6) requested that the Department look for a mechanism to codify permit fees so that they are used exclusively for permits.

Response: All NPDES and WPCF permit fees are utilized within the Department's Wastewater Permitting Program. This is a regulatory program designed to protect Oregon's surface waters and groundwater from pollution. In addition to issuing permits, this program investigates complaints, pursues enforcement action on violations, provides technical assistance, conducts inspections, evaluates discharge monitoring reports, reviews new technologies, and develops new rules and policy. Permit fees support approximately 55% of the Wastewater Permitting Program; the remainder is subsidized with federal grants and state general funds. In addition, the Department's budget and fees are approved by the Legislature and the budget package for this program does not allow for the creation of new positions within the program.

The Department is actively engaged in efforts to increase the permitting program's accountability to the public and regulated community. Such efforts include a new time accounting system implemented in July 2001 to better track the time spent on different types of permit program activities and a review of the permitting process in May 2000 to identify ways to increase the efficiency and effectiveness of the permitting program. Examples of improvements that are actively being pursued by the Department include:

- Implementation of a watershed based management plan so data gathering,

data evaluation and public involvement work can be completed much more efficiently.

- Improvement of data quality and systems, which includes greater use of electronic tools for permit writers to cut down on process times (e.g., automated permit drafting template and an internal web site of compiled guidance), development of a system to allow electronic submittal of facility discharge data, and upgrading of the permit database to allow for better tracking of permit processing efforts.

No changes were made to the proposed rules in response to these comments.

Comment E:
*Reduce fees for
residential and
lower flow on-
site sewage
systems
requiring
WPCF permits*

Comment: Several commenters (1, 2, 3, 4, 7) recommended that the Department revise the annual compliance determination fee schedule for WPCF on-site sewage system permits to reduce fees for single-family residential systems and lower flow systems. These commenters also raised the following related issues:

- Smaller systems are easier to maintain and operate and more reliable than larger systems (2);
- High fees prevent the use of newer and better technologies for residential systems (7);
- Residential fabric filter systems should not be charged an annual compliance fee because residential sand filter systems are not charged the fee (3);
- SB 5516 intended to make environmentally appropriate small systems more affordable to the general public (3); and
- Fee categories are inequitable because fees for individual residences can often be the same as small businesses or communities (4).

Response: SB 5516 reduced site evaluation and plan review fees for WPCF permitted facilities with design flows of 5,000 gallons or less per day and annual fees for certified sewage holding tanks under WPCF permit. It did not rollback WPCF permit application processing fees and, except for holding tanks, it did not reduce annual compliance fees associated with these WPCF permits. The current fee schedule has been approved by the Legislature and the Department believes that the revenue generated by the proposed fee increase is necessary to support the operation of its permitting program. The Department will further consider these comments during its review of the on-site sewage program rules in 2002. Any proposed changes will be reviewed by the appropriate advisory committee and an opportunity for public comment on such changes will be provided to all interested parties. No changes were made to the proposed rules in response to these comments.

Comment F:
Allow local jurisdictions to run residential WPCF on-site sewage system permit program

Comment: Two commenters (2, 7) suggested that the Department allow WPCF permits for residential on-site sewage systems to be issued and managed by local jurisdictions.

Response: Statutory authority would need to be changed to allow local governments to *issue* WPCF permits. However, local governments can assist the Department in the inspection of WPCF permittees and other aspects of managing this program (e.g., reviewing monitoring reports). The Department is open to exploring such agreements with interested agencies. No changes were made to the proposed rules in response to these comments.

List of Commenters

Ref #	Last Name	First Name	Organization	Address	City	St.
1	Besmehn	Roxanne	homeowner	50776-4A Dike Rd.	Scappoose	OR
2	Bounds	Terry	Orenco Systems Inc.	814 Airway Avenue	Sutherlin	OR
3	Cates	Charles	homeowner	Cross Creek Drive	Roseburg	OR
4	Demshki Breslin	Michael Mary	homeowners	712 NW Syline Crest	Portland	OR
5	Langner	Paul	Port of St. Helens	100 E Street	Columbia City	OR
6	Light	Zachary	Northwest Environmental Defense Center	10015 SW Terwilliger Blvd.	Portland	OR
7	vanCreveld	Robert	Edgewater Environmental	PO Box 130	Newport	OR
8	Wooten	Cliff	Linn County Commissioner	PO Box 100	Albany	OR

Attachment C
Presiding Officers' Report on Public Hearings

State of Oregon

Department of Environmental Quality

Memorandum

To: Environmental Quality Commission Date: November 20, 2001

From: Ranei Nomura, Presiding Officer, Water Quality Division

Subject: Presiding Officers' Report for Rulemaking Hearings in November 2001
Title of Proposal: Amendment of Rules to Increase Water Quality Permit Fees as
Approved by the 2001 Legislature

Overview of Public Hearing Dates, Times and Locations

Date and Time	November 1 at 11 a.m.	November 2 at 11 a.m.	November 6 at 10 a.m.
Location	Jackson County Courthouse Auditorium 10 S. Oakdale Medford, OR 97501	Lane County Harris Hall 125 E. 8 th Ave. Eugene, OR 97401	City of Bend City Council Chambers 710 NW Wall Bend, OR 97701

Date and Time	November 7 at 7 p.m.	November 13 at 4 p.m.
Location	Pendleton Convention Center, Room 1 1601 Westgate Pendleton, OR 97801	DEQ Headquarters Room 3A 811 SW 6 th Ave. Portland, OR 97204

Summary of Public Hearings

Medford Hearing The rulemaking hearing was convened at 11:30 a.m. and closed shortly thereafter. There was no one in attendance.

Eugene Hearing The rulemaking hearing was convened at 11:30 a.m. and closed shortly thereafter. Three people were in attendance: Mark McCormick, Willamette Industries, David Light, Oregon Insider, and Deirdre Malarkey, Environmental Quality Commission. No one provided oral or written comment.

Bend Hearing The rulemaking hearing was convened at 10:30 a.m. and closed shortly thereafter. There was no one in attendance.

Pendleton Hearing The rulemaking hearing was convened at 7:30 p.m. and closed shortly thereafter. There was no one in attendance.

Portland Hearing The rulemaking hearing was convened at 4:30 p.m. and closed shortly thereafter. Two people were in attendance: Carol and David Grant, homeowners at Dikeside Moorage. No one provided oral or written comment.

Attachment D
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Water Quality Permit Fee Increase Rule Amendments

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

1. **Are there federal requirements that are applicable to this situation? If so, exactly what are they?**
There are no applicable federal requirements.
2. **Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?**
Not applicable.
3. **Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?**
Not applicable.
4. **Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?**
The proposed fee increase for water quality permits will not improve the ability of the regulated community to comply with requirements; however, it will allow the Department of Environmental Quality to maintain its current service level in the Wastewater Permitting Program. This program provides technical assistance to permittees, which involves the clarification of confusing or conflicting requirements. Without the fee increase, staff positions will be loss and technical assistance activities will likely be reduced.
5. **Is there a timing issue which might justify changing the time frame for implementation of federal requirements?**
Not applicable
6. **Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?**
The proposals do not affect the issue of accommodation of uncertainty and future growth.

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

The proposal maintains the current structure of fees. For the Wastewater Permitting Program, all fees would be raised by 20% across the board. Since the current fee schedule was developed to maintain a reasonable equity between various sources, an across the board increase would continue to maintain such equity.

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

No.

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?

No.

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

Not applicable.

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

Not applicable.

Attachment E
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Water Quality Permit Fee Increase Rule Amendments

Fiscal and Economic Impact Statement

Introduction

The Department of Environmental Quality (DEQ) is proposing to adopt amended rules to increase water quality permit fees by 20% as approved by the 2001 Legislature in Senate Bill (SB) 5517 for all types of National Pollutant Discharge Elimination System (NPDES) permits and Water Pollution Control Facilities (WPCF) permits. This includes wastewater and storm water NPDES permits and WPCF permits required for sewage holding tanks and certain sizes and types of on-site sewage systems. These fees are found in Oregon Administrative Rule (OAR) 340-045-0075 and OAR 340-071-0140(5). They include, but are not limited to the following: application filing fees, application processing fees, annual compliance determination fees, technical services fees for plan review, pretreatment fees, population based fees for sewage treatment plants, site evaluation fees, etc.

This fee increase is expected to generate approximately \$1,136,235 in additional revenue over DEQ's 1999-2001 operating budget. The revenue will be used to restore five full time equivalents (fte) to DEQ's Wastewater Permitting Program to maintain the program's current service level. The largest impact of the fee increase will fall on new businesses needing a wastewater permit for the first time. However, a majority of the revenue will be collected from existing permittees that pay annual compliance determination fees.

The following tables provide a summary of fee increases for NPDES and WPCF permittees (filing fee and special fees are not included) and the current number of permittees. The number of applications received is provided to illustrate the distribution of revenue during the 1999-2001 biennium, but should not be used to forecast the applications expected for the 2001-2003 biennium. New applications are unpredictable from year to year and renewals may not occur if a permit is no longer needed.

New Permit Fee
(one-time fee)

Type of Permit	Current Fee	Proposed Fee	Amount of Increase	Estimate of New Applications (7/1/99-6/30/01)
General	\$0 to \$235	\$0 to \$280	+ \$0 to \$45	707 (~18 paid little or no fees for placer mining activities)
Individual Industrial	\$6,280 to \$31,400	\$7,535 to \$37,680	+ \$1,255 to \$6,280	20
Individual Domestic	\$500 to \$20,000	\$600 to \$24,000	+ \$100 to \$4000	34
Individual WPCF for on-site sewage systems & holding tanks	\$400 to \$2,000	\$480 to \$2,400	+ \$80 to \$400	117
Total				878

Permit Renewal Fee
(typically due once every five years; may only be due
once every 10 years for WPCF permittees)

Type of Permit	Current Fee	Proposed Fee	Amount of Increase	Estimate of Renewal Applications (7/1/99-6/30/01)
General	\$0 to \$35	\$0 to \$40	+ \$0 to \$5	686
Individual Industrial	\$1,180 to \$15,700	\$1,415 to \$18,840	+ \$235 to \$3,140	53
Individual Domestic	\$200 to \$10,000	\$240 to \$12,000	+ \$40 to \$2,000	160
Individual WPCF for on-site sewage systems & holding tanks	\$100 to \$1,000	\$120 to \$1200	+ \$20 to \$200	319
Total				1218

Annual Compliance Determination Fee

Type of Permit	Current Fee	Proposed Fee	Amount of Increase	# of Permittees as of 9/2001
General	\$0 to \$275	\$0 to \$330	+ \$0 to \$55	2778 (~142 pay no fees for placer mining activities)
Individual Industrial	\$1,060 to \$9,420	\$1,270 to \$11,300	+ \$210 to \$1,880	231
Individual Major Domestic	\$1,060 to \$42,410	\$1,270 to \$50,890	+ \$210 to \$8,480	48
Individual Minor Domestic (that are not WPCF on-site sewage systems)	\$200 to \$955	\$240 to \$1,145	+ \$40 to \$190	26
Individual WPCF for on-site sewage systems	\$250 to \$600	\$300 to \$720	+ \$50 to \$120	543
Individual WPCF for holding tanks	\$25 to \$200	\$30 to \$240	+ \$5 to \$40	329
Total				3955

General Public:

The general public may be indirectly impacted by the proposal. Businesses and municipalities could pass the additional permit costs to consumers in the form of marginally higher prices for goods and services. The potential price impact for consumers is expected to be minimal.

Small Business:

DEQ water quality permits are based on the type and volume of wastewater discharged and the discharge location. Business size, as measured by number of employees, is often unrelated to these factors. Small businesses do not typically generate large quantities of wastewater, however, they may have general permits

for wash water discharges, storm water runoff or WPCF permits for on-site sewage systems or holding tanks. Annual fees for these types of permits will increase anywhere from \$30 to \$120. New and renewal application fees will increase by 20%.

Large Business:

Large businesses with discharges of industrial wastewater or WPCF permits for on-site systems will experience the same 20% increase in fees as small businesses, but typically have individual permits that cost more to maintain or several general permits to cover a variety of discharges. These facilities could see increases in annual fees of up to \$1,880 for major individual industrial permits. Large businesses needing permits for the first time will experience the largest increase in application processing fees, which could be as much as \$6,280 for major permits. New and renewal application fees will increase by 20%.

Local Governments:

Local governments may have a variety of permits with DEQ, ranging from the least expensive general permits to the most expensive permits for domestic wastewater (sewage) treatment plants. Annual fees for wastewater treatment plants are not estimated here in detail because there are additional special fees that may be applicable, such as pretreatment and population based fees that are included in the calculation. A facility designed to treat 50 million gallons of sewage per day could expect their base annual compliance determination fee to increase by \$8,480. Additional increases to this base fee will occur once pretreatment and population based fees are factored in. New and renewal application fees will increase by 20%.

State Agencies

DEQ: DEQ is expecting to generate approximately \$1,136,235 in additional revenue from this 20% fee increase. This additional revenue will be used to restore five fte in the Wastewater Permitting Program. Without the additional revenue, the program will face a funding shortfall due to a combination of inflation, salary increases, and the loss of one-time state General Funds received for the 1999-2001 biennium.

Other Agencies: Other state agencies hold a variety of DEQ permits. For example, the Oregon Department of Fish and Wildlife has fish hatchery general permits and the Oregon Department of Transportation has construction general permits, as well as an individual permit for its storm sewer systems, and WPCF permits for on-site systems at highway rest areas. These agencies can expect to see annual fees increase anywhere from \$55 for general permits to \$1,880 for individual storm water permits and up to \$120 for WPCF on-site sewage systems. New and renewal application fees will increase by 20%.

Assumptions

For the 2001-2003 biennium, DEQ faces a reduction in staff due to a loss of revenue caused by a combination of inflation, salary increases, and the loss of one-time state General Funds. DEQ estimates that it will need to eliminate nine fte from this program (56 fte to 47 fte) if this revenue is not replaced. By reprioritizing and shifting funds, the Department has already restored four of the nine fte. This allowed the Department to keep the fee increase proposal at a lower level. However, restoring the remaining five fte through a 20% permit fee increase is still necessary to maintain the current level of service in the Wastewater Permitting Program. DEQ is assuming that the 20% increase in fees will generate approximately \$1,136,235 in additional revenue over DEQ's 1999-2001 operating budget and that the current level of activity in the Wastewater Permitting Program will not decrease.

The fee increase does not apply to DEQ permits administered by the Oregon Department of Agriculture (ODA). ODA currently administers the WPCF #800 Confined Animal Feeding Operation (CAFO) general permit for DEQ. SB 5517 approved a 20% increase in permit fees based on DEQ's Wastewater Permitting Program operating budget, which does not include revenue generated by ODA's CAFO

program and the WPCF #800. ODA will continue to utilize DEQ's fee schedules for the WPCF #800 and other DEQ permits it may administer until it adopts its own permits and fee schedule.

Housing Cost Impact Statement

DEQ has determined that this proposed rulemaking may have a minor impact 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. WPCF on-site sewage systems are usually designed to serve more than one single family dwelling so the proposed 20% fee increase would likely be shared over several residents reducing its impact. Fees for these systems vary depending on the type of system installed and design flow. New application fees would increase \$80 - \$400; renewal fees would increase \$20 - \$200; and annual compliance determination fees would increase \$50 - \$120. Site evaluation and plan review fees would also increase anywhere from \$80 - \$100 depending on the specific situation.

If a WPCF permit for an on-site sewage system serving one single-family dwelling is required, the system would typically be designed for around 450 gallons/day. Site evaluation fees for such a system would increase \$85 from \$425 to \$510; new application fees would increase \$80 from \$400 to \$480; renewal fees would increase \$40 from \$200 to \$240; and annual compliance determination fees would increase \$50 from \$250 to \$300.

Attachment F
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Water Quality Permit Fee Increase Rule Amendments

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The Department is proposing to adopt amended rules to increase water quality permit fees by 20% as approved by the 2001 Legislature in Senate Bill (SB) 5517 for all types of National Pollutant Discharge Elimination System (NPDES) permits and Water Pollution Control Facilities (WPCF) permits. This includes wastewater and storm water NPDES permits and WPCF permits required for holding tanks and certain sizes and types of on-site sewage systems. These fees are found in Oregon Administrative Rule (OAR) 340-045-0075 and OAR 340-071-0140(5). They include, but are not limited to the following: application filing fees, application processing fees, annual compliance determination fees, technical services fees for plan review, pretreatment fees, population based fees for sewage treatment plants, site evaluation fees, etc.

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:

NPDES and WPCF permitting activities

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):

A land use compatibility statement signed by the local land use authority is required from the applicant prior to authorizing discharges under NPDES and WPCF permits.

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

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

1. Specifically referenced in the statewide planning goals; or

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

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.
not applicable

3. **If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

Water Quality Division
Division

[signed by Roberta Young]
Intergovernmental Coordinator

9/13/01
Date

Attachment G 20% Fee Increase Comparison Tables

Note that dollar amounts are being rounded down to the nearest 0 or 5 to simplify the fee amounts. For example, \$378 is rounded to \$375 and \$1,272 is rounded to \$1,270.

Proposed 20% Increase to New Application Fees

Type	Current Fee	Proposed Fee	Amount of Increase
Major industries ¹	\$31,400	\$37,680	\$6,280
Minor industries & Agricultural	\$6,280	\$7,535	\$1,255
Major domestic ²	\$20,000	\$24,000	\$4,000
Minor domestic Da, Db ³	\$4,000	\$4,800	\$800
Minor domestic E ⁴	\$2,000	\$2,400	\$400
Minor domestic F ⁵	\$500	\$600	\$100
WPCF permits for on-site systems >1,200 gpd	\$2,000	\$2,400	\$400
WPCF permits for on-site systems <=1,200 gpd	\$400	\$480	\$80
WPCF on-site general permits	\$150	\$180	\$30
General Permits 100, 200, 400, 500, 600 (over 1500 cubic yards), 900, 1000, 1400A	\$80	\$95	\$15
General Permits 300, 1300, 1400B, 1500, 1600	\$155	\$185	\$30
General Permits all other 1200, 1700	\$235	\$280	\$45
General Permits not elsewhere specified	\$235	\$280	\$45

¹ Major industries = Discharges large biochemical oxygen demand loads, or is a large metals facility, or has significant toxic discharges, or has a treatment system that will have a significant adverse impact on the receiving stream if not operated properly, or any other industry which the Department needs special regulatory control.

² Major domestic = Serving more than 10,000 people, or serving industries that can have a significant impact on the treatment system.

³ Minor domestic Da, Db = do not meet major domestic qualifying factors and less than 1 MGD

⁴ Minor domestic E = do not meet major domestic qualifying factors and where treatment is limited to lagoons that do not discharge to surface waters.

⁵ Minor domestic F = do not meet major domestic qualifying factors and is a septage alkaline stabilization facility.

**Proposed 20% Increase to Permit Renewal or Permit Modification Fees
w/Request for Effluent Limit Modification**

Type	Current Fee	Proposed Fee	Amount of Increase
Major industries	\$15,700	\$18,840	\$3,140
Minor industries & Agricultural	\$3,140	\$3,765	\$625
Major domestic	\$10,000	\$12,000	\$2,000
Minor domestic Da, Db	\$2,000	\$2,400	\$400
Minor domestic E	\$1,000	\$1,200	\$200
WPCF permits for on-site systems >1,200 gpd	\$1,000	\$1,200	\$200
WPCF permits for on-site systems <=1,200 gpd	\$200 (\$150 for modification)	\$240 (\$180 for modification)	\$40 (\$30 for modification)

**Proposed 20% Increase to Renewal Fees
No Request for Effluent Limit Modification**

Type	Current Fee	Proposed Fee	Amount of Increase
Major industries	\$7,850	\$9,420	\$1,570
Minor industries & Agricultural	\$1,180	\$1,415	\$235
Major domestic	\$5,000	\$6,000	\$1,000
Minor domestic Da, Db	\$750	\$900	\$150
Minor domestic E	\$500	\$600	\$100
Minor domestic F	\$200	\$240	\$40
WPCF permits for on-site systems >1,200 gpd	\$500	\$600	\$100
WPCF permits for on-site systems <=1,200 gpd	\$100	\$120	\$20

Miscellaneous Permit Fees with Proposed 20% Increase

Type	Current Fee	Proposed Fee	Amount of Increase
Filing Fee	\$50	\$60	\$10
Permit Modification not involving an increase in effluent limits, excluding WPCF on-site	\$500	\$600	\$100
WPCF permits for on-site systems >1,200 gpd - modification w/o request for increase in effluent limits	\$500	\$600	\$100
WPCF permits for on-site systems <=1,200 gpd - modification w/o request for increase in effluent limits	\$100	\$120	\$20

Miscellaneous Permit Fees with Proposed 20% Increase

Type	Current Fee	Proposed Fee	Amount of Increase
Special WPCF Permits	\$250	\$300	\$50
Renewal Fee for General Permits (no renewal fee for 600 if < 1,500 cubic yards or > 5 cubic yards, but less than 1,500 cubic yards per year)	\$35	\$40	\$5
Modification of septage alkaline stabilization facilities permit	\$200	\$240	\$40
Disposal system plan review for general permits, excluding WPCF on-site	\$315	\$375	\$60
Site inspection and evaluation for general permits, excluding WPCF on-site	\$785	\$940	\$155
Technical Activities Fee ¹ : New or substantially modified sewage treatment facility	\$4,600	\$5,520	\$920
Technical Activities Fee: Minor sewage treatment facility modifications and pump stations	\$500	\$600	\$100
Technical Activities Fee: Pressure sewer system, or major sewer collection system expansion	\$350	\$420	\$70
Technical Activities Fee: Minor sewer collection system expansion or modification	\$100	\$120	\$20
Technical Activities Fee: New or substantially modified water pollution control facilities utilizing alkaline agents to stabilize septage –	\$500	\$600	\$100

¹ Technical activities fees are charged for initial submittal of engineering plans and specifications. Technical activities fees are not be charged for revisions and resubmittals of engineering plans and specifications and for facilities plans, design studies, reports, change orders or inspections.

Proposed 20% Increase to WPCF On-site Sewage Systems Site Evaluation and Plan Review Fees

Type	Current Fee	Proposed Fee	Amount of Increase
WPCF site evaluation fee for facilities >5,000 gpd	\$1,200	\$1,440	\$240
WPCF site evaluation confirmation fee	\$350	\$420	\$70
WPCF plan review fee for commercial facilities >= 5,000 gpd	\$500	\$600	\$100
WPCF plan review for non-commercial facilities	\$100	\$120	\$20

Proposed 20% Increase to Annual Compliance Determination (ACD) Fees

Type		Current ACD Fee	20% Increase	
			Fee	Amount of Increase
Individual Industrial				
A	Pulp, paper, and other fiber pulping industry	\$9,420	\$11,300	\$1,880
B	Sugar beet, potato, or other produce processing	\$9,420	\$11,300	\$1,880
Ci	Seafood Processing: Bottom fish, crab and/or oysters	\$1,060	\$1,270	\$210
Cii	Seafood Processing: Shrimp	\$1,060	\$1,270	\$210
Ciii	Seafood Processing: Salmon or tuna	\$1,885	\$2,260	\$375
Civ	Seafood Processing: Surimi	\$1,885	\$2,260	\$375
Di	Electroplating: Rectifier output capacity of 15,000 Amps or more	\$9,420	\$11,300	\$1,880
Dii	Electroplating: Rectifier output capacity of less than 15,000 Amps but more than 5,000 Amps	\$4,710	\$5,650	\$940
E	Primary Aluminum Smelting	\$9,420	\$11,300	\$1,880
F	Primary smelting and/or refining of non-ferrous metals utilizing sand chlorination separation facilities	\$9,420	\$11,300	\$1,880
G	Primary smelting and/or refining of ferrous and non-ferrous metals not elsewhere classified above	\$4,710	\$5,650	\$940
H	Alkalies, chlorine, pesticide, or fertilizer manufacturing with discharge of process waste waters	\$9,420	\$11,300	\$1,880
I	Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process wastewater	\$9,420	\$11,300	\$1,880
J	Cooling water discharges in excess of 20,000 BTU/sec	\$4,710	\$5,650	\$940
K	Milk products processing industry which processes in excess of 250,000 pounds of milk per day	\$9,420	\$11,300	\$1,880
L	Major mining operations (over 500,000 cubic yards per year)	\$9,420	\$11,300	\$1,880
Mi	Minor mining operations: Medium (100,000 to 500,000 cubic yards per year) using mechanical processing	\$3,140	\$3,765	\$625
Mii	Minor mining operations: Medium (100,000 to 500,000 cubic yards per year) using froth flotation	\$4,710	\$5,650	\$940
Miii	Minor mining operations: Medium (100,000 to 500,000 cubic yards per year) using chemical	\$6,280	\$7,535	\$1,255

Type		Current ACD Fee	20% Increase	
			Fee	Amount of Increase
	leaching			
Miv	Minor mining operations: Small (less than 100,000 cubic yards per year) using mechanical processing	\$785	\$940	\$155
Mv	Minor mining operations: Small (less than 100,000 cubic yards per year) using froth flotation	\$1,570	\$1,880	\$310
Mvi	Minor mining operations: Small (less than 100,000 cubic yards per year) using chemical leaching	\$3,140	\$3,765	\$625
N	All facilities not elsewhere classified with disposal of process wastewater	\$1,885	\$2,260	\$375
O	All facilities not elsewhere classified which dispose of non-process wastewaters (i.e., small cooling water discharges, boiler blowdown, filter backwash, log ponds, etc.	\$1,180	\$1,415	\$235
P	Dairies and other confined feeding operations on individual permits	\$705	\$845	\$140
Q	All facilities which dispose of wastewaters only by evaporation from watertight ponds or basins	\$705	\$845	\$140
Individual Domestic				
A1	Sewage Disposal – 50 MGD or more	\$42,410	\$50,890	\$8,480
A2	Sewage Disposal – At least 25 MGD but less than 50 MGD	\$24,510	\$29,410	\$4,900
A3	Sewage Disposal – At least 10 MGD but less than 50 MGD	\$11,020	\$13,220	\$2,200
Ba	Sewage Disposal – At least 5 MGD but less than 10 MGD	\$6,700	\$8,040	\$1,340
Bb	Sewage Disposal – At least 5 MGD but less than 10 MGD, systems where treatment occurs in lagoons that discharge to surface waters	\$3,070	\$3,680	\$610
C1a	Sewage Disposal – At least 2 MGD but less than 5 MGD	\$4,175	\$5,010	\$835
C1b	Sewage Disposal – At least 2 MGD but less than 5 MGD, systems where treatment occurs in lagoons that discharge to surface waters	\$1,825	\$2,190	\$365
C2a	Sewage Disposal – At least 1 MGD but less than 2 MGD	\$2,510	\$3,010	\$500
C2b	Sewage Disposal – At least 1 MGD but less than 2 MGD, systems where treatment occurs in lagoons that discharge to surface waters	\$1,060	\$1,270	\$210
Da	Sewage Disposal – Less than 1 MGD, and not otherwise categorized under Category E	\$955	\$1,145	\$190

Type		Current ACD Fee	20% Increase	
			Fee	Amount of Increase
Db	Sewage Disposal – Less than 1 MGD, systems where treatment occurs in lagoons that discharge to surface waters which are not otherwise categorized under Category E	\$625	\$750	\$125
E	Sewage Disposal – Systems where treatment is limited to lagoons which do not discharge to surface waters	\$600	\$720	\$120
F	Septage alkaline stabilization facilities	\$200	\$240	\$40
G	Pretreatment base fee	\$1,000	\$1,200	\$200
G	Pretreatment fee per industrial user	\$335	\$400	\$65
H	Population Based Fee – domestic permittees pay additional annual fees based on the population (population served by the facility multiplied by a rate factor)	0.08038 rate factor	0.09645 rate factor	.01607
WPCF Permits for Domestic On-site Sewage Systems [OAR 340-071-140(5)]				
A	On-Site sewage lagoon with no discharge	\$600	\$720	\$120
Bi	Standard or alternative subsurface system not listed below with design flow of 20,000 gpd or more	\$500	\$600	\$100
Bii	Standard or alternative subsurface system not listed below, with design flow less than 20,000 gpd	\$250	\$300	\$50
Biii	Aerobic systems, 1,500 gpd or more	\$500	\$600	\$100
Biv	Aerobic systems, less than 1,500 gpd	\$250	\$300	\$50
Bv	Recirculating Gravel Filter, 1,500 gpd or more	\$500	\$600	\$100
Bvi	Recirculating Gravel Filter, less than 1,500 gpd	\$250	\$300	\$50
Bvii	Sand Filter, 1,500 gpd or more	\$500	\$600	\$100
Bviii	Sand Filter, less than 1,500 gpd	\$250	\$300	\$50
Bix	Holding tanks	\$200	\$240	\$40
	Holding tanks	\$25	\$25	0
General NPDES & WPCF Permits				
100	Cooling water/heat pumps	\$275	\$330	\$55
200	Filter Backwash	\$275	\$330	\$55
300	Fish Hatcheries	\$275	\$330	\$55
400	Log Ponds	\$275	\$330	\$55
500	Boiler blowdown	\$275	\$330	\$55
600	Offstream placer mining – processing less than 5 cubic yards of material per day.	0	0	0
600	Offstream placer mining – processing at least 5 cubic yards of material per day, but not more than 1,500 cubic yards of material per year.	0	0	0

Agenda Item E, Rule Adoption: Water Quality 20% NPDES and WPCF Permit Fee Increase
January 25, 2002 EQC Meeting
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Attachment G 20% Fee Increase Comparison Tables

Type		Current ACD Fee	20% Increase	
			Fee	Amount of Increase
600	Offstream placer mining - processing more than 1,500 cubic yards of material per year.	0	0	0
700	Suction dredges – less than 4 inches in diameter.	0	0	0
700	Suction dredges – 4 inches or greater in diameter.	0	0	0
800	Confined animal feeding operations (CAFOs)	\$50	na	na
900	Seafood processing	\$275	\$330	\$55
1000	Gravel mining	\$275	\$330	\$55
1200A	Storm Water: Sand, gravel, and other non-metallic mining (SIC 14)	\$275	\$330	\$55
1200C	Storm Water: Construction activities – 5 acres or more	\$275	\$330	\$55
1200CA	Storm Water: Municipal construction activities – 5 acres or more	\$275	\$330	\$55
1200Z	Storm Water: All other	\$275	\$330	\$55
1300	Oily storm water runoff	\$275	\$330	\$55
1400A	Seasonal wineries; crop preparation for market; fresh pack produce	\$155	\$185	\$30
1400B	Canneries; processed foods; meat processing and packing; poultry, marine, and other animal products processing; oils and extracts	\$275	\$330	\$55
1500A	Petroleum hydrocarbon clean-up	\$275	\$330	\$55
1500B	Petroleum hydrocarbon clean-up	\$275	\$330	\$55
1600	Small froth flotation mineral extraction	\$275	\$330	\$55
1700A	Vehicle & equipment wash water	\$275	\$330	\$55
1700B	Vehicle & equipment wash water	\$275	\$330	\$55
1900	Non-contact geothermal heat exchange	\$275	\$330	\$55

Addendum 1
(additional proposed language in red)

Agenda Item E, Rule Adoption: Water Quality 20% NPDES and WPCF Permit Fee Increase
January 25, 2002 EQC Meeting
Page 11 of 43
Attachment A-2 Proposed Rule Revisions

- (A) Discharges large biochemical oxygen demand loads, or
- (B) Is a large metals facility, or
- (C) Has significant toxic discharges, or
- (D) Has a treatment system that will have a significant adverse impact on the receiving stream if not operated properly, or
- (E) Any other industry which the Department determines needs special regulatory control.

(b) Major domestic

- (A) Serving more than 10,000 people, or
- (B) Serving industries that can have a significant impact on the treatment system.

(c) Minor domestic [see OAR 340-045-0075(7)(a) for descriptions of domestic categories]

- (A) Do not meet major domestic qualifying factors, or
- (B) Are facilities in categories Da and Db and discharge to surface waters, or
- (C) Are facilities in categories E and F that do not discharge to surface waters and are under a Water Pollution Control Facilities permit.

(14) Filing Fee. Unless waived by this rule, a filing fee of ~~\$50~~ \$60 shall accompany any application for issuance, renewal, modification, or transfer of an NPDES permit or WPCF permit, including registration for a General Permit pursuant to OAR 340-045-0033 and request for a Special Permit pursuant to OAR 340-014-0050. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed. The following filing fees are waived:

- (a) Small gold mining suction dredges ~~which~~ that qualify for General Permit 700, and with an intake hose diameter of four inches or less;
- (b) Small gold mining operations ~~which~~ that qualify for General Permit 600, and ~~which~~ can process no more than five cubic yards of material per day.

(25) Application Processing Fee. ^s Unless waived by this rule, an application processing fee shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) New Applications:

- (A) Major industries¹ – ~~\$31,400;~~ \$37,680
- (B) Minor industries – ~~\$6,280;~~ \$7,535
- (C) Major domestic² – ~~\$20,000;~~ \$24,000
- (D) Minor domestic³:
 - (i) Categories Da, Db – ~~\$4,000;~~ \$4,800
 - (ii) Category E – ~~\$2,000;~~ \$2,400
 - (iii) Category F – ~~\$500;~~ \$600
- (E) Agricultural – ~~\$6,280;~~ \$7,535

(b) Permit Renewals (including request for effluent limit modification):

- (A) Major industries¹ – ~~\$15,700;~~ \$18,840
- (B) Minor industries – ~~\$3,140;~~ \$3,765
- (C) Major domestic² – ~~\$10,000;~~ \$12,000
- (D) Minor domestic³:
 - (i) Categories Da, Db – ~~\$2,000;~~ \$2,400
 - (ii) Category E – ~~\$1,000;~~ \$1,200
- (E) Agricultural – ~~\$3,140;~~ \$3,765

(b) Permit Renewals (without request for effluent limit modification):

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** January 23, 2001
From: Stephanie Hallock, Director
Subject: Director's Dialogue

State Budget Update

In late 2001, the Governor asked all state agencies to submit proposals for cutting general and lottery fund budget allocations by ten percent, in anticipation of a special legislative session to re-balance the state budget. Earlier this month, after reviewing submissions from each agency, the Governor proposed cuts in program and administrative costs totalling \$829.8 million. Attachment A summarizes his proposal. DEQ's share of these cuts is roughly \$1.9 million and 5 full time equivalent (FTE) positions. At this early stage in the negotiations between the Governor and State Legislature, it is too early to determine the DEQ programs from which these cuts would be taken. The target date for special session is February 8.

Focus on the Economy; Regulatory Streamlining Work Group

In recent months, two legislative committees have focused on what Oregon can do to help stimulate the economy: the Senate Special Committee on Economic and Job Stimulus and the House Special Task Force on Jobs and the Economy. The Senate committee released a report this month with eight potential short-term actions that would require legislative or executive action:

1. Establish a regulatory streamlining task force to make recommendations on (a) agency coordination, especially siting of new or expanding businesses, (b) eliminating unnecessary regulation and (c) streamlining permit granting.
2. Authorize additional bonding authority for transportation projects, using existing revenue streams, to take advantage of current low interest rates.
3. Create authority for a "rainy day" fund, and transfer unscheduled agency budget reductions into the fund if and when economy improves.
4. Establish a back-up funding source for lottery bonds (in the event that the 1984 lottery initiative is ruled unconstitutional as a result of a recent court challenge) to enable immediate sale of lottery bonds and scheduling of lottery-bond construction projects.
5. Re-examine nursing licensure requirements, including certification standards for nursing assistants and nursing-program instructor qualifications, to accelerate training and hiring of nurses and certified nursing assistants.
6. Listen to the needs of business, identify more ways to assist business (especially minority and women-owned businesses), and change Oregon's reputation to "business-friendly."

7. Re-focus state energy and commitment on international trade, especially exports of Oregon products and services. Agricultural commodities and value-added agricultural products for trade with China and other emerging markets such as Africa, appear to show the most promise.
8. Shift budget emphasis to fund film/video production incentives. The proposal presented to the Committee called for creation of a \$2 million "Production Investment Fund" that would reimburse some film/video production costs in Oregon, similar to reimbursements offered in other jurisdictions.

Mike Greenfield, Director of the Department of Administrative Services, responded to recommendation #1 by establishing an agency regulatory streamlining work group to address issues raised to the legislature. The group is chaired by Jim Brown, Director of Forestry, and includes DEQ, several natural resource agencies, Building Codes, Transportation, Consumer and Business Services, Economic and Community Development, and the Community Solutions Office. We will be interviewing stakeholders and talking to legislators in an effort to get specific examples of permitting barriers and regulatory problems.

In addition, the Governor formed an Economic Strategy Advisory Group this fall to provide him with a forum for interacting with the private sector about Oregon's economy and developing a strategy for economic stimulus. The Governor also plans to use the forum to inform the private sector about the state budget and impacts of budget cuts. The group is chaired by Brett Wilcox, President of Northwest Aluminum Company. Attachment B shows the group's membership.

Performance Partnership Agreement with EPA

On January 18, DEQ's Executive Management Team met with the EPA Region 10 Senior Management Team to "kick off" the Performance Partnership Agreement update process. The Agreement describes how our two agencies will work collaboratively toward meeting environmental goals. As a foundation for our discussion, I described the four priorities outlined in DEQ's Strategic Directions and encouraged EPA to assist us in addressing these priorities. John Iani, EPA Region 10 Administrator, relayed Governor Whitman's approach to environmental protection as one that emphasizes partnerships with states and tribes in protecting the environment. During the meeting, we reached common agreement on a number of priorities, including:

- progress on Columbia River Basin water quality work (TMDL, temperature, etc.)
- the need for better integration of compliance assistance and enforcement in program planning
- the importance of data management, and use of data, as critical to our success
- the need to support innovative strategies, maintain an ongoing dialogue and keep a close working relationship throughout this process

We will continue meetings with EPA this spring in order to update the agreement by June 2002.

Upper Klamath Lake TMDL

Over the last two years, we have worked with stakeholders and government to develop the Upper Klamath Lake TMDL, which addresses temperature for the tributaries that feed the lake and pH and dissolved oxygen for the lake itself. The TMDL aims to reduce phosphorus coming into the lake, which is a primary cause of these water quality problems. Public comment was invited on

December 6, 2001, and we are on schedule to finalize the TMDL for submitting to EPA in late spring. Recently, however, we have received concerns from the local agricultural community about imposing greater restrictions after the difficulties of the 2001 water year. It is likely that we will extend the current public comment period to provide time to consider these concerns and make changes as necessary. We are holding a public hearing at the Oregon Institute of Technology in Klamath Falls this Thursday, January 24.

Improving DEQ's Rulemaking Process

Rulemaking is at the heart of what we do. While I believe we have been doing a good job with rulemaking, there are ways we can improve. We are now considering changes to our internal rulemaking process with intentions to strengthen cross program coordination, work through implementation issues early on, think more strategically about timing and workload planning, and gain efficiencies overall. One key to this process will be development of an annual agency-wide rulemaking agenda, which will require more up-front planning and prioritizing and allow better management of resources and workloads. We also want to provide more opportunity for EQC members to be involved earlier in our rulemaking process. We will discuss rulemaking with you in greater detail during the March 7-8 EQC meeting.

Evaluating Information Technology

One of the high priority issues we identified over the last year is the need to effectively manage the \$10 million and roughly 56 FTE the agency invests in information management each biennium. It is an agency priority to figure out how to make environmental information more accessible to Oregonians and how we ourselves can maximize the use of the technology and information available to us. I have asked Helen Lottridge to lead a workgroup to look at this issue over the next six to eight months. Because we are also working on budget issues and preparing for a special session, we will designate an Acting MSD Administrator to share the workload while Helen is devoting her attention to the Information workgroup. You will also hear from Helen soon on the makeup of the Information workgroup and how their efforts will proceed.

On-site (Septic) Program Service Initiative

We are embarking on a major effort to make the on-site sewage disposal program as efficient, effective and "user friendly" as possible. There are several aspects of this effort, including a customer service initiative and two advisory committees. One committee will look at our process for evaluating and approving products and technologies for use in Oregon. The other committee will look at all aspects of the program and recommend changes to help make the program viable for the next 10 years. The product evaluation committee plans to have recommendations by May 2002, and we expect the overall program review committee to have draft rules by the end of 2002. All of these efforts will be undertaken with existing resources.

Legal Orientation for New Commissioners

Contested cases brought to the Commission have gradually become more complex, involving critical legal issues and detailed legal questions. For this reason, I have asked Larry Knudsen to start offering a legal orientation to new Commissioners to describe the Commission's role and responsibilities in these cases, and answer any general questions about legal obligations. Larry will consult you in the near future to get your suggestions for developing an effective orientation.

Cost of EQC meetings

In light of present state budget constraints, we have evaluated the cost of Commission meetings and compared costs for Portland and non-Portland meetings. In general, it costs about \$5,000 for the Commission to meet in a location outside of the Portland area and about \$1,500 to meet in Portland. In the interest of conserving costs wherever possible, Chair Eden and I agreed to hold the March and September meetings in Portland, rather than in Pendleton and Brookings as originally decided. (Attachment C provides a cost-evaluation of four EQC meetings for reference.) Thus, the current plan for Commission meetings this year is:

March 7-8	Portland, including a work session with Executive Managers
April 23-25	Burns, with tour of Malheur Wildlife Refuge
June 6-7	Salem, including a joint session with the Water Resources Commission
July 25-26	Clatskanie, with a tour of the Port Westward Energy Facilities
September 16-17	Portland
December 12-13	Columbia River Gorge or Portland, including a joint session with the Economic and Community Development Commission

Governor's Proposed Program and Administrative Reductions January 2001

In January 2001, the Governor proposed a total of \$829.8 million in reductions to state agency funding from general and lottery funds. Reductions to different government sectors are shown below.

Education: \$450.4 million and 460 FTE
Human Services: \$172.3 million and 50 FTE
Public Safety: \$103.3 million and 219.18 FTE
Natural resources (includes DEQ): \$10.3 million and 46.22 FTE
Administration (Several commissions, DAS, OLCC, ERB, library): \$2.7 million and 0 FTE
Economic Development: \$11.4 million and 2 FTE
Transportation: \$920,000 and 0 FTE
Bureau of Labor and Industry: \$653,000 and 0 FTE
Judicial/Legislative/Sec of State: \$32 million - FTE figure not available

In addition, the Governor proposed miscellaneous fund transfers, administrative reductions, and other state fund shifts totaling \$45.9 million, which do not affect DEQ.

Natural Resources

Below is a summary of proposed reductions to some natural resource agency budgets.

Department of Environmental Quality: \$1.9 million and 5 FTE
Department of Fish and Wildlife: \$2.8 million and 24.21 FTE, includes closing 5 hatcheries
Department of Agriculture: \$1.8 million and 2.3 FTE
Department of Forestry: \$1.5 million and 13.45 FTE
Department of Land Conservation and Development: \$483,808 and 0 FTE
Water Resources Department: 1.1 million and .89 FTE
Oregon Watershed Enhancement Board: \$227,000 and 0 FTE
Cuts to other natural resource agencies were proportionately minimal.

The budget rebalance proposal put forth by Legislative leadership for natural resource agencies is similar to what the Governor proposed; DEQ's share would be roughly \$1.99 million and 5.35 FTE.

The Governor and legislative leadership will negotiate the state budget rebalance between now and special session, which is expected in February. The Governor's budget information is available at <http://www.governor.state.or.us/governor/press/p020107.htm>. The Legislature's budget rebalance plan is available at <http://www.leg.state.or.us/comm/lfo/home.htm>.

Governor's Economic Strategy Advisory Group Members

Private Sector Members

Donald Blair, Vice President/Chief Financial Officer of Nike; Member of Smart Growth Coalition

Sam Brooks, President of Sam Brooks & Associates; Member of Governor's Council of Small Business

Allyn Ford, President of Roseburg Forest Products Co.

Gerry Frank, Civic Leader; Tourism interests

Ray Guenther, Director of NW Regional Operations, Intel; Chair of Associated Oregon Industries

Rebecca Johnson, Associate Dean at OSU College of Forestry; Member of Governor's Council of Economic Advisors

David Marks, President of Marks Metal Technology

Suzi Mazzio, Community and Education Relations Manager of Boeing Portland; Vice Chair of Oregon Workforce Investment Board

Mike McArthur, Sherman County Judge; Agricultural and local government interests

Tim Nesbitt, President of Oregon AFL-CIO

Ralph Shaw, Managing General Partner of Shaw Venture Partners; Chair of Governor's Council of Economic Advisors

Ron Timpe, President and CEO of Standard Insurance Company; Member of Oregon Business Council

Brett Wilcox (Chair), President of Northwest Aluminum Company; Chair of Economic and Community Development Commission; Member of Oregon Business Council

Public Sector Members

Randall Edwards, State Treasurer

Mike Greenfield, Director of DAS

Bill Scott, Director of Economic and Community Development Department

Bill Wyatt, Executive Director of Port of Portland

Ex Officio Members

Tom Potiowsky, State Economist

Duncan Wyse, Executive Director of Oregon Business Council

EQC Meeting in Joseph	August 9-10, 2001
Room Rental	(no charge)
Catering at the Conference Site	285.00
Other Meals Provided	737.50
Walking Tour	<u>100.00</u>
Subtotal	1,122.50
Travel Expenses:	
EQC Members	635.94
DEQ Staff (six)	2,314.90
DOJ-Attorney*	<u>1,202.00</u>
Subtotal	4,152.84
Total	<u>\$ 5,275.34</u>

EQC Meeting in Hermiston	March 8-9, 2001
Room Rental	\$ 550.00
Catering at the Conference Site	401.75
Other Meals Provided	<u>761.20</u>
Subtotal	1,712.95
Travel Expenses:	
EQC Members	1,746.09
DEQ Staff (two)	123.00
DOJ-Attorney*	<u>684.00</u>
Subtotal	2,553.09
Total	<u>\$ 4,266.04</u>
Grand Total for Both Meetings	<u>\$ 9,541.38</u>

EQC Meeting in Portland	Nov 29-Dec 1, 2000
Room Rental - Heathman (11/29)	\$100.00
Catering at Heathman Site	518.55
Catering at DEQ-HQ	32.5
Other Meals Provided	297.93
Subtotal	948.98
Travel Expenses:	
EQC Members	755.73
DEQ Staff (S. Hallock & M. O'Mealy)	-
DOJ-Attorney	<u>-</u>
Subtotal	755.73
Total	<u>\$1,704.71</u>

EQC Meeting in Portland	May 3-4, 2001
Room Rental - DEQ-HQ	\$ -
Catering at the Conference Site	233.9
Other Meals Provided	-
Subtotal	233.9
Travel Expenses:	
EQC Members	847.75
DEQ Staff (S. Hallock & M. O'Mealy)	-
DOJ-Attorney	<u>-</u>
Subtotal	847.75
Total	<u>\$1,081.65</u>
Grand Total For Both Meetings	<u>\$2,786.36</u>

*Including hourly rate from DOJ

1/25/02 - EOC Meeting, Item F.

Reduction Options: Natural Resources

Legend

Agriculture	Department of Agriculture
CRGC	Columbia River Gorge Commission
DEQ	Department of Environmental Quality
DLCD	Department of Land Conservation and Development
DOF	Department of Forestry
DOGAMI	Department of Geology and Mineral Industries
LUBA	Land Use Board of Appeals
ODFW	Oregon Department of Fish and Wildlife
OWEB	Oregon Watershed Enhancement Board
State Lands	Division of State Lands
WRD	Water Resources Department

No	Agency	Short Description	2001-03			
			General Fund	Lottery Funds	Other Funds	Full Time Equivalent
1	Agriculture	Debt service and vacancy savings.	294,355			
2	CRGC	Vacancy savings and expenditure reductions.	13,614			
3	DEQ	Hold positions vacant, delay bond sale, reduce expenditures for cleanup contracts.	920,909			0.80
4	DLCD	Reduce employee training, delay Measure 56 special payments and Senate Bill 12 grants.	195,924			
5	DOGAMI	Reduce travel, printing, and implement short-term sabbaticals.	51,320			
6	ODFW	Hold administrative positions vacant.	256,537			
7	DOF	Hold positions vacant, delay capital improvement and motor pool charges.	700,490			
8	LUBA	If vacancy occurs, hold open to capture savings.	20,370			
9	OWEB	Hold positions vacant, delay database improvements.		107,012		
10	State Lands	Reduce non-fixed services and supplies.	3,375			
11	WRD	Hold positions vacant.	283,790			
12	Agriculture	Reduces support for Marketing, Food Safety, Animal Health, and Shellfish programs. Combination of program reductions and increased Other Funds program support.	694,674			1.82
13	DEQ	Reduces support for Hazardous Waste, Northwest Pollution Prevention Roundtable, Air Quality and Cleanup programs.	170,921			0.55
14	DLCD	Reduces Measure 56 Special Payments.	203,060			
15	DOGAMI	Places Executive Service Person on sabbatical, reduces services and supplies.	97,500			
16	ODFW	Reduces support for Wildlife, Game, Fish Production, Interjurisdictional Fisheries, and Marine Habitat programs.	761,689			5.50
17	DOF	Reduces support for Fire Practices, Fire Protection, and Administration. Includes increased Other Fund program support.	591,709		775,793	11.79
18	OWEB	Reduces Willamette Restoration Initiative and on the ground project grants.	40,035			
19	WRD	Reduces Klamath Well Construction Grants, Emergency Drought Services, Administration and Hearings. Decreased spending on services and supplies.	283,123			

920
171
896
1988 Mill

No	Agency	Short Description	2001-03				
			General Fund	Lottery Funds	Other Funds	Federal Funds	Full Time Equivalent
20	Agriculture	Shifts funding for the Food Safety Program from General Fund.	503,968				
21	DEQ	Reduces support for Hazardous Waste, Air Quality, and Water Quality programs.	896,057				4.00
22	DOGAMI	Shifts program support to alternative revenue source.	12,000				
23	ODFW	Reduces support for Fish, Interjurisdictional Fisheries, Propagation and Natural Production programs.	356,010		4,091	12,581	4.00
24	DOF	Reduces support for Fire Protection, Forestry Assistance, and Forest Practices programs.	282,928		589,806		1.66
25	OWEB	Further reduces Willamette Restoration Initiative on the ground project grants.	40,035				
26	WRD	Reduces support for Water Rights and Field Services programs.	605,043				0.89
27	Agriculture	Eliminate one field technician position.	55,000				0.50
28	ODFW	Closes Trask Hatchery.	238,014				2.00
29	OWEB	Further reduces Willamette Restoration Initiative and on the ground project grants.	40,035				
30	ODF	Fire Severity Response - SPA (remaining)	390,000				
31		Subtotal	9,002,485	107,012	1,369,690	12,581	33.51
32		Governor Plan	9,002,485	107,012	1,369,690	12,581	33.51
33		General and Lottery Funds	9,109,497				

State of Oregon
Department of Environmental Quality

Memorandum

Date: January 4, 2002
To: Environmental Quality Commission
From: Stephanie Hallock *S. Hallock*
Subject: Agenda Item G, Action Item: Consider Department Plan for Methane Regulation
January 25, 2002 EQC Meeting

Proposed Action Through the authority granted the Commission under ORS 465.400, designate methane, under certain conditions, as a hazardous substance by adoption of temporary rule amendments to OAR 340-122-0115 and OAR 340-122-0040 as presented in Attachment A.

Background and Key Issues At the September 21, 2001 EQC Meeting, the Commission denied a petition submitted by the citizen association CLEAN for temporary rulemaking related to regulation of methane at unpermitted landfills. The Commission denied the petition after determining that methane did not pose an immediate threat to human health or the environment. The Commission directed the Department to work with stakeholders on permanent rulemaking to address methane issues. DEQ staff developed options for methane regulation in October and held a stakeholder meeting on November 13, 2001.

At the December 6, 2001 EQC Meeting, the Commission discussed potential long term approaches for addressing methane issues at unpermitted landfills and heard from CLEAN representatives.

Also at this meeting, the Commission denied a second petition from CLEAN for temporary rulemaking after determining again that there was no immediate threat to public health or the environment. The Commission directed the Department to bring this matter back to the Commission at its January 2002 meeting and to propose a temporary rule for possible adoption if the Department concluded that the rule would be effective and in the public's interest.

The Department continues to receive requests for written responses to private party investigations and methane mitigation activities at two unpermitted landfill sites currently being redeveloped or considered for redevelopment. A key issue that was discussed at the EQC meeting is the current lack of Department authority to advise on or require methane mitigation activities at

unpermitted landfills. The proposed temporary rule would give the Department authority to require or conduct methane mitigation activities at such sites.

**EQC Action
Alternatives**

The EQC could decide that a temporary rule is not necessary and consider permanent rules addressing this issue. The Department intends to have draft permanent rules prepared by May 1, 2002.

**Department
Recommendation**

The Department recommends that the Commission adopt temporary rules declaring methane a hazardous substance under certain conditions. The Department believes this action is necessary to help insure protection of public health and the environment at unpermitted land disposal sites.

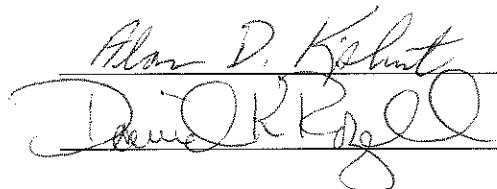
Attachments

- A. Temporary Rule Language
- B. Statement of Need and Justification

Approved:

Section:

Division:

The image shows two handwritten signatures. The top signature is "Alan D. Kiphut" and the bottom signature is "David O. Kiphut". Both signatures are written in dark ink and are positioned over horizontal lines.

Report Prepared By: Alan Kiphut
Phone: (503) 229-6834

ATTACHMENT A – PROPOSED TEMPORARY RULES

340-122-0115

Definitions

(30) "Hazardous substance" means:

- (a) Hazardous waste as defined in ORS 466.005;
- (b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499;
- (c) Oil as defined in ORS 465.200(18); and
- (d) Methane generated at land disposal sites as defined in ORS 459.005, excluding methane generated from land disposal sites under permits issued by the Department pursuant to ORS 459.205 where the permittee is able to comply with the permit requirements related to methane; and
- ~~(d)~~ (e) Any substance designated by the commission under ORS 465.400.

340-122-0040

Standards

- (1) Any removal or remedial action shall address a release or threat of release of hazardous substances in a manner that assures protection of present and future public health, safety, and welfare, and the environment.
- (2) In the event of a release of a hazardous substance, remedial actions shall be implemented to achieve:
 - (a) Acceptable risk levels defined in OAR 340-122-0115, as demonstrated by a residual risk assessment; or
 - (b) Numeric soil cleanup levels specified in OAR 340-122-0045, if applicable; or
 - (c) Numeric cleanup standards developed as part of an approved generic remedy identified or developed by the Department under OAR 340-122-0047, if applicable; or
 - (d) For areas where hazardous substances occur naturally, the background level of the hazardous substances, if higher than those levels specified in subsections (2)(a) through (2)(c) of this rule.
- (3) In the event of a release of methane as defined in OAR 340-122-0115, removal or remedial actions shall be implemented to prevent or safely manage concentrations exceeding or likely to exceed 1.25% by volume (25% of the lower explosive limit for methane) in confined spaces and occupied structures.
- ~~(3)~~ (4) In the event of a release of hazardous substances to groundwater or surface water constituting a hot spot of contamination, treatment shall be required in accordance with OAR 340-122-0085(5) and OAR 340-122-0090.
- ~~(4)~~ (5) A removal or remedial action shall prevent or minimize future releases and migration of hazardous substances in the environment. A removal or remedial action and related activities shall not result in greater environmental degradation than that existing when the removal or remedial action commenced, unless short-term degradation is approved by the Director under OAR 340-122-0050(4).
- ~~(5)~~ (6) A removal or remedial action shall provide long-term care or management, as necessary and appropriate, including but not limited to monitoring, operation, maintenance, and periodic review.

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Environmental Quality, Land Quality Division, OAR Chapter 340
Administrative Rules Chapter Number 340

In the Matter of Amending OAR 340-122-0040 and 340-122-0115 to Designate Methane, Under Certain Conditions, as a Hazardous Substance	)	Statutory Authority
	)	Statutes Implemented
	)	Statement of Need
	)	Principal Documents Relied Upon
	)	Housing Cost Impact Statement

Statutory Authority: ORS 183.335 and 465.400

Other Authority: N/A

Statutes Implemented: ORS 465.200 to ORS 465.545, ORS 465.900

Need for the Temporary Rule(s):

The Commission finds that, under conditions specified in the temporary rule, the addition of methane to the list of hazardous substances is appropriate, necessary and consistent with the criteria in ORS 465.400(3)(b) for the following reasons:

- Most communities in Oregon have one or more historic landfill sites, where municipal solid waste, demolition debris and other material has been disposed.
- These "historic" landfill sites include sites that: a) existed before the state's solid waste law required permits for municipal solid waste disposal; b) are no longer permitted for disposal and applicable post-closure requirements of state laws have been satisfied; or c) currently have solid waste operation or solid waste closure permits but are unable financially to meet permit requirements (orphan sites).
- Landfills, including historic landfills, typically generate methane as organic material within the landfill decomposes.
- Methane is capable of migrating vertically or horizontally and may accumulate within enclosed areas—such as utility corridors, basements or buildings—in concentrations that present a fire or explosion hazard for site workers or residents.
- In addition to potential risks to site workers and residents of neighboring properties, some historic landfills are being redeveloped. Because of site alterations and improvements, including potential newly enclosed areas, these new developments may create significant risks to public health and safety.

In the absence of temporary rules, DEQ and the Oregon Department of Justice have determined that DEQ does not have regulatory authority to provide oversight, order actions by responsible parties or, if necessary, perform methane site investigation and control measures at historic landfills. Lack of an effective regulatory authority could result in potential fire or explosive hazards to residents and workers at or in the vicinity of these sites.

Documents Relied Upon:

- CLEAN petition, August 21, 2001
- DEQ Action Item Staff Report to EQC, Agenda Item L: Petition for Temporary and Permanent Rulemaking, August 31, 2001
- Ball Janik response to petition, September 17, 2001
- CLEAN response to Ball Janik letter, September 21, 2001
- DEQ Policy Framework for Evaluation of Potential Methane Management Tools at Historic Fill Sites, November 1, 2001
- Methane Stakeholder Meeting Summary, November 13, 2001
- DEQ Information Item Staff Report to EQC, Agenda Item C: Methane Status Report, November 16, 2001
- CLEAN petition, November 20, 2001
- Ball Janik response to CLEAN petitions, December 4, 2001
- Ball Janik letter regarding Methane Investigation at Sexton Place and Haagen Parcels, December 11, 2001
- Oregon Department of Justice response to Ball Janik's December 11 letter, December 14, 2001
- Ball Janik "Analysis of Regulatory Alternatives for Methane" letter, December 20, 2001
- EQC Certificate of Action, December 14, 2001

These documents may be reviewed during regular business hours by contacting Cameron Oster at Oregon DEQ, 811 S.W. Sixth Avenue, Portland, Oregon, 97204. Cameron may be reached by phone at (503) 229-5409 or by e-mail at oster.cameron.deq.state.or.us.

Justification of Temporary Rule(s):

In the absence of this rule, DEQ will not be able to provide technical review and approval for investigation and control of methane from historic landfills under DEQ's Voluntary Cleanup Program, even if methane concentrations present a significant public risk. In addition, DEQ will not be able to order responsible parties to take necessary actions, nor will DEQ be able to perform these actions itself in cases where the responsible parties are unknown, unable or unwilling to perform measures necessary for protection of public health, safety and welfare.

At the request of property owners participating in DEQ's Voluntary Cleanup Program, DEQ has been asked to review site investigation and site control measures for management of methane from certain historic landfills, e.g., Bethel-Danebo and Cobb's Quarry. Concentrations of methane at levels of concern have been observed at both of these sites. However, because existing rules do not provide adequate authority for DEQ involvement in methane issues

associated with historic landfills, DEQ and the Oregon Department of Justice believe temporary rules are needed for DEQ review and action.

Serious prejudice to the public interest and the interest of the parties concerned will be caused if DEQ is unable to provide review of methane issues at Voluntary Cleanup Sites where the responsible party has requested DEQ review and approval of methane site investigation and control measures under DEQ's Voluntary Cleanup Program. In addition, serious prejudice to the public interest and the interest of parties concerned will be caused if DEQ is unable to order actions necessary for investigation and safe management of methane concentrations whether these actions are undertaken through DEQ's Voluntary Cleanup, Enforcement, or Orphan Site programs.

Citation to the Legal Authority Relied Upon

ORS 183.335 provides general requirements for adoption of temporary rules. In addition, ORS 465.400 is also applicable as a legal authority for this rule because ORS 465.400 establishes criteria for Environmental Quality Commission additions to the existing list of hazardous substances.

ORS 465.400 authorizes the Commission to designate as a hazardous substance "...any element, compound, mixture, solution or substance or any class of substances that, should a release occur, may present a substantial danger to the public health, safety, welfare or the environment."

Methane is not currently a hazardous substance under Oregon's environmental cleanup law (see ORS 465.200) or implementing administrative rules (OAR 340-122-115).

ORS 465.400(3)(b) also provides that "before designating a substance or class of hazardous substances as a hazardous substance the commission must find that the substance, because of its quantity, concentration, or physical, chemical or toxic characteristics, may pose a present or future hazard to human health, safety, welfare or the environment should a release occur."

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.

Melinda Eden, Chair of the Environmental Quality Commission



SCHWABE, WILLIAMSON & WYATT, P.C.
ATTORNEYS AT LAW

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DATE: January 24, 2002

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Melinda Eden Environmental Quality Commission	503-229-6762	503-229-5696
Stephanie Hallock, Director Oregon DEQ	503-229-6762	503-229-5696
Alan Kiphut Oregon DEQ	503-229-6954	503-229-5696

FROM:	PHONE No.:	E-MAIL ADDRESS:
Neal A. Hueske	541-330-0904	nhueske@schwabe.com

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1/29/02
EAC Meeting, Item 6 (Submitted)

SCHWABE, WILLIAMSON & WYATT, P.C.

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NEAL A. HUESKE

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January 24, 2002

VIA FACSIMILE

Melinda S. Eden
Chair
Oregon Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, OR 97204-1390

Stephanie Hallock
Director
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204-1390

Re: Agenda Item G
Temporary Rulemaking to Regulate Methane as a Hazardous Substance at
Unpermitted Landfills

Dear Commissioner Eden and Director Hallock:

I am submitting written testimony on behalf of Lane Plywood in opposition to the proposed temporary rulemaking being considered by the EQC as Agenda Item G on January 25.

As you may know, Lane Plywood is currently developing the Pioneer Business Park on portions of the former Bethel-Danebo landfill located west of Eugene. This landfill was the former Lane County landfill and operated from 1970 to 1977. During this time, the landfill accepted construction, demolition and municipal solid waste for disposal. In approximately 1979, the County closed the landfill by covering it with several feet of fill dirt and wood mulch. It remained vacant and undeveloped from 1979 until the current redevelopment efforts commenced in the late 1990s. The closed landfill covers an area of approximately 17 acres in the western portion of the Business Park.

Since 1997, Lane Plywood has been working with DEQ's Western Region Voluntary Cleanup Program, the City of Eugene and the Lane Regional Air Pollution Authority (LRAPA) to redevelop the site and return it to productive use. Lane Plywood has conducted substantial environmental investigation at the site and installed a comprehensive Landfill Gas Control and Collection System (LGCCS) to address and control methane generated at the site. At DEQ's request, in addition to installation and operation of the LGCCS, Lane Plywood (1) provided

Stephanie Hallock
Melinda Eden
January 24, 2002
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written notices to occupants of the business park informing them of the potential for environmental and safety risks posed by methane at the landfill; (2) installed gas vapor barriers in and under all new construction at the former landfill; (3) installed combustible gas sensors in each suite of each new building located near or over the former landfill; and (4) will attach deed restrictions to the property that provides notice of the former landfill and existence of the LGCCS.

These significant efforts have all been accomplished within the existing regulatory framework and with the Voluntary Cleanup Program. There is simply no need to adopt a rule to accomplish what already can take place in the existing programs.

As proposed, this temporary rule would include in the definition of "hazardous substance"

Methane generated at land disposal sites as defined in ORS 459.005, excluding methane generated from land disposal sites under permits issued by the Department pursuant to ORS 459.205 where the permittee is able to comply with the permit requirements related to methane.

The proposed temporary rule goes on to provide that

In the event of a release of methane as defined in OAR 340-122-0115, removal or remedial actions shall be implemented to prevent or safely manage concentrations exceeding or likely to exceed 1.25% by volume (25% of the lower explosive limit for methane) in confined spaces and occupied structures.

Lane Plywood opposes the adoption of this temporary rule because:

1. It is unnecessary and overly broad. The rule being proposed is a result of the neighborhood land use dispute between the opponents of the proposed Cobb's Quarry development in Beaverton, and the developers. All of the documents cited by DEQ as being relied upon for the proposed temporary rule are directly related to the Cobb's Quarry site and to the many petitions by CLEAN to have methane regulated as a hazardous substance. According to counsel for the developers of this site, after many failed land use challenges, the opponents to the development have latched onto the methane issue as a way of halting or delaying the development. To our knowledge (and confirmed by Alan Kipphut at DEQ), there have been no other complaints, petitions, claims or inquiries regarding methane generation by members of the public at any other sites in Oregon, including the development by Lane Plywood at the former Bethel-Danebo landfill in Lane County. It is inequitable to adopt a regulation that will apply statewide to sites where additional regulatory authority is unnecessary, simply to address a situation unique to the Cobb's Quarry site.



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Melinda Eden
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2. Requiring the implementation of "removal" or "remedial action" to address methane being generated at a historic landfill is inappropriate and inconsistent with those statutory definitions and the applicable regulatory programs. Methane does not behave like other hazardous substances, and, therefore, trying to "shoehorn" it into the existing cleanup program makes no sense. Methane is constantly regenerated at landfills because of the decomposition of organic wastes. Therefore, it is doubtful that a site where methane exists will ever successfully complete a "remedial action."

If the Commission persists in the current rulemaking, we strongly suggest that the phrase "or remedial actions" be deleted so that the rule only requires the implementation of a "removal" as defined in ORS 465.200. Authority to require removal action will provide the Department with sufficient tools and flexibility to address methane sites, without the difficulties posed by the remedial action rules. For instance, it is likely impossible for a methane site to ever achieve an "acceptable risk level" that would warrant the conclusion of a remedial action.

3. Moreover, we are very concerned that this proposed regulation will open former landfill sites up to significant liability under ORS 465.255, for natural resource damages, remedial action costs and other damages. It will also subject former landfills where methane is being generated to the many other programs, funds and requirements authorized by ORS 465 and 466. For example, as you know, methane is constantly being "released" from a former landfill. By including methane in the definition of what is a hazardous substance, any owner or operator of a former landfill will become potentially liable for any other party's incurrence of remedial action costs, even (as with the Bethel-Danebo Landfill) if waste disposal activities ceased decades earlier. This potentially significant liability will be a huge impediment to the successful redevelopment of historic landfills and is contrary to DEQ's stated brownfields policies.
4. If DEQ is concerned about the human health and environmental effects of methane at historic, unpermitted landfill sites, it should request a legislative change to enact a comprehensive program within the auspices of ORS Chapter 459 to address these sites in a manner that is appropriately tailored to the chemical and physical characteristics of methane, similar to how it is regulated at permitted sites. Trying to fit methane into the programs authorized by ORS Chapter 465 is inefficient and will create more problems in the long run as owners and developers of such sites grapple with trying to accomplish a "removal" or "remedial action" with respect to methane.

In summary, Lane Plywood believes that this temporary rule, and the rush it creates to enact a permanent rule within 6 months, will not be the best answer for Oregon in the long run. If the Commission is concerned about the possible environmental, safety and public health impacts from methane at former landfill sites, it should allow DEQ to take the time to



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thoroughly and rationally evaluate the perceived issues, and then craft a program that is appropriate for the entire state, not just as a reaction to one site.

Thank you for the opportunity to provide these comments. If you have any questions, I would be happy to discuss these comments in more detail.

Very truly yours,



Neal A. Hueske

NAH:nah

Enclosure

cc: Alan Kiphut, Oregon DEQ
Billy Sherritt, Lane Plywood



State of Oregon
Department of Environmental Quality

Memorandum

Date: January 4, 2002
To: Environmental Quality Commission
From: Stephanie Hallock, *S. Hallock* Director
Subject: Agenda Item H, Informational Item: Port Westward Energy Facilities
January 25, 2002 EQC Meeting

Purpose of Item This item introduces the proposed Port Westward Energy Facilities project to the Commission in preparation for future action.

Background The Port Westward project consists of the creation of two natural gas fired power plants and one ethanol production plant on land owned by the Port of St. Helens (Port) adjacent to the Columbia River near Clatskanie.

The Port has proposed to act as the NPDES permittee for collection and discharge of wastewater to the Columbia River from the new energy facilities. The discharge would be a new major discharge to the River. Under these circumstances, Commission approval is required for the Department to accept the results of an antidegradation review needed to issue the NPDES permit.

The reach of Columbia River where the proposed discharge would occur is water quality limited for a number of parameters, including temperature, arsenic and PCBs, for which TMDLs have not been established. The USEPA is currently working on a TMDL for temperature. Both state and federal regulation constrain new permits to water quality limited streams in the absence of a TMDL. As part of the final permit action the Commission may be asked to provide a variance as allowed under the temperature standard and to interpret administrative rules that govern new discharge to water quality limited streams.

Because the proposed discharge is to a water quality limited stream in absence of a TMDL and substantive antidegradation review, the Department expects the project to generate considerable public interest and raise a number of policy issues. This briefing will give the Commission an opportunity to learn and ask questions about the proposed project.

Next Steps The Port plans to submit an NPDES permit prior to this EQC meeting. The Port's consultant, David Evans and Associates, is preparing analyses and reports to support the application and related environmental studies. The Department has initiated public information meetings for this permitting action. Meetings will be held to gather public input prior to drafting the permit. As part of drafting the permit, the Department will review the permit

with EPA Region 10, the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and Oregon Department of Fish and Wildlife to assure the permit is protective of the endangered species present. Further, the Department has started to evaluate potential environmental and economic impacts of the proposed project, as required for the NPDES permit and antidegradation review.

**EQC
Involvement**

The Commission's July 25-26, 2002 meeting will be held in Clatskanie, during which the Department will provide an informational update on the project and a tour of the existing Beaver Generating Station and the proposed site for the new facilities. This tour should convey a sense of the large scale of the proposed energy facilities.

At its September 19-20, 2002 meeting, the Commission will be asked to approve or deny Department actions on the NPDES permit, and the antidegradation review. The Commission may also be asked to interpret policies regarding discharge to water quality limited stream and variances for new sources as allowed under the temperature standard.


Attachments

A fact sheet, aerial view and a river photograph of the proposed project are attached.


**Available Upon
Request**

Applications for site certificates for the two power plants, submitted by the Port to the Oregon Energy Facility Siting Council.
The NPDES permit application submitted by the Port to DEQ

Approved:
Section:


Robert P. Baumgartner
Manager, Water Quality Source Control
Northwest Region 503-229-5323

Division:


Michael Llewelyn
Division Administrator
Water Quality 503-229-5324

Report Prepared By: James R. Sheetz, PE

Port Westward Energy Facilities

Proposed Energy Facilities

The Port of St. Helens (Port), a port district in Columbia County, is proposing to provide industrial sites for the construction of two new power plants and one ethanol production plant, collectively referred to as the Port Westward Energy Facilities project. The facilities would be located in an industrial area adjacent to the Columbia River near Clatskanie, where Portland General Electric Company (PGE) currently operates the existing Beaver Generating Station, a natural gas and oil fired power plant. PGE would build a new natural gas fired power plant, known as Port Westward, for market power. Westward Energy, LLC (Brett Wilcox, owner) would build a natural gas fired power plant, known as Summit Westward, to provide power for Golden Northwest Aluminum, Inc, Goldendale, Washington. Cascade Grains Products would build an ethanol production plant using grain imported in unit trains from the Midwest. Other industrial users may also be attracted to the site in the future.

The power plants have applied for site certificates from the Oregon Office of Energy. The Summit Westward project is under the Energy Facilities Siting Council expedited process.

The Summit Westward plant would employ 25, Port Westward would employ 20, and Cascade Grain Products would employ 85. Construction of each power plant would employ 200-385 workers and take 12-24 months.

Wastewater

Wastewater from the energy facilities will include sanitary sewage and process cooling water. Sanitary sewage may be handled through large on-site systems, if technically feasible, and would be regulated under a state Water Pollution Control Facilities (WPCF) permit. If not technically feasible, a domestic treatment facility with discharge to the Columbia River would be necessary and would be regulated under a federal-state National Pollutant Discharge Elimination System (NPDES) permit. Process cooling water would be discharged to the Columbia River and would be regulated under an NPDES permit. Process cooling water pollutants will include temperature (heat), total dissolved solids (TDS), oil and grease, and metals. Effluent temperature and heat load will be 29 to 36 degrees Celsius and 12 to 27 megawatts, respectively. (Heat load would be zero if the effluent temperature were equal to the criterion of 20 degrees Celsius.)

The Port has proposed to provide process cooling water collection, a pump station, and an outfall and diffuser to the Columbia River. The Port would be the NPDES permittee for the wastewater discharge from the three plants.

Water Quality Issues

The Columbia River is water quality limited for temperature, bacteria, dissolved oxygen, pH, dissolved gas, pesticides, PCB, and arsenic. The effluent from the project will relate primarily to temperature, dissolved oxygen, pH, and arsenic.

Issues associated with discharge of heated effluent to a water quality limited water include potential impacts on threatened and endangered species, assigning a waste load allocation without a Total Maximum Daily Load (TMDL), and establishing a mixing zone for water quality limited pollutants.

Because the Port's outfall would be a new major discharge to a water quality limited water, the Environmental Quality Commission (EQC) will need to approve issuance of an NPDES permit, accept the results of an antidegradation review, and approve allocation of assimilative capacity to the new discharge in the absence of a TMDL for temperature (OAR 340-41-0026). Also, public involvement as a Category IV permitting action will be required, which will involve a public information meeting in addition to the usual opportunity to comment on the draft permit and antidegradation review.

The EQC will be briefed on the project at its January and July 2002 meetings, and will be presented with action items at the September 2002 meeting.

Air Quality Permitting Status

The Port Westward energy facilities are in the middle of the air quality permitting process. A construction permit has been issued for Cascade Grain. Port Westward's construction permit is on public notice. DEQ expects to place Summit Westward's permit on public notice in early 2002. Port Westward already has a federal Title V operating permit. The other two facilities will need to obtain Title V permits within one year of initiating operation.

All three proposed facilities have completed the air quality impact analysis and demonstrated no impacts on Class I wilderness areas. All three have demonstrated no Class II impacts. The U.S. Forest Service has expressed concern that DEQ has not completed a cumulative impact



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analysis for all existing and proposed facilities in the area. Very few states do this type of analysis currently due to lack of an established procedure and limited resources. DEQ is working with EPA Region 10 and Washington State to develop a consistent cumulative impact analysis protocol. DEQ has analyzed the proposed and existing facilities and finds that at this time, there would not be a cumulative impact from PGE and the proposed facilities.

*Alternative formats of
this document can be
made available.
Contact DEQ Public
Affairs for more
information (503) 229-
5696.*

For more information please contact:
Marcia Danab, Public Affairs 503-229-6488

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The EQC will be briefed on the project at its January and July 2002 meetings, and will be presented with action items at the September 2002 meeting.

Air Quality Permitting Status

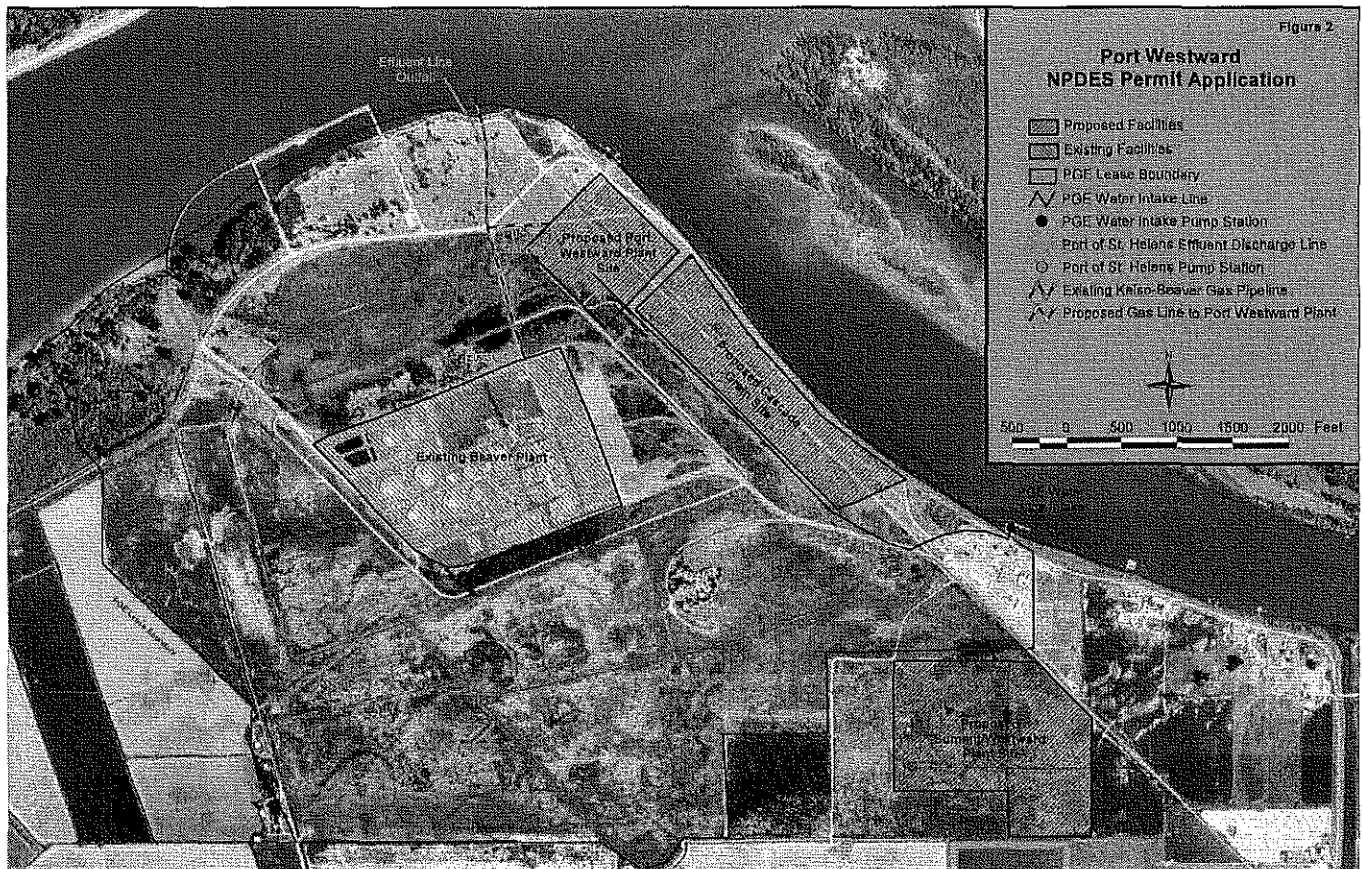
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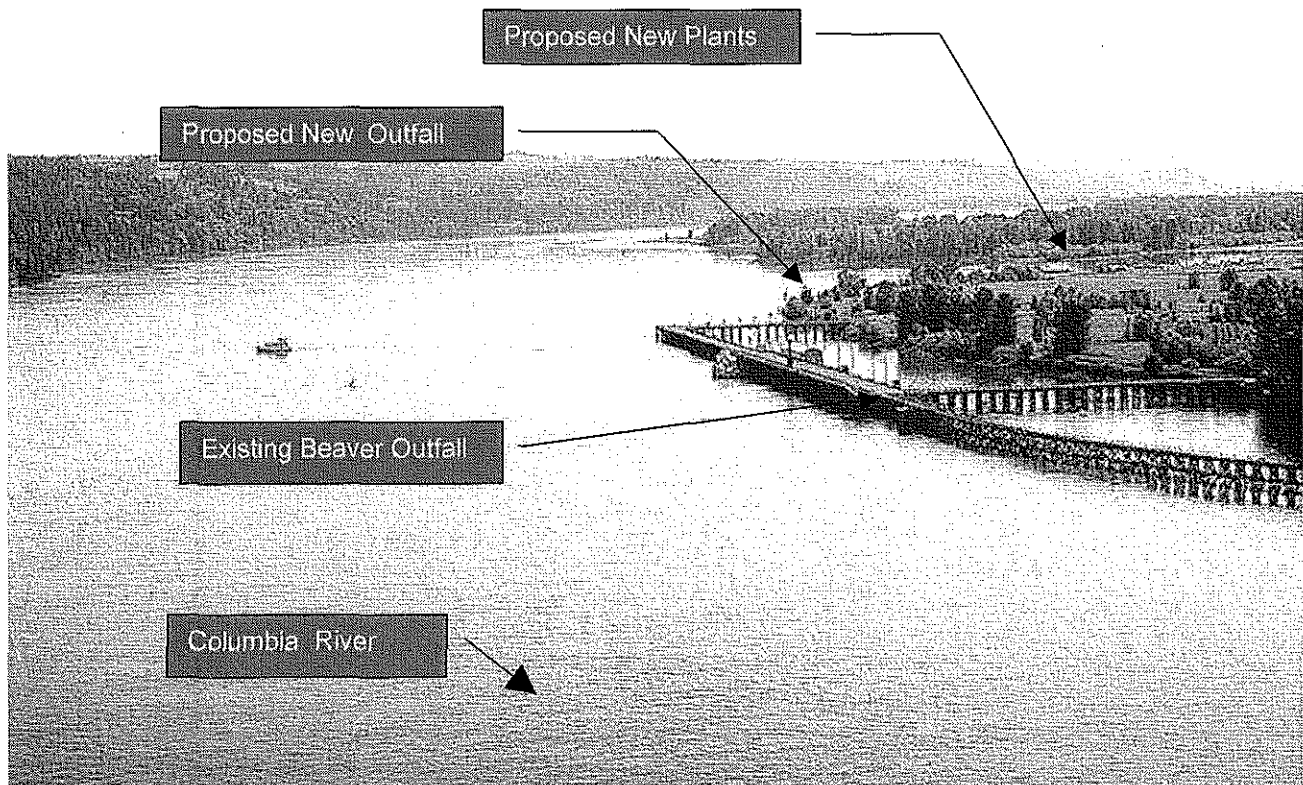


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Proposed Energy Facilities



Outfall Locations

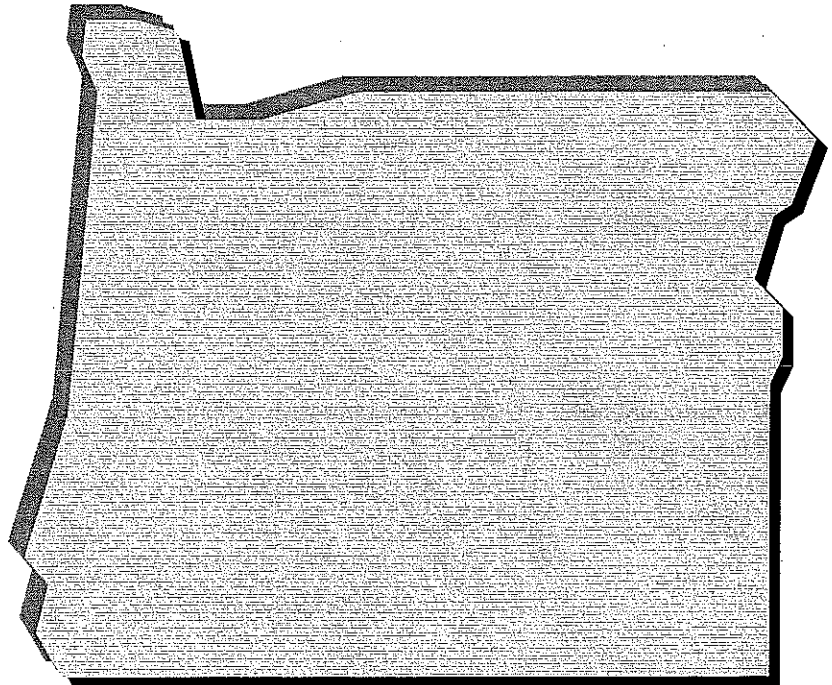
1/25/02 - EQC, Item H. (handout)

Oregon DEQ Implementation Management Internal Directive for NPDES Permits

March 2001

State Of Oregon

Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and Section 401 Water Quality Certifications



**Oregon Department of Environmental Quality
Water Quality Division
811 SW Sixth Avenue
Portland, OR 97204**

Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and Section 401 Water Quality Certifications

Executive Summary

Purpose	This document provides methods and directions to be followed by the DEQ for implementing the Antidegradation Policy. Implementation of the policy provides a structured process for protecting, maintaining, and enhancing the ecological integrity of the surface waters of the State, and towards that end, defines conditions under which water quality can and cannot be degraded.
Scope	The information provided in the following document is meant to guide the Department of Environmental Quality in its internal procedures for applying existing statutes and rules related to Oregon's Antidegradation Policy. As such, the Internal Management Directive does not create rights or obligations on the part of the public or regulated entities.
Applicability	This internal management directive must be reviewed and implemented by: <ul style="list-style-type: none">• Staff issuing new or renewal NPDES permits, and• Staff issuing 401 water quality certifications.
Components of this internal management directive	This implementation internal management directive has two major chapters: <ol style="list-style-type: none">(1) <i>The Antidegradation Policy</i>, which provides background information on the Antidegradation Policy, including the definition of key terms; and(2) <i>Process for Completing an Antidegradation Review</i>, which provides more detail on how to conduct a review.
Contact for Questions	For questions about this guidance, contact Marty Fitzpatrick (503-229-5656) in the Program Policy & Project Assistance Section or the Surface Water Management Section (503-229-6962) in the Water Quality Division.

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Chapter 1: The Antidegradation Policy

Introduction

What is it?	<p>A fundamental premise of the Clean Water Act is the maintenance and restoration of the chemical, physical, and biological integrity of the Nation's waters. This concept forms the basis for what is referred to as <i>antidegradation</i>. Antidegradation policy is an integral component of our water quality standards. By definition, a water quality standard is composed of:</p> <ol style="list-style-type: none">1) Designated uses of a waterbody which set the water quality goals of a waterbody (e.g. resident fish and aquatic life, water contact recreation),2) Water quality criteria that define the minimum conditions necessary to achieve the designated uses, and3) <i>Antidegradation policy</i> that prevents existing water quality from degrading unless specific circumstances apply.
Purpose of the policy	<p>An antidegradation policy provides a means for maintaining and protecting water quality of surface waters by requiring that all activities with the potential to affect existing water quality undergo review and comment prior to any decision to approve or deny a permit or certificate for the activity.</p>
How does it work?	<p>The antidegradation policy complements the use of water quality criteria. While criteria provide the absolute minimum values or conditions that must be met in order to protect designated uses, the antidegradation policy offers protection to existing water quality, including instances where that water quality equals or is better than the criteria.</p> <p>Antidegradation policy prohibits degradation of water quality in some circumstances and provides for exceptions to this prohibition in others; however, degradation of water quality is allowed only after a systematic decision-making process considering many factors. These factors include the classification of the waterbody, consideration of alternative treatments to the proposed activity, and comparison of economic and social benefits with environmental costs. In addition, the antidegradation policy requires the involvement of the public through direct notice and through coordination with other government agencies. In this way, decisions to maintain or to change current water quality are made only after a deliberate and inclusive process.</p>

Continued on next page

Introduction, Continued

Tiers of Protection

US EPA directs States and Tribes to implement antidegradation policy at three different levels or tiers of protection:

- Tier 1 -- the basic protection afforded to all waterbodies regardless of current water quality, which is that existing uses will be maintained.
- Tier 2 -- applies protection to water quality that equals or is better than the water quality criteria.
- Tier 3 -- applies to waterbodies that constitute an outstanding national resource.

Once a waterbody or segment of a waterbody is assigned the appropriate tier of protection, the antidegradation policy specifies whether activities that degrade water quality will be prohibited or allowed.

Note: States and tribes may classify their waterbodies or segments of waterbodies into categories that differ from this tier classification as long as the degree of antidegradation protection is consistent with these tiers. For example, in Oregon, waters can be classified as Outstanding Resource Waters, High Quality Waters, or Water Quality Limited Waters. The administrative rules state that in each class of water, beneficial uses will be maintained, which is consistent with Tier 1 protection. The policies for High Quality Waters and Water Quality Limited Waters also have stipulations that are consistent with Tier 2 protection, and the policy for Outstanding Resource Waters is consistent with Tier 3 protection.

Oregon's Antidegradation Policy

Oregon's policy Oregon's antidegradation policy is found in Oregon Administrative Rule (OAR) 340-041-0026(1)(a) (see **Appendix A**). It spells out the level of protection offered to the existing water quality of a waterbody.

Oregon's strategy In Oregon, waters are classified as either Water Quality Limited, High Quality Waters, or Outstanding Resource Waters. Although there are three classes of waters, these classifications are not the same as the three tiers of protection. Outstanding Resource Waters must be High Quality Waters, and High Quality Waters cannot be Water Quality Limited Waters. This is in contrast to other States in which a waterbody can be categorized as a Water Quality Limited Water for one water quality parameter, but can simultaneously be an Outstanding Resource Water or a High Quality Water for other water quality parameters. Oregon's antidegradation policy applies to activities in all three classes of waters, but the level of protection offered differs between classes of waters.

Integration of policy into NPDES permitting An antidegradation policy provides a means for maintaining and protecting water quality of surface waters by requiring that all activities with the potential to affect existing water quality undergo review and comment prior to any decision to approve or deny the activity. For NPDES permits, this review will be conducted by the permit writer, evaluated by the designated water quality manager that approves/denies the permit application, and made available in the staff report for public comment and intergovernmental coordination.

The review portion should happen early in the application process to ensure that the environmental consequences of any activity that might affect water quality are fully assessed. This assessment should then be subjected to public comment and interagency governmental coordination (since other agencies' policies might be affected by the proposed activity). After considering the comments, the permit application may be approved or denied by the Department of Environmental Quality (DEQ) or the Environmental Quality Commission (EQC).

Definition of Key Terms

Antidegradation Review is the process by which the State determines that antidegradation requirements are satisfied for a given regulated activity that may have an effect on surface water quality.

Designated Beneficial Use means the purpose or benefit to be derived from a water body, as designated by the Oregon Water Resources Department or the Environmental Quality Commission.

High Quality Waters means those waters which meet or exceed the levels that are necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses.

Load Allocation (LA) means the portion of a receiving water's loading capacity that is attributed either to one of its existing or future non-point sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments depending on the availability of data and appropriate techniques for predicting loading. Whenever possible, natural and non-point source loads should be distinguished.

Major Sources as defined in OAR 340-045-0075(2): *Major Industries Qualifying Factors*: discharges large BOD loads; or is a large metals facility; or has significant toxic discharges; or has a treatment system which, if not operated properly, will have a significant adverse impact on the receiving stream; or any other industry which the Department determines needs special regulatory control. *Major Domestic Qualifying Factors*: serving more than 10,000 people; or serving industries which can have a significant impact on the treatment system.

Non-point Sources refers to diffuse or unconfined sources of pollution where wastes can either enter into — or be conveyed by the movement of water to — public waters.

Outstanding Resource Waters means those waters designated by the Environmental Quality Commission where existing high quality waters constitute an outstanding state or national resource based on their extraordinary water quality or ecological values, or where special water quality protection is needed to maintain critical habitat areas.

Continued on next page

Definition of Key Terms, Continued

Reserve Capacity means that portion of a receiving stream's loading capacity that has not been allocated to point sources or non-point sources and natural background as waste load allocations or load allocations, respectively. The reserve capacity includes that loading capacity which has been set aside for a safety margin and is otherwise unallocated.

Short-Term Disturbance means a temporary disturbance where water quality standards may be violated briefly, but not of sufficient duration to cause acute or chronic effects on beneficial uses.

Total Maximum Daily Load (TMDL) means the sum of the individual Waste Load Allocations (WLAs) for point sources and Load Allocations (LAs) for non-point sources and background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLAs plus the LAs for any non-point sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other non-point source pollution controls make more stringent load allocations practicable, then waste load allocations can be made less stringent. Thus, the TMDL process provides for non-point source control tradeoffs.

Wasteload Allocation (WLA) means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

Water Quality Limited Waters refers to waterbodies in one of the following categories:

- (a) A receiving stream which does not meet instream water quality standards during the entire year or defined season even after the implementation of standard technology;
 - (b) A receiving stream which achieves and is expected to continue to achieve instream water quality standard but utilizes higher than standard technology to protect beneficial uses;
 - (c) A receiving stream for which there is insufficient information to determine if water quality standards are being met with higher than standard treatment technology or where through professional judgment the receiving stream would not be expected to meet water quality standards during the entire year or defined season without higher than standard technology.
-

Chapter 2: Process for Completing an Antidegradation Review

Overview

Introduction	<p>The process through which the Antidegradation Policy is implemented is called the <i>Antidegradation Review</i>. The first part of the Review will be completed by the permit writer assigned to the NPDES permit application or 401 certification and signed by the permit writer and the designated water quality manager. This portion of the Review should then be included in the staff report as part of the application package, where it can be examined during the public comment and intergovernmental coordination parts of the Review.</p>
Applicability	<p>The Antidegradation Review must be considered for every DEQ water quality action, such as issuing an NPDES permit or water quality certificate.</p> <p>Note: Some specific situations will not require an in depth evaluation, but the antidegradation review should be documented for each case including the justification for why an in depth review is unnecessary (e.g. the proposed activity is a renewal of a permit for discharging at the same or lower loading).</p> <p>The Antidegradation Policy also applies to nonpoint source pollution; however, this document focuses on implementation of antidegradation policy with regard to point source pollution. DEQ intends to continue developing procedures for applying antidegradation policy in a nonpoint source context. In this developmental process, DEQ will work with nonpoint source Designated Management Agencies to achieve effective implementation of the antidegradation policy.</p>
Documentation of review	<p>The Antidegradation Review must be documented in the permit evaluation report (staff report) for each permit application. This includes the justification for not conducting a review or completing an in depth review. If a permit evaluation report is not developed, then written documentation to the applicant's file will suffice.</p> <p>Note: An <i>Antidegradation Review Worksheet</i> is available to document major decisions.</p>

Stages of Review

The following briefly describes the stages of Antidegradation Review. For more detail review the relevant sections.

Stage	Description
1	The permit writer determines if the proposed activity requires an Antidegradation Review. (See p. 13.)
2	If an Antidegradation Review is required, the permit writer determines if a significant lowering of water quality is likely to occur. (See p. 15.)
3	If a lowering of water quality is likely to occur, then the permit writer determines how the classification of the waterbody receiving the discharge will further affect the review process. (See p. 18 for Outstanding Resource Waters, p. 20 for High Quality Waters, or p. 24 for Water Quality Limited Waters.)
4	After review is conducted, the permit writer along with the manager determines if they will proceed with drafting a permit.
5	The proposed permit will be put on public notice for public comment.

Flow Chart

Figure 1 presents the flow chart sequence of major questions to be answered by DEQ in conducting an Antidegradation Review. Although the permit writer prepares the answers to these questions, information can be requested from the applicant (OAR 340-045-0030(4)) or other sources to assist in this process. The first matter to be addressed is to determine which level of antidegradation protection applies. This determination will be made based on the classification of the waterbody (i.e. Outstanding Resource Waters, High Quality Waters, and Water Quality Limited Waters). Once the correct classification is determined, then a determination is made whether the proposed activity is likely to result in a lowering of water quality. Subsequently, DEQ evaluates whether authorizing the proposed activity would be consistent with the State's antidegradation requirements.

ANTIDEGRADATION IMPLEMENTATION FLOW CHART

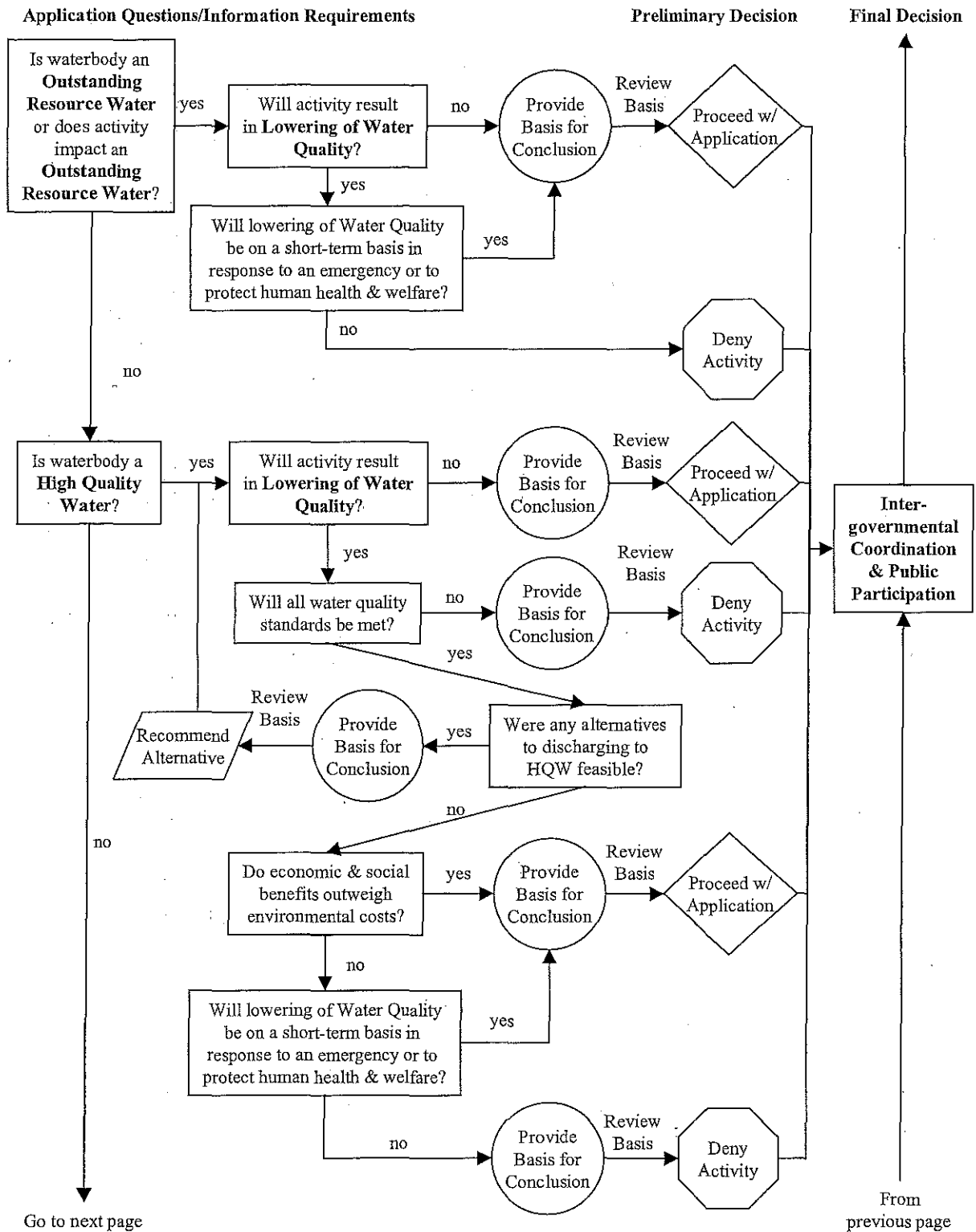


Figure 1.

ANTIDEGRADATION IMPLEMENTATION FLOW CHART

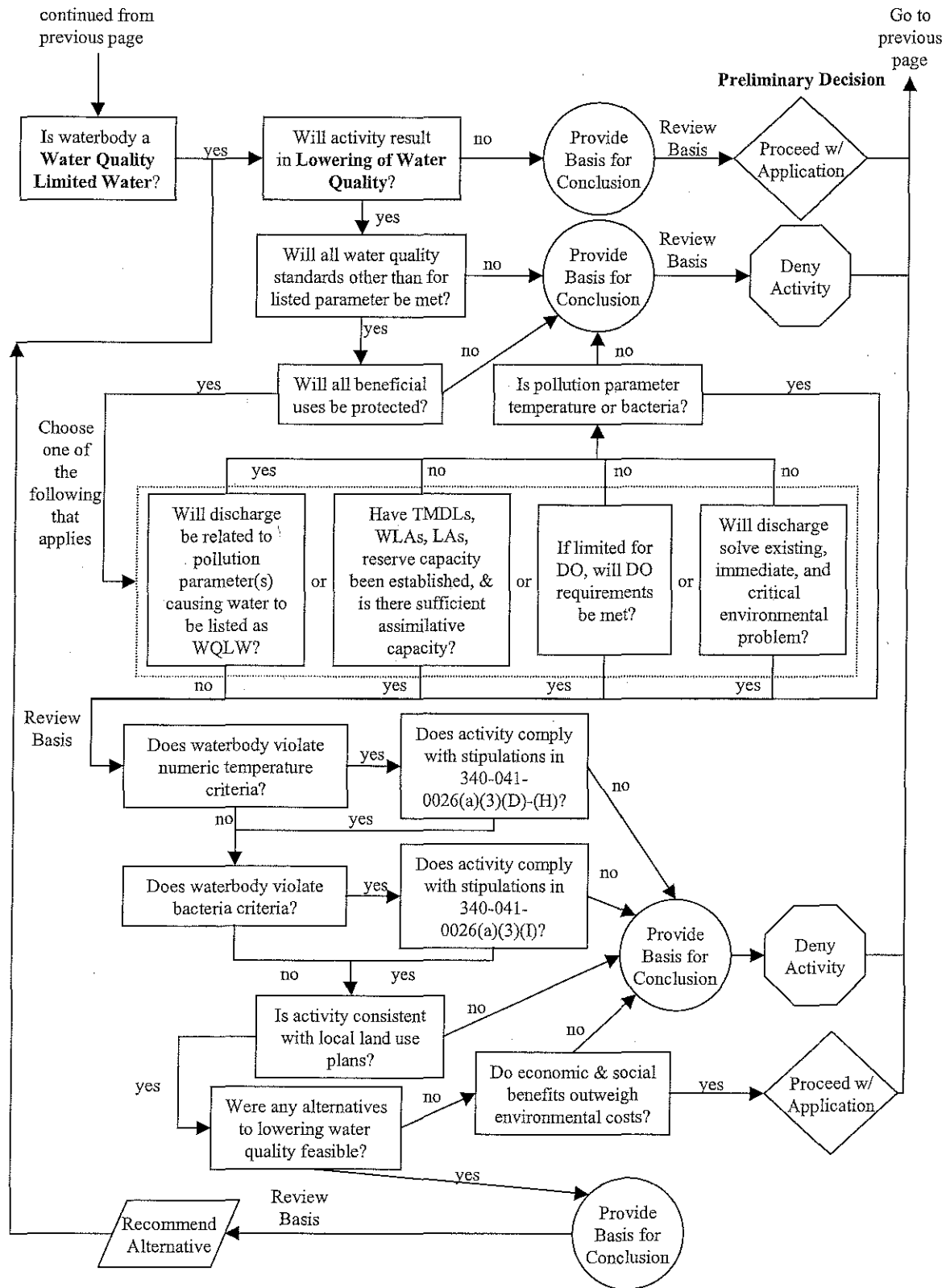


Figure 1 (continued).

Review Sheet

DEQ will document the major conclusions of the Antidegradation Review in an **Antidegradation Review Worksheet (Appendix B)** and make a preliminary recommendation to proceed with the application or deny the proposed activity. This preliminary recommendation will occur at the conclusion of the Applicant Review process. The recommendation is designated 'preliminary' because it can be reversed on consideration of the intergovernmental coordination and public comment steps that are the next phase of the process.

**Public Review
& Inter-
governmental
Coordination**

Public participation and intergovernmental coordination will occur if the applicant review process yields a recommendation to approve the proposed activity. DEQ will then consider the various agencies' comments and public comments in reaching a final decision or recommendation to the Environmental Quality Commission regarding whether to authorize the proposed activity pursuant to the State's antidegradation requirements. *If the applicant review process results in a denial of the permit, then the applicant has the right to appeal the decision to the Environmental Quality Commission (EQC).* In this situation, the antidegradation review should be made available to the EQC. If the appeal is successful and the EQC directs DEQ to proceed with a permit, then the antidegradation review will be included in the staff report and made available for public comment and intergovernmental coordination during the usual period for comment on the application.

Determining if an In-Depth Antidegradation Review is Necessary

Activities subject to review	<p>Any activity that proposes to discharge a new or increased load (beyond that presently allowed in an existing permit) or any other activity that will lower water quality is subject to an in depth antidegradation review. The specifics of the review will depend on the waterbody segment that would be affected, the level of antidegradation protection applicable to that waterbody segment, and the extent to which existing water quality would be degraded.</p> <p>Antidegradation reviews for general permits will occur at the time that DEQ renews the permit—not at the time the permit is assigned to an applicant.</p> <p><i>Note:</i> the EPA rules [40 CFR 130.2] define a “load” as the quantity of matter [either mass or concentration times volume] or thermal energy introduced into a waterbody).</p>
401 Water Quality certifications	<p>Conduct a full review. New certifications that will not result in lower water quality do not require a complete review, but the permit record must fully document that no lowering of water quality is expected to occur for any water quality parameter.</p>
New NPDES permits	<p>Conduct a full review. The antidegradation review worksheet for new permits or water quality certifications that will not lower water quality will consist of documentation that no lowering of water quality is expected to occur.</p>
Renewal NPDES permits	<p>A permit renewal that will result in discharge of a new or increased load (beyond that presently allowed in the existing permit) or that will lower water quality is subject to an antidegradation review. Permit renewals with the same or lower discharge load as the previous permit are not considered to lower water quality from existing water quality and therefore, the antidegradation review worksheet will consist of substantiation that there will be no lowering of water quality.</p>

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Determining if an In-Depth Antidegradation Review is Necessary, Continued

Historic Discharges

An historic discharge that DEQ was aware of and decided not to regulate in the past, and is now coming under permit regulation for the first time should be considered a permit renewal at the same or lower discharge load if the load is expected to be the same as or less than the historic discharge load.

An historic discharge that is expected to have a load greater than the historic discharge load should be treated as a new or increased discharge, thereby requiring an in depth antidegradation review.

Calculation of whether the proposed discharge is less than, equal to, or more than the historic discharge may be made based on historic monitoring data for the pollutant parameter in question (if available) or on modeling based on estimated pollutant loads during the existing permit period.

Illegal Discharges

Illegal discharges should not be considered historic discharges, and require an in-depth antidegradation review if the discharge is coming under permit regulation.

Is an Activity Likely to Lower Water Quality?

Concept If the proposed activity would likely result in any measurable change in water quality away from conditions unimpacted by anthropogenic sources (outside the mixing zone, if existing), then the proposed activity will be considered to likely result in a lowering of water quality.

Approach In evaluating if an activity is likely to cause water quality to be lowered, DEQ should exercise best professional judgment in focusing on those pollutants that are in the pollution stream. A “measurable change” in water quality can be assessed by calculation of mass load or by modeling. Furthermore, a “measurable change” has been defined in the administrative rules for some pollutant parameters (see below), but not for others. For these other parameters, determining whether a measurable change will occur must be made based on case-specific information.

Measurable Change A “measurable change” will be based either on criteria specified in Oregon Administrative Rules (*see below for dissolved oxygen and temperature*) or on best professional judgment (*any of the following can be used in deciding the likelihood that an activity will result in a measurable change in water quality away from conditions unimpacted by anthropogenic sources*): a) percentage change in ambient conditions at appropriate critical periods; b) the difference between current ambient conditions and the conditions that would result if the proposed activity were allowed; c) percentage change in loadings; d) percent reduction in assimilative capacity; e) nature, persistence, and potential effects of the pollutant parameter; f) potential for cumulative effects; g) predicted impacts on aquatic biota; and h) degree of confidence in any modeling techniques used.

The precise nature of conditions unimpacted by anthropogenic sources need not be known; rather, these conditions can be estimated by examining upstream conditions unaffected by similar sources of pollution or by comparing conditions in similar waterbodies that are unaffected by similar sources of pollution.

Note: The purpose of knowing the conditions unimpacted by anthropogenic sources in a general way is to aid professional judgment in deciding whether the direction of change in water quality will likely be toward or away from conditions unimpacted by anthropogenic sources. Therefore, an appropriate comparison for this purpose should be used. Only a change away from conditions unimpacted by anthropogenic sources should be considered a lowering of water quality.

Detailed knowledge of the existing levels of water quality parameters, while preferable, is not necessary for DEQ to require the antidegradation review. A reviewer from DEQ may conclude that if a pollutant is in the pollutant stream, then the discharger/applicant/source has the burden of proof to show that there is no consequent lowering of water quality. If a discharger/applicant/source claims that the activity will not result in a lowering of water quality, then DEQ can require the source to submit data in support of this claim. These data should be collected by DEQ-approved methods in order to show that no statistically significant ($p < 0.05$) change will result in water quality due to the proposed activity.

**Dissolved
oxygen**

Based on OAR 340-041-0026(3)(a)(C)(iii), an activity that results in more than 0.10 mg/L decrease in dissolved oxygen (at the edge of the mixing zone, if existing) will constitute a lowering of water quality. This limit comes from the rule definition for "no measurable reduction" of dissolved oxygen in Water Quality Limited Waters. For consistency, this limit will be applicable to all classes of surface waters.

Temperature

Based on OAR 340-041-0026(3)(a)(F)(ii), an activity that results in more than 0.25°F change in temperature (at the edge of the mixing zone, if existing) will constitute a lowering of water quality. This limit comes from the rule restriction for Water Quality Limited Waters. For consistency, this limit will be applicable to activities in all classes of waters.

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Is an Activity Likely to Lower Water Quality?, Continued

Example of Non-Significant Impact

Two examples illustrate the types of activities that can be declared to not result in a lowering of water quality. First, facilities renewing permits which are proposing effluent concentrations and volumes at the same level as or lower than those in the previous permit will be considered to not cause a lowering of water quality. Second, general permits issued for cleanup activities (discharge of remediated groundwater) which have very efficient technology resulting in no measurable discharge of pollutants will be considered to not cause a lowering of water quality.

Example of Significant Impact

Facilities renewing permits which are proposing an effluent loading increase, or any change in discharge location or treatment process are subject to an antidegradation review. For example, operators of a wastewater treatment plant propose to expand a facility to provide for capacity to meet organic and hydraulic loads, to eliminate discharges of chlorine, and to comply with ammonia limits. However, the upgrades will result in an increase in Biochemical Oxygen Demand (BOD) discharged. Because this is a new or increased discharge, the application for the proposed action must undergo an antidegradation review.

Directions for Outstanding Resource Waters (ORWs)

Qualification Criteria	The antidegradation policy affords Outstanding Resource Waters the highest level of protection. By definition at 340-041-0006(42), Outstanding Resource Waters must be High Quality Waters, i.e. a waterbody must meet all water quality criteria. OAR 340-041-0026(1)(a)(D) further clarifies the definition of ORW to mean that the waterbody must also constitute an outstanding state or national resource based on its extraordinary water quality, ecological values, or requirement for special water quality protection in order to maintain critical habitat areas. The Environmental Quality Commission designates a waterbody as an Outstanding Resource Water after a process of nomination, review, and public comment.
No Lowering of Water Quality in ORW	The rules (OAR 340-041-0026(1)(a)(D)) specify that existing water quality and water quality values will be maintained and protected in ORW. This rule is interpreted to prohibit new or expanded sources from discharging directly to an ORW or upstream of an ORW if it results in a change in water quality within the ORW.
Exceptions	<p>Exceptions to this prohibition can be made by the EQC in response to emergencies or to protect human health and welfare if the effect on water quality is temporary. Activities that lower water quality for one month or less will generally be considered to have temporary effects.</p> <p>Decisions on whether individual proposed activities qualify for exceptions may be based on: a) the length of time during which water quality will be lowered (e.g. no more than one month); b) the percentage change in ambient conditions (e.g. no more than 5%); c) the water quality parameters affected (e.g. magnitude of impact on the most sensitive beneficial uses); d) the likelihood that long-term water quality benefits will accrue to the waterbody (e.g. an increase in sediments or turbidity resulting from removal of a culvert to allow for fish passage); e) the degree to which achieving applicable water quality standards during the proposed activity may be at risk; and f) the potential for any residual long-term influences on existing uses.</p>

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Directions for Outstanding Resource Waters (ORWs), Continued

If the activity will likely result in a long-term or permanent decrease in water quality, then the activity is prohibited. In the instance of an discharge upstream of the ORW, such a source would be prohibited from having an impact on water quality in the ORW. Effects on water quality in the ORW due to upstream sources will be judged using such factors as a) predicted percentage change in ambient conditions during critical periods; b) comparisons of predicted new or expanded loading with existing loading; c) percentage change in assimilative capacity; d) characteristics of the pollutant parameter (e.g. persistence, toxicity, potential impacts); e) potential for cumulative effects; and f) the degree of confidence in modeling, if utilized. These determinations will be made on a case-by-case basis.

Directions for High Quality Waters (HQWs)

Qualification Criteria	Based on the rules OAR 340-041-0006(41) and 340-041-0026(1)(a)(A)(iii), High Quality Waters are those which have water quality that meets or is better than all water quality standards. A High Quality Water is one that is not a Water Quality Limited Water. This interpretation is in contrast to some other States in which the waterbody is classified on a water quality parameter-by-parameter basis (thus, in these States, a waterbody can be simultaneously Water Quality Limited for one parameter but High Quality for other parameters). Therefore, in Oregon, waterbodies must have water quality that meets or is better than all water quality criteria in order to be classified as High Quality Waters (HQW).
Overview of Regulations in HQW	<p>In HQW, a lowering of water quality is prohibited unless EQC (for major sources) or DEQ (for minor sources) decides that all of the following apply:</p> <ul style="list-style-type: none">• All water quality standards will be met and beneficial uses protected; and• No other reasonable alternative exists; and• The lowering of water quality is necessary for social and economic benefits that outweigh the environmental costs. <p><i>Note: see OAR 340-041-0026(1)(a)(A).</i></p>
No violation of any water quality standards	The discharger/applicant/source must provide assurance that the lowering of water quality will not result in a violation of any water quality standards in the HQW. The definition of a water quality standard includes water quality criteria (numeric and narrative) and beneficial uses. Existing uses must also be protected. If insufficient information is available, then DEQ should request the applicant to submit more specific information.
Best available treatment	A discharger/applicant/source is expected to employ the best available technology economically achievable in limiting their effluent discharge.

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Directions for High Quality Waters (HQWs), Continued

Reasonable alternatives must be considered

In evaluating the alternatives, the discharger/applicant/source must consider all known, available, and reasonable methods of prevention, control, and treatment to prevent the lowering of water quality. At a minimum, the following alternatives must be considered:

- Improved operation and maintenance of existing treatment system
- Recycling or reuse with no discharge
- Discharge to on-site system
- Seasonal or controlled discharges to avoid critical water quality periods
- Discharge to sanitary sewer
- Land application

Resources for Identifying Alternatives

In the case of individual NPDES permits, the applicant proposing an activity that will likely result in a lowering of water quality must prepare an evaluation of alternatives. One source of information on alternatives is EPA, which publishes effluent guidelines for wastewater treatment discharges and publicly owned treatment plants that provide information on best available technology (<http://www.epa.gov/ostwater/guide/>) for a variety of activities as well as other guidance (e.g. <http://www.epa.gov/owm/muni.htm>) that identifies alternatives for some aquatic discharges. Other sources of information on alternatives may also be used provided that they are credible.

Evaluation of Alternatives

The evaluation of alternatives should provide substantive information pertaining to the effectiveness, costs, and environmental impacts of the alternatives. DEQ will evaluate any analysis of alternatives submitted by the applicant. Analysis of alternatives should include discussions of their technical feasibility and economic feasibility for the particular situation. If at least one of the alternatives to lowering water quality is technically and economically feasible, then the source should pursue that alternative rather than the activity that results in a lowering of water quality. If an alternative will still result in a lowering of water quality, then that alternative is subject to analysis of socioeconomic benefits and environmental costs. If an acceptable analysis was submitted to DEQ as part of an initial project proposal or best management practice, then no further evaluation of alternatives is required of the applicant. If an acceptable analysis has not been submitted, then DEQ will work with the applicant to develop an acceptable analysis of alternatives.

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Directions for High Quality Waters (HQWs), Continued

Technical and Economic Analyses

The technical and economic analyses of alternatives feed into the overall comparison of social and economic benefits with environmental costs (discussed below). Obviously, if an alternative is not technically feasible, then an economic feasibility analysis of the alternative is not required. Furthermore, the lack of a technically feasible alternative obviates the need to show that the lowering of water quality is “necessary” but does not relieve the need to show that the lowering of water quality is “important” (see discussion below). If a technically feasible alternative does exist, then the economic analysis will help to determine whether lowering of water quality is justified. However, regardless of whether alternatives are technically or economically feasible, the lowering of water quality still must be shown to provide widespread socioeconomic benefits.

Socioeconomic Benefits vs. Environmental Costs

The antidegradation review next turns to the analysis of social and economic benefits versus the environmental costs. The two key elements that must be addressed are: 1) is the lowering of water quality “necessary” (i.e. no alternatives feasible) and 2) is the lowering of water quality “important” (i.e. will it result in widespread benefits)?

Is Lowering Water Quality “Necessary”?

In such an analysis, the applicant must demonstrate that the proposed activity is necessary, i.e. the same social and economic benefits cannot be achieved with some other approach. This assumes that an alternative approach is technically feasible.

Note: This concept is discussed more fully in the section on Analysis of Socioeconomic Benefits and Environmental Costs.

Is Lowering Water Quality “Important”?

It must also be demonstrated that the value of the social and economic benefits due to lowering water quality is greater than the environmental costs of lowering water quality.

Note: This concept is discussed more fully in the section on Analysis of Socioeconomic Benefits and Environmental Costs.

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Directions for High Quality Waters (HQWs), Continued

Resources for Socioeconomic Analyses and Environmental Costs

The EPA's Office of Science and Technology provides some help in conducting these analyses in the "Economic Guidance for Water Quality Standards Workbook" (<http://www.epa.gov/ost/econ/>). In some instances of particularly difficult analyses, site-specific assistance from EPA should be requested.

Note: Explanation of the process for analyzing socioeconomic benefits and environmental costs is given below in the section on Analysis of Socioeconomic Benefits and Environmental Costs.

Unusual Circumstances

For unusual circumstances, the Director or designee may grant exceptions for short-term lowering of water quality during emergencies or to protect human health and welfare. Activities that lower water quality for one month or less will generally be considered to have temporary effects. The context for evaluating whether the exception may be granted is similar to that for Outstanding Resource Waters: a) the length of time during which water quality will be lowered; b) the percentage change in ambient conditions; c) the water quality parameters affected; d) the likelihood that long-term water quality benefits will accrue to the water body (e.g. an increase in sediments or turbidity resulting from removal of a culvert to allow for fish passage); e) the degree to which achieving applicable water quality standards during the proposed activity may be at risk; and f) the potential for any residual long-term influences on existing uses. The criteria for granting this exception are evaluated on a case-by-case basis.

Directions for Water Quality Limited Waters (WQLWs)

Qualification Criteria	As defined in OAR 340-041-0006(30), Water Quality Limited Waters (WQLW) are those which a) do not meet the water quality standards during the entire year or defined season even after implementation of standard technology, b) only meet water quality standards through the use of higher than standard technology, or c) insufficient information exists to determine if water quality standards are being met.
Overview of Regulation in WQLW	In WQLW, a lowering of Water Quality by new or increased discharges is prohibited unless EQC (major sources) or DEQ (minor sources) decides the provisions of OAR 340-041-0026(3) apply. OAR 340-041-0026(3) (Appendix A) details the circumstances and conditions under which the antidegradation policy is applied to WQLW. In the case of major sources, DEQ will prepare the information for presentation to the EQC; therefore, regardless of whether it is a major or minor source, DEQ staff will conduct the antidegradation review.
No violation of standards	The rule language indicates that all water quality standards must be met. For a WQLW, this refers to all water quality criteria other than that for which the waterbody is listed as water quality limited (or to the situation where “higher than standard” or advanced treatment technology must be used to protect beneficial uses).
All beneficial uses protected	All beneficial uses except for those for which the standards are in violation must also be protected. In practice, a reviewer generally may conclude that beneficial uses are protected if all narrative and numeric water quality requirements are being met. Existing uses must also be protected.
Best available treatment	A discharger/applicant/source is expected to employ the best available technology economically achievable in limiting their effluent discharge.

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Directions for Water Quality Limited Waters (WQLWs),

Continued

Compliance with one of the following

If the activity will result in a lowering of water quality, then the discharger/applicant/source must comply with one of the following four provisions: 1) the activity can only discharge pollution parameters unrelated either directly or indirectly to the parameter for which the waterbody is already listed; or 2) there must be a Total Maximum Daily Load (TMDL) plan in place that demonstrates sufficient reserve capacity to assimilate the parameter that the activity will change; or 3) in waterbodies that are water quality limited for dissolved oxygen (DO), the activity must result in a reduction in DO of no more than 0.10 mg/l for a single source and no more than 0.20 mg/L for all anthropogenic activities that influence the waterbody; or 4) under extraordinary circumstances to solve a critical environmental problem, a waste load increase may be allowed if TMDLs, WLAs, LAs have been set, a compliance plan has been established and implemented, the increased load will not result in adverse effects on beneficial uses, and the increased load is temporary.

WQLW for temperature

For WQLWs that are limited for temperature, a surface water temperature management plan must be developed and implemented if the proposed discharge will increase temperature by 0.25°F or more. New or increased discharge loads may be allowed to increase ambient water temperature (measured at the edge of the mixing zone, if existing) by less than or equal to 0.25°F in WQLW limited for temperature if such a plan is in place. However, this increase must not have a measurable impact on beneficial uses (see OAR 340-041-0026(3)(a)(D)-(H)). A discharger/applicant/source may petition DEQ for an exception of the above stipulations, if it 1) demonstrates that the discharge will result in less than 1.0°F increase at the edge of the mixing zone; 2) provides the necessary scientific information describing how no designated beneficial uses will be adversely impacted; and 3) demonstrates that it is implementing all reasonable management practices, its activity will not affect beneficial uses, and the environmental cost of treating the parameter to the level necessary to assure full protection would outweigh the risk to the resource. A discharger/applicant/source may petition the EQC for an exception to the previously mentioned stipulations if 2 and 3 apply.

WQLW for bacteria

If the discharger/applicant/source intends to contribute to the bacteria contamination problem in a WQLW that is limited for bacteria, then the source must develop and implement a bacteria management plan. These management plans must describe the technologies, best management practices (BMPs), and measures or approaches that will be implemented by the source to limit bacterial contamination (see OAR 340-041-0026(3)(a)(I)).

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Directions for Water Quality Limited Waters (WQLWs),

Continued

Consistency with Local Land Use Plans

A lowering of water quality by the discharger/applicant/source must be consistent with local land use plans by providing a statement to that effect from the appropriate local land use agency (see OAR 340-041-0026(3)(a)(J)). An example of consistency would be showing that local zoning allows for the presence of the activity.

Evaluation of Environmental and Economic Effects Criteria

OAR 340-041-0026(3)(b) acknowledges the value of unused assimilative capacity in Oregon's waterbodies and indicates that, in allowing a source to use any of that unused assimilative capacity, DEQ or the EQC should consider environmental and economic effects that the activity might cause. Under environmental and economic effects criteria, the discharger/applicant/source must demonstrate that there are no alternatives to lowering water quality in the WQLW, and that economic benefits of lowering water quality are greater than other uses of the assimilative capacity. Antidegradation policy prohibits discharge of pollution parameters related either directly or indirectly to the parameter causing the waterbody to be listed (except in the specialized circumstances specified for temperature or dissolved oxygen); therefore, the water quality parameters considered under this section are those that are equal to or better than the water quality criteria. Implementation of this part of the antidegradation policy in WQLW will be essentially the same as that for HQW.

Reasonable alternatives must be considered

In evaluating the alternatives, the discharger/applicant/source must consider all known, available, and reasonable methods of prevention, control, and treatment to prevent the lowering of water quality. At a minimum, the following alternatives must be considered:

- Improved operation and maintenance of existing treatment system
- Recycling or reuse with no discharge
- Discharge to on-site system
- Seasonal or controlled discharges to avoid critical water quality periods
- Discharge to sanitary sewer
- Land application

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Directions for Water Quality Limited Waters (WQLWs),

Continued

Resources for Identifying Alternatives	For individual NPDES permits, the discharger/applicant/source must prepare an evaluation of alternatives to lowering of water quality. As stated above, EPA publishes information on alternative treatment technologies (e.g. http://www.epa.gov/ostwater/guide/ ; http://www.epa.gov/owm/muni.htm) for a variety of activities. Other credible sources may also be consulted.
Evaluation of Alternatives	Information on the effectiveness, costs, and environmental impacts of the alternatives should be included so that DEQ can complete this evaluation. Analysis of alternatives should include discussion of their technical feasibility and economic feasibility for the particular circumstances. Technical and economic feasibility of at least one alternative is sufficient for DEQ to deny the application to lower water quality and to recommend that the alternative be used. Therefore, it is important that enough information is submitted to evaluate the alternatives. If an alternative will still result in a lowering of water quality, then that alternative is subject to analysis of socioeconomic benefits and environmental costs. If an acceptable analysis is submitted to DEQ as part of an initial project proposal or best management practice, then no further information on alternatives will be required of the applicant. If an acceptable analysis is not submitted, then DEQ will work with the applicant to develop an acceptable analysis of alternatives.
Technical and Economic Analyses	The comparison of social and economic benefits with environmental costs requires the technical and economic analyses of alternatives. If alternatives are not technically feasible, then no analysis of economic feasibility of alternatives is necessary; however, lowering of water quality must still be shown to provide widespread socioeconomic benefits (see below). The lack of a technically feasible alternative should be interpreted to mean that the requirement of showing that 'a lowering of water quality is necessary' has been satisfied. However, if a technically feasible alternative does exist, then the economic analysis will help to determine whether lowering of water quality is justified. Regardless of whether alternatives are technically or economically feasible, the lowering of water quality still must be shown to provide widespread socioeconomic benefits. In addition, the socioeconomic benefits of lowering water quality must be demonstrated to outweigh the environmental costs.
Socioeconomic Benefits vs. Environmental Costs	The two key elements that must be addressed in the analysis of social and economic benefits versus the environmental costs are: 1) is the lowering of water quality "necessary" (i.e. no alternatives feasible) and 2) is the lowering of water quality "important" (i.e. will it result in widespread benefits)?

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Directions for Water Quality Limited Waters (WQLWs),

Continued

Is Lowering Water Quality “Necessary”?

In such an analysis, the applicant must demonstrate that the proposed activity is necessary, i.e. the same social and economic benefits cannot be achieved with some other approach. This assumes that an alternative approach is technically feasible.

Note: This concept is discussed more fully in the section on Analysis of Socioeconomic Benefits and Environmental Costs.

Is Lowering Water Quality “Important”?

The socioeconomic benefits of lowering water quality must be demonstrated to be important, i.e. they must outweigh the environmental costs.

Note: This concept is discussed more fully in the section on Analysis of Socioeconomic Benefits and Environmental Costs.

Resources for Socioeconomic Analyses and Environmental Costs

The EPA’s Office of Science and Technology provides some help in conducting these analyses in the “Economic Guidance for Water Quality Standards Workbook” (<http://www.epa.gov/ost/econ/>). In some instances of particularly difficult analyses, site-specific assistance from EPA should be requested.

Note: Explanation of the process for analyzing socioeconomic benefits and environmental costs is given below in the section on Analysis of Socioeconomic Benefits and Environmental Costs.

Directions for General Permits

Considerations General permits (see **Table 1**) have effluent limits and monitoring requirements that are set at the same level within each permit issued regardless of the class of receiving water (e.g. ORW, HQW, WQLW). Since antidegradation policy focuses on protecting existing water quality, the antidegradation review proposed in the Draft Implementation Internal Management Directive does not readily fit general permits. Furthermore, the low fees charged for general permits do not allow for generation of revenues sufficient to perform the type of analysis required in an antidegradation review of an individual NPDES permit application.

Therefore, unless there are data to indicate that activities under a general permit are likely to cause a significant lowering of water quality, such activities should be considered as not likely to cause a lowering of water quality for the purposes of the antidegradation review. If DEQ staff believe that an activity proposed under a general permit will result in a lowering of water quality, then DEQ should require the source/discharger to apply for an individual NPDES permit.

Permit Renewals Renewal of general permits at the same or more stringent effluent limitations will be deemed to not cause a lowering of water quality (similar to an individual NPDES permit renewed for the same discharge load that is not considered to cause a lowering of water quality). However, if the new technology-based effluent limits are less stringent than the previous effluent limits, then water quality-based limits must be set at levels that cause no lowering of water quality in any ORW, that prohibit increased discharge of the limited water quality parameter (or parameter related to the limited parameter) in a WQLW, and that follow Best Management Practices for all waters.

New Permits New general permits should undergo an analysis of potential impact on water quality before they are issued. Modeling can be used, where appropriate, to determine the likelihood that water quality will be lowered as a result of activities under a general permit. Effluent limitations and operating conditions of the general permit should be designed to cause no lowering of water quality. This may require adherence to Best Management Practices or to progressively restrictive effluent limitations. If a lowering of water quality is likely to take place, then an analysis must be conducted to determine if the socioeconomic benefits of allowing the lowering of water quality outweigh the environmental costs.

Continued on next page

Directions for General Permits, Continued

Socioeconomic Benefits vs. Environmental Costs

Determination of socioeconomic benefits/environmental costs will be done in a general way since activities allowed under general permits are not necessarily limited geographically. The following list of benefits and costs may be useful in evaluating the activity, but others may be added or substituted if necessary.

Social and Economic Benefits (examples)

- Creation or expansion of employment
- Increase of median family income
- Increase of community tax base
- Providing necessary social services
- Enhancing environmental attributes
- Providing an innovative pollution control and management approach that would result in significant improvement in current practices
- Prevention of a substantial environmental or public health threat

Costs associated with Lowering Water Quality (examples)

- Losing assimilative capacity otherwise used for other industries/development
- Impacting fishing, recreation, and tourism industries negatively
- Impacting health protection negatively
- Impacting societal value for environmental quality negatively
- Impacting other Federal, State, or Local environmental goals

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Directions for General Permits, Continued

Table 1.	
NPDES General Permits	
100	Cooling water/heat pumps
200	Filter backwash
300	Fish hatcheries
400	Log ponds
500	Boiler blowdown
700	Suction dredges
900	Seafood processing
1200A	Stormwater permit for gravel mining
1200C	Construction that disturbs five or more acres
1200CA	Construction that disturbs five or more acres - Government agencies
1200CM	Construction activities, 1200-C permit administered by DEQ agents
1200COL	Industrial stormwater discharging to Columbia Slough
1200Z	Industrial stormwater
1300	Oily stormwater runoff, oil/water separators
1500A	Tanks cleanup and treatment of groundwater
1700A	Washwater
1900	Non contact geothermal
WPCF General Permits	
600	Offstream placer mining
1000	Gravel mining
1400A	Wineries, fresh pack food processors
1400B	Canneries, food/animal processing, extracts
1500B	Tanks cleanup and treatment of groundwater
1700B	Washwater
1800	Dog kennels

General WPCF Permits

General WPCF Permits (see **Table 1**) do not allow discharge to surface waters; therefore, activities under such permits are considered to not lower water quality. Thus, the antidegradation review need only note that the previous sentence is true.

Analysis of Socioeconomic Benefits and Environmental Costs

Overview

To demonstrate the necessity and importance of the proposed activity in either a HQW or WQLW, the discharger/applicant/source must provide DEQ with enough information to allow for a financial impact analysis that assesses whether allowing an activity that lowers water quality has socioeconomic benefits that outweigh the environmental costs. Information on the economic analysis of alternatives to lowering water quality comes into play here. The process of evaluation differs between public and private sector developments; however, each process applies equally to activities in HQW and WQLW.

Effluent Trading

Effluent trading may be proposed as a means to offset the expected lowering of water quality due to the proposed activity. In this instance, the effluent trading should be conducted within the same waterbody segment or in such a way that improvements in water quality will accrue to the waterbody segment in which the proposed activity will take place (e.g. upstream of the proposed activity such that improvements of water quality will occur at the location of the proposed activity). If such trading is proposed, then the discharger/applicant/source should still be subjected to an antidegradation review; the trade can be used to show how environmental costs will be lowered as a result of allowing the lowering of water quality due to the proposed activity.

Public Sector Developments

EPA's "Economic Guidance for Water Quality Standards Workbook" provides worksheets that can be used as a step-by-step guide for making these calculations. For public sector developments such as Publicly Owned Treatment Works (POTWs), primary and secondary tests are applied to determine if the community can afford alternatives to lowering water quality (e.g. additional treatment). The information necessary to run these tests can be requested from the applicant (although some of the information is readily available from public sources). The results of these tests can then be used to justify the decision to either allow or deny application to lower water quality.

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Analysis of Socioeconomic Benefits and Environmental Costs, Continued

Municipal Preliminary Screener

For the first test, information on the median household income and the cost of treatment required to maintain current water quality is useful in generating the Municipal Preliminary Screener (MPS). The MPS is a ratio of the total annual cost of pollution control (expressed on a per household basis) to the median household income, which serves as an initial screening tool to see if the treatment cost of maintaining current water quality conditions is too much of a burden to the community.

$$\text{MunicipalPreliminaryScreener} = \frac{\text{TotalAnnualPollutionControlCostperHousehold}}{\text{MedianHouseholdIncome}} * 100$$

Secondary Tests

The secondary tests involve further estimates of the economic impact of the alternative on the community using indicators of debt, socioeconomic health, and financial management within the impacted community. As specified in the EPA guidance, information on **bond rating** (indicates credit worthiness of the community), **overall net debt per capita** (indicates debt burden on residents within the community), **unemployment rate** (indicates general economic health of the community), **median household income** (indicates wealth of the community), and **property tax collection rate** (indicates how well local government is administered) is necessary to make the secondary test and therefore, the DEQ reviewer will not be able to make a favorable determination or recommendation unless the applicant supplies sufficient information. The EPA guidance also calls for information on **property tax revenue as a percent of full market value of taxable property**. However, since Oregon currently places limits on property tax collections and/or rates, this information is not appropriate for estimating impacts. Worksheets for generating values and for calculating the results of these secondary tests are provided in **Appendix C**. An example of socioeconomic analysis of a POTW is presented in **Appendix D**.

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Analysis of Socioeconomic Benefits and Environmental Costs, Continued

Private Sector Developments

EPA's "Economic Guidance for Water Quality Standards Workbook" provides worksheets that can be used as a step-by-step guide for making these calculations. For private sector developments, primary and secondary tests are applied to determine if the company can afford alternatives to lowering water quality (e.g. additional treatment). The information necessary to run these tests can be requested from the company (although some of the information is readily available from public sources). The results of these tests can then be used to justify the decision to either allow or deny application to lower water quality.

Profit Test

For private sector developments, the initial focus is on how maintaining existing water quality will affect profits of the facility in question. In attempting to justify that a lowering of water quality is warranted, the private sector entity must provide sufficient information on its economic health and the economic consequences of adopting alternative treatment(s) that would maintain existing water quality. The information required to make this evaluation includes the cost of the alternative treatment (alternative costs) and the earnings/revenue information of the private sector entity's facility in question (both with and without the additional cost associated with the alternative to lowering water quality).

$$\text{ProfitRateWithoutAlternativeCosts} = \frac{\text{EarningsBeforeTaxes}}{\text{Revenues}}$$

$$\text{ProfitRateWithAlternativeCost} = \frac{\text{EarningsBeforeTaxesWithAlternativeCosts}}{\text{Revenues}}$$

Interpreting the results of the Profit Test

These ratios can be used to assess whether the discharger/applicant/source is already in financial risk (either not profitable or profits far below industry norms) even before pollution control investments are estimated. If the facility of the discharger/applicant/source is already not profitable, it may not claim that substantial impacts would occur due to maintaining existing water quality.

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Analysis of Socioeconomic Benefits and Environmental Costs, Continued

Information Resources

The information on Earnings Before Taxes can be obtained from the private entity's annual income statement. Earnings Before Taxes consists of the Revenues (or net sales) minus the Cost of Goods Sold (or cost of sales) minus the Portion of Corporate Overhead Assigned to the Discharger (or selling, general and administrative costs). It is useful to have access to the Earnings Before Taxes for the previous three years in order to identify trends or atypical years. The private entity's design engineers should be able to provide an accurate estimate of alternative costs.

EPA contacts

In addition, EPA can be consulted for estimates as well. Such information can be obtained from a) EPA Region 10 (<http://www.epa.gov/region10>; 206-553-1448) or EPA Headquarters staff (<http://www.epa.gov/ost/>; George Denning 202-260-7374), who at the request of DEQ could review the project and develop estimates of alternative costs (provided resources are available); and b) the effluent guidelines program which collects national costs and prepares national engineering models to support each Federal effluent guideline rulemaking action (see <http://www.epa.gov/ost/guide>).

Minimal Effect on Profits

DEQ should require that the alternative approach be followed if maintaining current water quality is shown to minimally affect profits. Obviously, determining whether the cut in profits due to adoption of the alternative is excessive becomes a subjective judgment. However, the discharger/applicant/source can be asked to provide some comparisons of expenditures on other infrastructure made by the discharger/applicant/source or others in the same business sector, which might be useful in determining the tolerance for profit reduction and the likelihood that competitor's facilities face similar project costs. In addition, information can be obtained that indicates the willingness of consumers to pay more for the product.

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Analysis of Socioeconomic Benefits and Environmental Costs, Continued

Secondary Measures

If maintaining water quality is expected to unduly lower profits at the facility, then secondary measures of the **financial liquidity** (indicates the ease with which the discharger/applicant/source can pay its short-term bills), **solvency** (indicates the ease with which the discharger/applicant/source can pay its fixed and long-term bills), and **leverage** (indicates the ease with which the discharger/applicant/source can borrow money) of the private sector entity should be calculated and compared to that of industry standards in order to determine if maintaining water quality would cause interference with development.

Information Resources

Information on industry standards for these comparisons is available in "Annual Statement Studies" (Risk Management Association), "Moody's Industrial Manual," "Dun's Industry Norms" (Dun and Bradstreet), and "Industry Surveys (Standard & Poor), which are available at many public and university libraries. Again, the "Economic Guidance for Water Quality Standards Workbook" provides step-by-step instructions for making these calculations. Worksheets for generating values and for calculating the results of these secondary tests are provided in **Appendix E** (Calculation of Current Ratio, Beaver's Ratio, and Debt to Equity Ratio). The objective of these tests is to determine if the discharger/applicant/source can readily obtain financing for pollution control to maintain existing water quality.

Determining the Importance of Lowering Water Quality

In contrast to the financial calculations that can be used to assess the necessity of lowering water quality, determining the importance of lowering water quality with regard to economic and social development of the community is not as easily reduced to economic ratios. Instead, a number of indicators must be considered, all of which would be projected to occur if a lowering of water quality was not allowed. These include indicators such as increases in unemployment, losses to the local economy, changes in household income, decreases in tax revenues, indirect effects on other businesses, and increases in sewer fees. The "Economic Guidance for Water Quality Standards" from EPA provides worksheets to aid in the analysis of socioeconomic importance and these are reproduced in **Appendix F** (Widespread Social and Economic Impact Factors).

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Analysis of Socioeconomic Benefits and Environmental Costs, Continued

Environmental Costs: Intrinsic & Human Use Values

In examining the environmental costs of lowering water quality, a distinction is made between the intrinsic value of the water and the value that derives from use by the human population. Intrinsic value is the sum of the existence value and the option value. The existence value is the willingness of an individual or society to pay to maintain water quality for its own sake regardless of any perceived future use; the option value is the willingness of an individual or society to pay to maintain water quality as an opportunity for future use.

Estimating Intrinsic Value

The intrinsic value can be difficult to estimate, but it still should be considered when examining environmental cost. If an estimate cannot be made at the time of the initial review of the proposed activity, then the potential existence of this intrinsic value should be noted in the antidegradation review for possible comment during public notice and intergovernmental coordination. For example, if the proposed activity might have an impact on a rare species of no known economic value, then an estimate of the willingness of society to pay for maintaining the existence of this species would be one intrinsic value. If the species is or was to become listed as threatened or endangered, then the associated costs of protection and restoration should be considered.

Note: This is not an exhaustive list of examples.

Human Use Value

The value derived from human use includes direct uses that may be consumptive (e.g. water supplies for agriculture, industry, and municipalities) or non-consumptive (e.g. fishing, swimming, boating, human health) and indirect uses (e.g. property values, fishing equipment manufacturer).

Estimating Human Use Value

Although more data sources exist on the value that derives from human use, estimates can be difficult to make because of their widespread and diffuse nature. Nevertheless, these values should be taken into account when weighing the environmental cost. Again, if estimates prove too difficult to make during the initial review, then the potential value for human use should be noted in the antidegradation review for possible comment during public notice and intergovernmental coordination. For example, if the proposed activity will likely have an impact on local sport fishing but the precise value of that fishery is unknown, then the antidegradation review should note this potential impact and whatever metrics are available (e.g. number of angler hours in impacted stream).

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Analysis of Socioeconomic Benefits and Environmental Costs, Continued

Information Requirements

If DEQ does not have sufficient information to make a preliminary recommendation regarding the socioeconomic benefits and environmental costs, then DEQ may require that the applicant submit more specific information. The type of information required of the applicant will vary from case to case, but might include:

- a) information pertaining to current aquatic life, recreational, or other waterbody uses;
- b) information necessary to determine the environmental impacts that may result from the proposed activity;
- c) facts pertaining to the current state of economic development in the area (e.g. population, area employment, area income, major employers, types of businesses);
- d) government fiscal base; and
- e) land use in the areas surrounding the proposed activity.

A list of categories for listing information on environmental costs is presented below. This information will be made available during the public review and intergovernmental coordination phase of the antidegradation review.

Continued on next page

Analysis of Socioeconomic Benefits and Environmental Costs, Continued

Categories of Benefits for Assessing Environmental Costs

Use Benefits

Direct

Consumptive: *Market Benefits*

Industrial Water Supply

Agricultural Water Supply

Municipal Water Supply

Commercial Fishing

Consumptive: *Non-Market Benefits*

Recreational Fishing

Hunting

Industrial Water Supply

Agricultural Water Supply

Municipal Water Supply

Non-Consumptive:

Swimming

Boating

Human Health

Indirect

Fishing Equipment Manufacturer

Property Values

Aesthetics (scenic views, water enhanced recreation)

Intrinsic Benefits

Option Value (access to resource in future)

Existence Value (knowledge that services

Preliminary Decision/Recommendation on Approval/Denial by DEQ

Preliminary Decision Issued

After considering which level of protection applies to the waterbody (based on the waterbody's classification), whether the activity will likely cause a lowering of water quality, and whether the discharger/applicant/source has demonstrated the necessary justification (e.g. consideration of alternatives, socioeconomic benefits compared to environmental costs), the Department will issue a preliminary decision/recommendation on whether to allow or deny the proposed permit or certificate. This decision/recommendation will be noted prior to the intergovernmental coordination and public notice phases of the antidegradation review. This decision/recommendation is preliminary and can be reversed once intergovernmental coordination and public comments are considered.

Intergovernmental and Public Review of Preliminary Decision

Intergovernmental Coordination

The Department will provide intergovernmental coordination of all preliminarily approved antidegradation reviews in compliance with OAR 340-018-0010. In addition to the general public notice requirements specified below, the Department will make a reasonable attempt to identify state and local governments, federal agencies, and Native American tribes that would likely be affected or interested in the waterbody or action under review. The preliminary antidegradation decision/recommendation should be made available to these governmental entities, which will be given a reasonable opportunity to provide comments to DEQ.

General Public Notice

The public must also have an opportunity to comment on the proposed activity and the preliminary decision/recommendation by the Department. Existing public involvement processes (e.g. those for issuing waste water discharge permits) may be used to provide this opportunity. The antidegradation review findings will be subjected to public review (the logical timing for this would be during public comment on the permit itself, thus the antidegradation review sheet should be included in the staff report for the permit). The content of the public notice will be as specified in OAR 340-011-0007 for activities that require a permit and as a general notice for all other activities. The public notice will contain at a minimum: 1) a substantive outline of the antidegradation review including the preliminary decision/recommendation; 2) a request for public input on particular aspects of the antidegradation review that might be improved based on public input; 3) notice that the antidegradation review sheet is available for review; 4) notice of any introductory public information available on Oregon's antidegradation policy; and 5) the formal reference to Oregon's antidegradation policy. The public will be provided a reasonable opportunity for written and/or oral comment.

Final Decision to Allow/Deny Activity

**EQC/DEQ
Final Decision**

Once the intergovernmental and public comment have been considered, DEQ or the EQC will issue a final decision on whether to allow or deny the proposed activity.

Appendix A: OAR 340-041-0026

Policies and Guidelines Generally Applicable to All Basins

(1) In order to maintain the quality of waters in the State of Oregon, the following is the general policy of the EQC:

(a) Antidegradation Policy for Surface Waters. The purpose of the Antidegradation Policy is to guide decisions that affect water quality such that unnecessary degradation from point and non-point sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to protect all existing beneficial uses. The standards and policies set forth in OAR 340-041-0120 through 340-041-0962 are intended to implement the Antidegradation Policy;

(A) High Quality Waters Policy: Where existing water quality meets or exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses, that level of water quality shall be maintained and protected. The Environmental Quality Commission, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, and with full consideration of sections (2), (3) and (5) of this rule, however, may allow a lowering of water quality in these high quality waters if they find:

- (i) No other reasonable *alternatives* exist except to lower water quality; and
- (ii) The action is necessary and justifiable for *economic or social development* benefits and outweighs the environmental costs of lowered water quality; and
- (iii) All *water quality standards* will be met and *beneficial uses* protected.

(B) The Director or a designee may allow lower water quality on a *short term basis* in order to respond to *emergencies* or to otherwise protect public health and welfare;

(C) Water Quality Limited Waters Policy: For water quality limited waterbodies, the water quality shall be managed as described in section (3) of this rule;

(D) Outstanding Resource Waters Policy: Where existing high quality waters constitute an outstanding state or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values shall be maintained and protected, and classified as "Outstanding Resource Waters of Oregon". The Commission may specially designate high quality waterbodies to be classified as Outstanding Resource Waters in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those waterbodies. The Department will develop a screening process and establish a list of nominated waterbodies for Outstanding Resource Waters designation in the Biennial Water Quality Status Assessment Report (305(b) Report). The priority waterbodies for nomination include:

- (i) National Parks;
- (ii) National Wild and Scenic Rivers;
- (iii) National Wildlife Refuges;
- (iv) State Parks; and
- (v) State Scenic Waterways.

- (E) The Department will bring to the Commission a *list of waterbodies* which are proposed for designation as Outstanding Resource Waters at the time of each Triennial Water Quality Standards Review;
- (F) In designating Outstanding Resource Waters, the Commission shall establish the *water quality values to be protected* and provide a process for determining what activities are allowed that would not affect the outstanding resource values. After the designation, the Commission shall not allow activities that may lower water quality below the level established except on a short term basis to respond to emergencies or to otherwise protect human health and welfare.
- (b) Point source discharges shall follow policies and guidelines in sections (2), (5) and (6) of this rule, and non-point source activities shall follow guidelines in sections (7), (8), (9), (10), and (11) of this rule.
- (2) In order to maintain the quality of waters in the State of Oregon, it is the general policy of the EQC to require that *growth and development* be accommodated by *increased efficiency and effectiveness of waste treatment* and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads except as provided in section (3) of this rule.
- (3) The Commission or Department may grant exceptions to sections (2) and (6) of this rule and approvals to section (5) of this rule for major dischargers and other dischargers, respectively. Major dischargers include those industrial and domestic sources that are classified as major sources for permit fee purposes in OAR 340-045-0075(2).
 - (a) In allowing new or increased discharged loads, the Commission or Department shall make the following findings:
 - (A) The new or increased discharged load would not cause *water quality standards* to be violated;
 - (B) The new or increased discharged load would not unacceptably threaten or impair any *recognized beneficial uses*. In making this determination, the Commission or Department may rely upon the presumption that if the numeric criteria established to protect specific uses are met the beneficial uses they were designed to protect are protected. In making this determination the Commission or Department may also evaluate other state and federal agency data that would provide information on potential impacts to beneficial uses for which the numeric criteria have not been set;
 - (C) The new or increased discharged load shall not be granted if the receiving stream is classified as being *water quality limited* under OAR 340-041-0006(30)(a), unless:
 - (i) The pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to violate water quality standards and being designated water quality limited; or
 - (ii) Total maximum daily loads (TMDLs), waste load allocations (WLAs) load allocations (LAs), and the reserve capacity have been established for the water quality limited receiving stream; and compliance plans under which enforcement action can be taken have been established; and there will be sufficient reserve capacity to assimilate the increased load under the established TMDL at the time of discharge; or
 - (iii) Effective July 1, 1996, in waterbodies designated water-quality limited for dissolved oxygen, when establishing WLAs under a TMDL for waterbodies meeting the conditions defined in this rule, the Department may at its discretion

provide an allowance for WLAs calculated to result in no measurable reduction of dissolved oxygen. For this purpose, "no measurable reduction" is defined as no more than 0.10 mg/L for a single source and no more than 0.20 mg/L for all anthropogenic activities that influence the water quality limited segment. The allowance applies for surface water DO criteria and for Intergravel DO if a determination is made that the conditions are natural. The allowance for WLAs would apply only to surface water 30-day and seven-day means, and the IGDO action level; or

- (iv) Under extraordinary circumstances to solve an existing, immediate, and critical environmental problem that the Commission or Department may consider a waste load increase for an existing source on a receiving stream designated water quality limited under OAR 340-041-0006(30)(a) during the period between the establishment of TMDLs, WLAs and LAs and their achievement based on the following conditions:
 - (I) That TMDLs, WLAs and LAs have been set; and
 - (II) That a compliance plan under which enforcement actions can be taken has been established and is being implemented on schedule; and
 - (III) That an evaluation of the requested increased load shows that this increment of load will not have an unacceptable temporary or permanent adverse effect on beneficial uses; and
 - (IV) That any waste load increase granted under subparagraph (iv) of this paragraph is temporary and does not extend beyond the TMDL compliance deadline established for the waterbody. If this action will result in a permanent load increase, the action has to comply with subparagraphs (i) or (ii) of this paragraph.
- (D) Effective July 1, 1996, in any waterbody identified by the Department as exceeding the relevant numeric temperature criteria specified for each individual water quality management basin identified in OAR 340-041-0205, OAR-340-041-0245, OAR-340-041-0285, OAR-340-041-0325, OAR-340-041-0365, OAR-340-041-0445, OAR-340-041-0485, OAR-340-041-0525, OAR-340-041-0565, OAR-340-041-0605, OAR-340-041-0645, OAR-340-041-0685, OAR-340-041-0725, OAR-340-041-0765, OAR-340-041-0805, OAR-340-041-0845, OAR-340-041-0885, OAR-340-041-0925, OAR-340-041-0965, and designated as water quality limited under Section 303(d) of the Clean Water Act, the following requirements shall apply to appropriate watersheds or stream segments in accordance with priorities established by the Department. The Department may determine that a plan is not necessary for a particular stream segment or segments within a water-quality limited basin based on the contribution of the segment(s) to the temperature problem:
 - (i) Anthropogenic sources are required to develop and implement a surface water temperature management plan which describes the best management practices, measures, and/or control technologies which will be used to reverse the warming trend of the basin, watershed, or stream segment identified as water quality limited for temperature;
 - (ii) Sources shall continue to maintain and improve, if necessary, the surface water temperature management plan in order to maintain the cooling trend until the numeric criterion is achieved or until the Department, in consultation with the

Designated Management Agencies (DMAs), has determined that all feasible steps have been taken to meet the criterion and that the designated beneficial uses are not being adversely impacted. In this latter situation, the temperature achieved after all feasible steps have been taken will be the temperature criterion for the surface waters covered by the applicable management plan. The determination that all feasible steps have been taken will be based on, but not limited to, a site-specific balance of the following criteria: protection of beneficial uses; appropriateness to local conditions; use of best treatment technologies or management practices or measures; and cost of compliance;

- (iii) Once the numeric criterion is achieved or the Department has determined that all feasible steps have been taken, sources shall continue to implement the practices or measures described in the surface water temperature management plan in order to continually achieve the temperature criterion;
 - (iv) For point sources, the surface water temperature management plan will be part of their National Pollutant Discharge Elimination System Permit (NPDES);
 - (v) For non-point sources, the surface water temperature management plan will be developed by designated management agencies (DMAs) which will identify the appropriate BMPs or measures;
 - (vi) A source (including but not limited to permitted point sources, individual landowners and land managers) in compliance with the Department or DMA (as appropriate) approved surface water temperature management plan shall not be deemed to be causing or contributing to a violation of the numeric criterion if the surface water temperature exceeds the criterion;
 - (vii) In waters the Department determines to be critical for bull trout recovery, the goal of a bull trout surface water temperature management plan is to specifically protect those habitat ranges necessary to maintain the viability of existing stocks by restoring stream and riparian conditions or allowing them to revert to conditions attaining the coolest surface water temperatures possible under natural background conditions;
- (E) Waters of the state exceeding the temperature criteria will be identified in the Clean Water Act (CWA), Section 303(d) list developed by the Department according to the schedule required by the Clean Water Act. This list will be prioritized in consultation with the DMAs to identify the order in which those waters will be addressed by the Department and the DMAs;
- (F) In basins determined by the Department to be exceeding the numeric temperature criteria, and which are required to develop surface water temperature management plans, new or increased discharge loads from point sources which require an NPDES permit under Section 402 of the Clean Water Act or hydro-power projects which require certification under Section 401 of the Clean Water Act are allowed a 1.0°F total cumulative increase in surface water temperatures as the surface water temperature management plan is being developed and implemented for the water quality limited basin if:
- (i) In the best professional judgment of the Department, the new or increased discharge load, even with the resulting 1.0°F cumulative increase, will not conflict with or impair the ability of a surface water temperature management plan to achieve the numeric temperature criteria; and

- (ii) A new or expanding source must demonstrate that it fits within the 1.0°F increase and that its activities will not result in a measurable impact on beneficial uses. This latter showing must be made by demonstrating to the Department that the temperature change due to its activities will be less than or equal to 0.25°F under a conservative approach or by demonstrating the same to the EQC with appropriate modeling.
- (G) Any source may petition the Department for an exception to paragraph (F) of this subsection, provided:
 - (i) The discharge will result in less than 1.0°F increase at the edge of the mixing zone, and subparagraph(ii) or (iii) of this paragraph applies;
 - (ii) The source provides the necessary scientific information to describe how the designated beneficial uses would not be adversely impacted; or
 - (iii) The source demonstrates that:
 - (I) It is implementing all reasonable management practices;
 - (II) Its activity will not significantly affect the beneficial uses; and
 - (III) The environmental cost of treating the parameter to the level necessary to assure full protection would outweigh the risk to the resource.
- (H) Any source or DMA may petition the Commission for an exception to paragraph (F) of this subsection, provided:
 - (i) The source or DMA provides the necessary scientific information to describe how the designated beneficial uses would not be adversely impacted; or
 - (ii) The source or DMA demonstrates that:
 - (I) It is implementing all reasonable management practices;
 - (II) Its activity will not significantly affect the beneficial uses; and
 - (III) The environmental cost of treating the parameter to the level necessary to assure full protection would outweigh the risk to the resource.
- (I) In waterbodies designated by the Department as water-quality limited for bacteria, and in accordance with priorities established by the Department, development and implementation of a bacteria management plan shall be required of those sources that the Department determines to be contributing to the problem. The Department may determine that a plan is not necessary for a particular stream segment or segments within a water-quality limited basin based on the contribution of the segment(s) to the problem. The bacteria management plans will identify the technologies, BMPs and/or measures and approaches to be implemented by point and non-point sources to limit bacterial contamination. For point sources, their National Pollutant Discharge Elimination System permit is their bacteria management plan. For non-point sources, the bacteria management plan will be developed by designated management agencies (DMAs) which will identify the appropriate BMPs or measures and approaches.
- (J) The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.
- (b) Oregon's water quality management policies and programs recognize that Oregon's water bodies have a finite capacity to assimilate waste. Unused assimilative capacity is an exceedingly valuable resource that enhances in-stream values specifically, and environmental quality generally. Allocation of any unused assimilative capacity should be based on explicit

criteria. In addition to the conditions in subsection (a) of this section, the Commission or Department shall consider the following:

(A) Environmental Effects Criteria:

- (i)** Adverse Out-of-Stream Effects. There may be instances where the non-discharge or limited discharge alternatives may cause greater adverse environmental effects than the increased discharge alternative. An example may be the potential degradation of groundwater from land application of wastes;
- (ii)** Instream Effects. Total stream loading may be reduced through elimination or reduction of other source discharges or through a reduction in seasonal discharge. A source that replaces other sources, accepts additional waste from less efficient treatment units or systems, or reduces discharge loading during periods of low stream flow may be permitted an increased discharge load year-round or during seasons of high flow, as appropriate;
- (iii)** Beneficial Effects. Land application, upland wetlands application, or other non-discharge alternatives for appropriately treated wastewater may replenish groundwater levels and increase streamflow and assimilative capacity during otherwise low streamflow periods.

(B) Economic Effects Criteria. When assimilative capacity exists in a stream, and when it is judged that increased loading will not have significantly greater adverse environmental effects than other alternatives to increased discharge, the economic effect of increased loading will be considered. Economic effects will be of two general types:

- (i)** Value of Assimilative Capacity. The assimilative capacity of Oregon's streams are finite, but the potential uses of this capacity are virtually unlimited. Thus it is important that priority be given to those beneficial uses that promise the greatest return (beneficial use) relative to the unused assimilative capacity that might be utilized. In-stream uses that will benefit from reserve assimilative capacity, as well as potential future beneficial use, will be weighed against the economic benefit associated with increased loading;
- (ii)** Cost of Treatment Technology. The cost of improved treatment technology, non-discharge and limited discharge alternatives shall be evaluated.

- (4) (a)** A receiving stream shall be designated as water quality limited through the biennial water quality status assessment report prepared to meet the requirements of Section 305(b) of the Water Quality Act. Appendix A of the Status Assessment report shall identify: what waterbodies are water quality limited, the time of year the water quality standards violations occur, the segment of stream or area of waterbody limited, the parameter(s) of concern, whether it is water quality limited under OAR 340-041-0006(30)(a), (b) or (c). Appendix B and C of the Status Assessment report shall identify the specific evaluation process for designating waterbodies limited;
- (b)** The WQL list contained in Appendix A of the Status Assessment report shall be placed on public notice and reviewed through the public hearing process. At the conclusion of the hearing process and the evaluation of the testimony received, Appendix A will become the official water quality limited list. The Department may add a waterbody to the water quality limited list between status assessment reports after placing that action out on public notice and conducting a public hearing;
- (c)** For interstate waterbodies, the state shall be responsible for completing the requirements of section (3) of this rule for that portion of the interstate waterbody within the boundary of the state;

- (d) For waterbodies designated WQL under OAR 340-041-0006(30)(c), the Department shall establish a priority list and schedule for future water quality monitoring activities to determine: if the waterbody should be designated WQL under OAR 340-041-0006(30)(a) or (b), if estimated TMDLs need to be prepared, and if an implementation plan needs to be developed and implemented;
 - (e) For waterbodies designated WQL under OAR 340-041-0006(30)(b), requests for load increases shall be considered following subsection (3)(b) of this rule.
 - (5) For any new waste sources, alternatives which utilize reuse or disposal with no discharge to public waters shall be given highest priority for use wherever practicable. New source discharges may be approved subject to the criteria in section (3) of this rule.
 - (6) No discharges of wastes to lakes or reservoirs shall be allowed except as provided in section (3) of this rule.
 - (7) Log handling in public waters shall conform to current EQC policies and guidelines.
 - (8) Sand and gravel removal operations shall be conducted pursuant to a permit from the Division of State Lands and separated from the active flowing stream by a watertight berm wherever physically practicable. Recirculation and reuse of process water shall be required wherever practicable. Discharges, when allowed, or seepage or leakage losses to public waters shall not cause a violation of water quality standards or adversely affect legitimate beneficial uses.
 - (9) Logging and forest management activities shall be conducted in accordance with the Oregon Forest Practices Act so as to minimize adverse effects on water quality.
 - (10) Road building and maintenance activities shall be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces.
 - (11) In order to improve controls over nonpoint sources of pollution, federal, state, and local resource management agencies will be encouraged and assisted to coordinate planning and implementation of programs to regulate or control runoff, erosion, turbidity, stream temperature, stream flow, and the withdrawal and use of irrigation water on a basin-wide approach so as to protect the quality and beneficial uses of water and related resources. Such programs may include, but not be limited to, the following:
 - (a) Development of projects for storage and release of suitable quality waters to augment low stream flow;
 - (b) Urban runoff control to reduce erosion;
 - (c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows;
 - (d) Stream bank erosion reduction projects.
-

Appendix B: Antidegradation Review Sheet

ANTIDEGRADATION REVIEW SHEET FOR A PROPOSED INDIVIDUAL NPDES DISCHARGE

1. What is the name of Surface Water that receives the discharge? _____

Briefly describe the proposed activity:

Is this review for a renewal OR new (circle one) permit application?

Go to Step 2.

2. Is this surface water an **Outstanding Resource Water** or **upstream** from an **Outstanding Resource Water**?

Yes. Go to Step 5.

No. Go to Step 3.

3. Is this surface water a **High Quality Water**?

Yes. Go to Step 8.

No. Go to Step 4.

4. Is this surface water a **Water Quality Limited Water**?

Yes. Go to Step 12.

No. Go to Step 2. Note: The surface water must fall into one of three (3) categories: Outstanding Resource Water (Step 2), High Quality Water (Step 3), or Water Quality Limited Water (Step 4).

5. Will the proposed activity result in a permanent new or expanded source of pollutants directly to or affecting the **Outstanding Resource Water**?

Yes. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

No. Please provide basis for conclusion. Go to Step 6.

6. Will the proposed activity result in a lowering of water quality in the **Outstanding Resource Water**?

Yes. Please provide basis for conclusion. Go to Step 7.

No. Please provide basis for conclusion. Go to Step 8.

7. If the proposed activity results in a non-permanent new or expanded source of pollutants directly to or affecting an **Outstanding Resource Water**, will the lowering of water quality in the **Outstanding Resource Water** be on a short-term basis in response to an emergency or to protect human health and welfare?
- Yes. Proceed with Application Process to Interagency Coordination and Public Comment. Go to Step 24.
- No. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
-
8. Will the proposed activity result in a Lowering of Water Quality?
- Yes. Go to Step 9.
- No. Proceed with Permit Application. Applicant should provide basis for conclusion. Go to Step 24.
9. OAR 340-041-0026(1)(a)(A)(iii) of the *High Quality Waters Policy* requires that the Department evaluate the application to determine all water quality standards will be met and beneficial uses protected after allowing discharge to **High Quality Waters**. Will all water quality standards be met and beneficial uses protected?
- Yes. Please provide basis for conclusion. Proceed with Application Process to Interagency Coordination and Public Comment. Go to Step 10.
- No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
10. OAR 340-041-0026(1)(a)(A)(i) of the *High Quality Waters Policy* requires that the Department evaluate the application to determine if no other reasonable alternatives exist except to discharge to **High Quality Waters**. Were any of the alternatives (at a minimum, the following list must be considered) feasible?
- Improved operation and maintenance of existing treatment system
 - Recycling or reuse with no discharge
 - Discharge to on-site system
 - Seasonal or controlled discharges to avoid critical water quality periods
 - Discharge to sanitary sewer
 - Land application
- Yes. Please provide basis for conclusion (see below for information requirements). Recommend Preliminary Decision that applicant use alternative. Go to Step 8.
- No. Please provide basis for conclusion (see below for information requirements). Go to Step 11.

In a separate statement to this application, please explain the *technical feasibility* of the alternative, explain the *economic feasibility* of the alternative, and provide an *estimated cost* of NPDES permit alternative for a five-year period from start-up.

11. OAR 340-041-0026(1)(a)(A)(ii) of the *High Quality Waters Policy* requires that the Department evaluate the application to determine if there are social and economic benefits that outweigh the environmental costs of allowing discharge to High Quality Waters. Do the social and economic benefits outweigh the environmental costs of lowering the water quality?

Yes. Please provide basis for conclusion (see below for information requirements).
Go to Step 24.

No. Please provide basis for conclusion (see below for information requirements).
Go to Step 12.

The basis for conclusion should include a discussion of whether the lowering of water quality is necessary and important. "Necessary" means that the same social and economic benefits cannot be achieved with some other approach. "Important" means that the value of the social and economic benefits due to lowering water quality is greater than the environmental costs of lowering water quality. Benefits can be created from measures such as:

- Creating or expanding employment (provide current/expected number of employees, type & relative amount of each type)
- Increasing median family income
- Increasing community tax base (provide current/expected annual sales, tax info)
- Providing necessary social services
- Enhancing environmental attributes

and Environmental Costs can include:

- Losing assimilative capacity otherwise used for other industries/development
- Impacting fishing, recreation, and tourism industries negatively
- Impacting health protection negatively
- Impacting societal value for environmental quality negatively

12. Will the lowering of water quality in the **High Quality Water** be on a short-term basis in response to an emergency or to protect human health and welfare?

Yes. Proceed with Application Process to Interagency Coordination and Public Comment. Go to Step 24.

No. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

-
13. Will the proposed activity result in a Lowering of Water Quality in the **Water Quality Limited Water**?

Yes. Go to Step 14.

No. Proceed with Permit Application. Applicant should provide basis for conclusion. Go to Step 24.

14. OAR 340-041-0026(3)(a)(A) of the *Water Quality Limited Waters Policy* requires that the Department evaluate the application to determine that all water quality standards will be met. Will all water quality standards be met?

- Yes. Please provide basis for conclusion. Go to Step 15.
- No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
15. OAR 340-041-0026(3)(a)(B) of the *Water Quality Limited Waters Policy* requires that the Department evaluate the application to determine that all beneficial uses will be met. Will all beneficial uses be met?
- Yes. Please provide basis for conclusion. Go to Step 16.
- No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
16. OAR 340-041-0026(3)(a)(C)(i-iv) of the *Water Quality Limited Waters Policy* requires that the Department evaluate the application for one of the following: Will the discharge be associated (directly or indirectly) with the pollution parameter(s) causing the waterbody to be designated a Water Quality Limited Water?
- Yes. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
- No. Please provide basis for conclusion. Go to Step 17.
- Have TMDLs, WLAs, LAs, and reserve capacity been established, compliance plans been established, and is there sufficient reserve capacity to assimilate the increased load under the established TMDL?
- Yes. Please provide basis for conclusion. Go to Step 17.
- No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
- Will the proposed activity meet the requirements, as specified under OAR 340-041-0026(1)(C)(3)(a)(C)(iii) of the *Water Quality Limited Waters Policy*, for dissolved oxygen?
- Yes. Please provide basis for conclusion. Go to Step 17.
- No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
- Will the activity solve an existing, immediate, and critical environmental problem?
- Yes. Please provide basis for conclusion. Go to Step 17.
- No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
17. Is the water body water quality limited for temperature?
- Yes. Go to Step 18.
- No. Go to Step 19.

18. Will the proposed activity meet the requirements for waterbodies water-quality limited for temperature as specified under OAR 340-041-0026(3)(a)(D-H) of the *Water Quality Limited Waters Policy*?
- Yes. Please provide basis for conclusion. Go to Step 19.
- No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
19. Is the water body water quality limited for bacteria?
- Yes. Go to Step 20.
- No. Go to Step 21.
20. Will the proposed activity meet the requirements for waterbodies designated water-quality limited for bacteria as specified under OAR 340-041-0026(3)(a)(I) of the *Water Quality Limited Waters Policy*?
- Yes. Please provide basis for conclusion. Go to Step 21.
- No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
21. Is the proposed activity consistent with local land use plans?
- Yes. Go to Step 22.
- No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
22. OAR 340-041-0026(3)(b)(A) of the *Water Quality Limited Waters Policy* requires the Department to consider alternatives to lowering water quality. Were any of the alternatives (at a minimum, the following list must be considered) feasible?
- Improved operation and maintenance of existing treatment system
 - Recycling or reuse with no discharge
 - Discharge to on-site system
 - Seasonal or controlled discharges to avoid critical water quality periods
 - Discharge to sanitary sewer
 - Land application
- Yes. Please provide basis for conclusion (see below for information requirements). Recommend Preliminary Decision that applicant use alternative. Go to Step 13.
- No. Please provide basis for conclusion (see below for information requirements). Go to Step 23.

In a separate statement to this application, please explain the *technical feasibility* of the alternative, explain the *economic feasibility* of the alternative, and provide an *estimated cost* of NPDES permit alternative for a five-year period from start-up.

23. OAR 340-041-0026(3)(b)(B) of the *Water Quality Limited Waters Policy* requires the Department to consider the economic effects of the proposed activity, which in this context consists of determining if the social and economic benefits of the activity outweigh the environmental costs of allowing a lowering of water quality. Do the social and economic benefits outweigh the environmental costs of lowering the water quality?

Yes. Please provide basis for conclusion. Proceed with Application Process to Interagency Coordination and Public Comment. Go to Step 24.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

The basis for conclusion should include a discussion of whether the lowering of water quality is necessary and important. "Necessary" means that the same social and economic benefits cannot be achieved with some other approach. "Important" means that the value of the social and economic benefits due to lowering water quality is greater than the environmental costs of lowering water quality. Benefits can be created from measures such as:

- Creating or expanding employment (provide current/expected number of employees, type & relative amount of each type)
- Increasing median family income
- Increasing community tax base (provide current/expected annual sales, tax info)
- Providing necessary social services
- Enhancing environmental attributes

and Environmental Costs can include:

- Losing assimilative capacity otherwise used for other industries/development
 - Impacting fishing, recreation, and tourism industries negatively
 - Impacting health protection negatively
 - Impacting societal value for environmental quality negatively
-

24. On the basis of the Antidegradation Review, the following is recommended:
- _____ Proceed with Application to Interagency Coordination and Public Comment Phase.
 - _____ Deny Application; return to applicant and provide public notice.

Action Approved

Section: _____

Review Prepared By: _____

Phone: _____

Date Prepared: _____

Please provide the following information and submit with the completed application form to:

Department of Environmental Quality
Water Quality Division—Surface Water Management
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Name: _____

Name of Company: _____

Address: _____

Phone: _____

Fax: _____

Appendix C: Socioeconomic Benefits Worksheets for Public Sector Developments

Instructions: Fill in the blanks with the appropriate information. For these calculations, the term "Proposed Project" refers to the discharger/applicant/source's proposed activity that will affect water quality; the term "Alternative Project" refers to one or more technically feasible alternative(s) to the Proposed Project in which either there will be no degradation of water quality or less degradation than the Proposed Project.

The following worksheets are provided:

- C.1. Public Sector Pollution Control Calculation of Total Annualized Project Costs
- C.2. Calculation of Total Annual Pollution Control Costs Per Household
- C.3. Municipal Preliminary Screener
- C.4. Data Used in Secondary Test for Public Sector Project
- C.5. Calculating The Secondary Score

C.1 Public Sector Pollution Control Calculation of Total Annualized Project Costs

A. Capital Costs of Proposed Project

Capital Cost of Project	\$ _____	
Other One-Time Costs of Project (Please List, if any):	\$ _____	
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
Total Capital Costs (Sum column)	\$ _____	(1)
Portion of Capital Costs to be Paid for with Grant Monies	\$ _____	(2)
Capital Costs to be Financed [Calculate: (1) - (2)]	\$ _____	(3)
Type of financing (e.g., G.O. bond, revenue bond, bank loan)	_____	
Interest Rate for Financing (expressed as decimal)	_____	(i)
Time Period of Financing (in years)	_____	(n)
Annualization Factor = $\frac{(i)}{(1 + i)^n - 1}$ (or see Interest Rate spreadsheet)	_____	(4)
Annualized Capital Cost of Proposed Project		(5)
[Calculate: (3) x (4)]		

B. Operating and Maintenance Costs of Proposed Project

Annual Costs of Operation and Maintenance (including but not limited to: monitoring, inspection, permitting fees, waste disposal charges, repair, administration and replacement.) (Please list below)	\$ _____	
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
Total Annual O & M Costs (Sum column)	\$ _____	(6)

C.1 Public Sector Pollution Control Calculation of Total Annualized Project Costs (con't)

C. Total Annual Cost of Proposed Pollution Control Project

Total Annual Cost of Pollution Control Project
[(5) + (6)]

\$ (7)

D. Capital Costs of Alternative Project

Capital Cost of Project

\$ _____

Other One-Time Costs of Project (Please List, if any):

\$ _____

\$ _____

\$ _____

\$ _____

Total Capital Costs (Sum column)

\$ _____ (8)

Portion of Capital Costs to be Paid for with Grant
Monies

\$ _____ (9)

Capital Costs to be Financed [Calculate: (8) - (9)]

\$ _____ (10)

Type of financing (e.g., G.O. bond, revenue bond,
bank loan)

Interest Rate for Financing (expressed as decimal)

_____ (i)

Time Period of Financing (in years)

_____ (n)

Annualization Factor =

_____ (11)

(or see Interest Rate spreadsheet)

$$\frac{(i)}{(1 + i)^n - 1}$$

Annualized Capital Cost of Alternative Project

(12)

[Calculate: (10) x (11)]

E. Operating and Maintenance Costs of Alternative Project

Annual Costs of Operation and Maintenance
(including but not limited to: monitoring, inspection,
permitting fees, waste disposal charges, repair,
administration and replacement.) (Please list below)

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

Total Annual O & M Costs (Sum column)

\$ _____ (13)

F. Total Annual Cost of Alternative Pollution Control Project

Total Annual Cost of Pollution Control Project
[(12) + (13)]

\$ (14)

(based on Worksheet P from EPA's "Economic Guidance for Water Quality Standards Workbook";
<http://www.epa.gov/ost/econ/>)

C.2. Calculation of Total Annual Pollution Control Costs Per Household

A. Current Pollution Control Costs (for renewals):

Total Annual Cost of Existing Pollution Control	\$ _____	(1)
Amount of Existing Costs Paid By Households	\$ _____	(2)
Percent of Existing Costs Paid By Households [Calculate: $((2)/(1)) \times 100$]	% _____	(3)
Number of Households*	_____	(4)
Annual Cost Per Household [Calculate: $(2)/(4)$]	\$ _____	(5)

* Do not use number of hook-ups.

B. Pollution Control Costs of Proposed Project

Are households expected to provide revenues for the new pollution control project in the same proportion that they support existing pollution control? (Check a, b or c and continue as directed.)

a) Yes [fill in percent from (3)]	_____	% (6a)
b) No, they are expected to pay	_____	% (6b)
c) No, they are expected to pay based on flow. (Continue on Worksheet Q, Option A)	_____	

Total Annual Cost of Pollution Control Project [Line (7), Worksheet P]	\$ _____	(7)
Proportion of Costs Households are Expected to Pay [6(a) or 6(b)]	_____	(8)
Amount to be Paid by Households [Calculate: $(7) \times (8)$]	\$ _____	(9)
Annual Cost per Household [Calculate: $(9)/(4)$]	\$ _____	(10)

C. Total Annual Pollution Control Cost Per Household of Proposed Project

Total Annual Cost of Pollution Control per Household [Calculate: $(5) + (10)$]	\$ _____	(11)
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D. Pollution Control Costs of Alternative Project

Are households expected to provide revenues for the alternative pollution control project in the same proportion that they support existing pollution control? (Check a, b or c and continue as directed.)

a) Yes [fill in percent from (3)]	_____	% (12a)
b) No, they are expected to pay	_____	% (12b)
c) No, they are expected to pay based on flow. (Continue on Option B below)	_____	

C.2. Calculation of Total Annual Pollution Control Costs Per Household (con't).

Total Annual Cost of Alternative Pollution Control Project [Worksheet P, (14)]	\$	(13)
Proportion of Costs Households are Expected to Pay [12(a) or 12(b)]		(14)
Amount to be Paid by Households [Calculate: (13) x (14)]	\$	(15)
Annual Cost per Household [Calculate: (15)/(4)]	\$	(16)

E. Total Alternative Annual Pollution Control Cost Per Household

Total Annual Cost of Pollution Control per Household [Calculate: (5) + (17)]	\$	(17)
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F. Comparison of Proposed and Alternative Pollution Control Cost Per Household

Difference between Proposed and Alternative Pollution Control Cost Per Household [Calculate: (11) - (17)]		(18)
If (18) is < 0, then Alternative is more expensive. Go to Secondary Cost Estimates		
If (18) is > 0, then Alternative is less expensive. Recommend Alternative.		

Option A

G. Calculating Proposed Project Costs Incurred by Households Based on Flow

Expected Total Usage of Project (e.g. MGD for Wastewater Treatment)		(19)
Usage due to Household Use (MGD of Household Wastewater)	\$	(20)
Percent of Usage due to Household Use [Calculate ((20)/(21)) x 100]	%	(21)
Total Annual Cost of Proposed Pollution Control Project	\$	(22)
Industrial Surcharges, if any	\$	(23)
Costs to be Allocated [Calculate: (22) - (23)]	\$	(24)
Amount to be Paid by Households [Calculate: (21) x (24)]	\$	(25)
Annual Project Cost per Household [Calculate: (25)/(4)]	\$	(26)

H. Total Annual Pollution Control Cost Per Household

Total Annual Cost of Proposed Pollution Control Per Household [Calculate: (5) + (26)]	\$	(27)
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Option B

I. Calculating Alternative Project Costs Incurred by Households Based on Flow

Expected Total Usage of Project (e.g. MGD for Wastewater Treatment)		(28)
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C.2. Calculation of Total Annual Pollution Control Costs Per Household (con't).

Usage due to Household Use (MGD of Household Wastewater)	\$	(29)
Percent of Usage due to Household Use [Calculate $((29)/(28)) \times 100$]	%	(30)
Total Annual Cost of Alternative Pollution Control Project	\$	(31)
Industrial Surcharges, if any	\$	(32)
Costs to be Allocated [Calculate: $(22) - (23)$]	\$	(33)
Amount to be Paid by Households [Calculate: $(21) \times (24)$]	\$	(34)
Annual Project Cost per Household [Calculate: $(25)/(4)$]	\$	(35)

**J. Total Annual Pollution Control Cost
Per Household**

Total Annual Cost of Alternative Pollution Control Per Household [Calculate: $(5) + (35)$]	\$	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	(36)
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(based on Worksheet Q from EPA's "Economic Guidance for Water Quality Standards Workbook";
<http://www.epa.gov/ost/econ/>)

Appendix D: Example of Applying Antidegradation Review

Example of Applying Antidegradation Review to Water Quality Limited Water.

City S notified DEQ in 1986 of deficiencies in its new wastewater facilities. City S and DEQ entered into a Stipulation and Final Order in January 1993 with a compliance schedule to address these problems, including a Facility Plan that determined that the existing wastewater treatment plant needed to be expanded and upgraded to address the problems. One of the major problems was that ammonia and chlorine levels were well above the acute toxicity criteria during low flow times. City S proposed (and DEQ accepted) a plan for a major plant upgrade that would eliminate discharges of chlorine, comply with ammonia limits, and would discharge a portion of the summer flow to a series of wetlands that had been constructed at the new Statename Garden site.

The treatment plant had discharged its effluent to S Creek, which is in the Molalla/Pudding Subbasin of the Willamette River Basin. S Creek was listed on the 1998 303(d) list as being water quality limited for temperature. It was not listed as water quality limited for dissolved oxygen. Table 1 presents a comparison between current and future discharges of the major pollutants during the summer low flow period.

TABLE 1 – SUMMER

1998 Discharges Versus Expected Discharges Over Design Life

Pollutant	Actual Discharge 1998	Average Projected Discharge in 2005	Average Projected Discharge in 2015
BOD ₅	53 #/day	48 #/day	77 #/day
TSS	43 #/day	48 #/day	77 #/day
Ammonia (see note 1)	10.7 mg/l	1.5 mg/l	1.5 mg/l
Chlorine (see note 2)	180 ppb	0 ppb	0 ppb

note 1 Without the Statename Gardens Project, the projected mass discharges of CBOD₅ and TSS to S Creek would be 69 pounds per day in 2005 and 103 pounds per day in 2015.

note 2 The acute toxicity level for chlorine is 19 ppb.

The Beneficial Uses listed for Willamette River tributaries (Table 6 at OAR 340-041-0442), which would apply to S Creek, include all uses except Commercial Navigation & Transportation.

Antidegradation Review. The following review is structured according to the proposed Antidegradation Review Sheet for NPDES permits. This proposed review consists of a series of questions that a permit writer would be required to answer based on information provided either by the applicant or by other sources.

ANTIDEGRADATION REVIEW SHEET

1. What is the name of Surface Water that receives the discharge?

S Creek in the Molalla/Pudding Subbasin of the Willamette River Basin

Briefly describe the proposed activity:

Sewage Treatment Plant will be upgraded to eliminate the discharge of chlorine and lower the discharge of ammonia. There will be an increase in the discharge of BOD5 and TSS.

Is this review for a renewal OR new (circle one) permit application?

Go to Step 2.

2. Is this surface water an **Outstanding Resource Water** or **upstream** from an **Outstanding Resource Water**?

Yes. Go to Step 5.

No. Go to Step 3.

3. Is this surface water a **High Quality Water**?

Yes. Go to Step 8.

No. Go to Step 4.

4. Is this surface water a **Water Quality Limited Water** (on the most current 303(d) list)?

Yes. Go to Step 12.

No. Go to Step 2. Note: The surface water must fall into one of three (3) categories: Outstanding Resource Water (Step 2), High Quality Water (Step 3), or Water Quality Limited Water (Step 4).

5. Will the proposed activity result in a permanent new or expanded source of pollutants directly to or affecting the **Outstanding Resource Water**?

Yes. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

No. Please provide basis for conclusion. Go to Step 6.

6. Will the proposed activity result in a lowering of water quality in the **Outstanding Resource Water**?

Yes. Please provide basis for conclusion. Go to Step 7.

No. Please provide basis for conclusion. Go to Step 8.

7. If the proposed activity results in a non-permanent new or expanded source of pollutants directly to or affecting an **Outstanding Resource Water**, will the lowering of water quality in the **Outstanding Resource Water** be on a short-term basis in response to an emergency or to protect human health and welfare?

Yes. Proceed with Application Process to Interagency Coordination and Public Comment. Go to Step 24.

No. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

9. OAR 340-041-0026(1)(a)(A)(iii) of the *High Quality Waters Policy* requires that the Department evaluate the application to determine all water quality standards will be met and beneficial uses protected after allowing discharge to **High Quality Waters**. Will all water quality standards be met and beneficial uses protected?

Yes. Please provide basis for conclusion. Proceed with Application Process to Interagency Coordination and Public Comment. Go to Step 10.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

10. OAR 340-041-0026(1)(a)(A)(i) of the *High Quality Waters Policy* requires that the Department evaluate the application to determine if no other reasonable alternatives exist except to discharge to **High Quality Waters**. Were any of the alternatives (at a minimum, the following list must be considered) feasible?

- Improved operation and maintenance of existing treatment system
- Recycling or reuse with no discharge
- Discharge to on-site system
- Seasonal or controlled discharges to avoid critical water quality periods
- Discharge to sanitary sewer
- Land application

Yes. Please provide basis for conclusion (see below for information requirements). Recommend Preliminary Decision that applicant use alternative. Go to Step 24.

No. Please provide basis for conclusion (see below for information requirements). Go to Step 11.

In a separate statement to this application, please explain the *technical feasibility* of the alternative, explain the *economic feasibility* of the alternative, and provide an *estimated cost* of NPDES permit alternative for a five-year period from start-up.

11. OAR 340-041-0026(1)(a)(A)(ii) of the *High Quality Waters Policy* requires that the Department evaluate the application to determine if there are social and economic benefits that outweigh the environmental costs of allowing discharge to High Quality Waters. Do the social and economic benefits outweigh the environmental costs of lowering the water quality?

Yes. Please provide basis for conclusion (see below for information requirements). Go to Step 24.

No. Please provide basis for conclusion (see below for information requirements). Go to Step 12.

The basis for conclusion should include a discussion of whether the lowering of water quality is necessary and important. "Necessary" means that the same social and economic benefits cannot be achieved with some other approach. "Important" means that the value of the social and economic benefits due to lowering water quality is greater than the environmental costs of lowering water quality. Benefits can be created from measures such as:

- Creating or expanding employment (provide current/expected number of employees, type & relative amount of each type)
- Increasing median family income
- Increasing community tax base (provide current/expected annual sales, tax info)
- Providing necessary social services
- Enhancing environmental attributes

and Environmental Costs can include:

- Losing assimilative capacity otherwise used for other industries/development
- Impacting fishing, recreation, and tourism industries negatively
- Impacting health protection negatively
- Impacting societal value for environmental quality negatively

12. Will the lowering of water quality in the **High Quality Water** be on a short-term basis in response to an emergency or to protect human health and welfare?
- Yes. Proceed with Application Process to Interagency Coordination and Public Comment. Go to Step 24.
- No. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.
-

13. Will the proposed activity result in a Lowering of Water Quality in the **Water Quality Limited Water**?

☒ Yes. Go to Step 14.

No. Proceed with Permit Application. Applicant should provide basis for conclusion. Go to Step 24.

14. OAR 340-041-0026(3)(a)(A) of the *Water Quality Limited Waters Policy* requires that the Department evaluate the application to determine that all water quality standards will be met. Will all water quality standards be met?

☒ Yes. Please provide basis for conclusion. Go to Step 15.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

The proposed wasteloads have been evaluated. Dissolved oxygen is the only water quality standard of concern with the CBOD₅ and TSS wasteloads proposed. While there will be an increase in oxygen demand from the CBOD₅, the summer discharges are more than offset by the much lower ammonia discharges and the alternate discharge point at the Statename Gardens wetland. The projected summer discharges were evaluated, and will not cause water quality standard violations. For the winter discharges, the projected increases have been evaluated and will not cause water quality standard violations, due to the lower temperature and larger assimilative capacity in S Creek in the winter.

15. OAR 340-041-0026(3)(a)(B) of the *Water Quality Limited Waters Policy* requires that the Department evaluate the application to determine that all beneficial uses will be met. Will all beneficial uses be met?

☒ Yes. Please provide basis for conclusion. Go to Step 16.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

As discussed in the rule, if a discharge meets the applicable instream water quality standards, then the Commission may consider that beneficial uses are protected. The proposed discharge will meet the dissolved oxygen instream water quality standards, and therefore will not impair any beneficial use.

16. OAR 340-041-0026(3)(a)(C)(i-iv) of the *Water Quality Limited Waters Policy* requires that the Department evaluate the application for one of the following: Will the discharge be associated (directly or indirectly) with the pollution parameter(s) causing the waterbody to be designated a Water Quality Limited Water?

Yes. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

☒ No. Please provide basis for conclusion. Go to Step 17.

S Creek is not water quality limited for dissolved oxygen. There will be no increase in the temperature load.

Have TMDLs, WLAs, LAs, and reserve capacity been established, compliance plans been established, and is there sufficient reserve capacity to assimilate the increased load under the established TMDL?

Yes. Please provide basis for conclusion. Go to Step 17.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

Because only one of the four questions needs to be answered, this question is not addressed.

Will the proposed activity meet the requirements, as specified under OAR 340-041-0026(1)(C)(3)(a)(C)(iii) of the *Water Quality Limited Waters Policy*, for dissolved oxygen?

Yes. Please provide basis for conclusion. Go to Step 17.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

Because only one of the four questions needs to be answered, this question is not addressed.

Will the activity solve an existing, immediate, and critical environmental problem?

Yes. Please provide basis for conclusion. Go to Step 17.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

Because only one of the four questions needs to be answered, this question is not addressed.

17. Is the water body water quality limited for temperature?

☒ Yes. Go to Step 18.

No. Go to Step 19.

18. Will the proposed activity meet the requirements for waterbodies water-quality limited for temperature as specified under OAR 340-041-0026(3)(a)(D-H) of the *Water Quality Limited Waters Policy*?

Yes. Please provide basis for conclusion. Go to Step 19.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

Because the activity will only affect dissolved oxygen, this question is not addressed.

19. Is the water body water quality limited for bacteria?

Yes. Go to Step 20.

☒ No. Go to Step 21.

20. Will the proposed activity meet the requirements for waterbodies designated water-quality limited for bacteria as specified under OAR 340-041-0026(3)(a)(I) of the *Water Quality Limited Waters Policy*?

Yes. Please provide basis for conclusion. Go to Step 21.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

Because the activity will only affect dissolved oxygen, this question is not addressed.

21. Is the proposed activity consistent with local land use plans?

☒ Yes. Go to Step 22.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

The activity in question is serving existing customers within the City S, and providing for additional growth in the area. The activity is consistent with the adopted and approved comprehensive plan for the City.

ANALYSIS OF ALTERNATIVES AND SOCIOECONOMIC & ENVIRONMENTAL BENEFITS/COSTS

22. OAR 340-041-0026(3)(b)(A) of the *Water Quality Limited Waters Policy* requires the Department to consider alternatives to lowering water quality. Were any of the alternatives (at a minimum, the following list must be considered) feasible?

- Improved operation and maintenance of existing treatment system
- Recycling or reuse with no discharge
- Discharge to on-site system
- Seasonal or controlled discharges to avoid critical water quality periods
- Discharge to sanitary sewer
- Land application

☒ **Yes.** Please provide basis for conclusion (see below for information requirements). Recommend Preliminary Decision that applicant use alternative. Go to Step 24.

☐ **No.** Please provide basis for conclusion (see below for information requirements). Go to Step 23.

In a separate statement to this application, please explain the *technical feasibility* of the alternative, explain the *economic feasibility* of the alternative, and provide an *estimated cost* of NPDES permit alternative for a five-year period from start-up.

The following alternatives were considered:

- A. Year-round discharge to Pudding River. **Rejected** because of inconsistency with philosophy of avoiding creek discharge of treated effluents, and because of uncertainty about future total mass load limitations in the Pudding River. Estimated Cost: \$10.1 million.
- B. Store treated effluent on-site during the summer and then release it to S Creek or Pudding River in the winter. **Rejected** because of economic infeasibility. Estimated Cost: \$16.7 million to \$20.7 million.
- C. Summertime effluent use for irrigation (reuse level 2 or 3), wintertime discharge to either S Creek or the Pudding River. **Rejected** because superior option was available. Estimated cost: \$13.3 million to \$14.8 million.
- D. Summertime effluent use for irrigation (reuse level 4), wintertime discharge to either S Creek or the Pudding River. **Rejected** because superior option was available. Estimated cost: \$15.0 million to \$16.1 million.
- E. Summertime effluent to treatment wetlands followed by use as source water for constructed mitigation wetlands; wintertime discharge to either S Creek or the Pudding River. **Rejected** because lower cost option with same advantages available. Estimated cost: \$12.2 million to \$13.2 million.
- F. Summertime effluent to treatment wetlands followed by reuse; wintertime discharge to either S Creek or the Pudding River. **Rejected** because type of wetlands inconsistent with City goals. Estimated cost: no costs developed.
- G. Summertime effluent used as irrigation with runoff captured and sent to mitigation wetlands; wintertime discharge to either S Creek or the Pudding River. **Rejected** because lower cost and less complex option with same advantages available. Estimated cost: \$13.6 million to \$14.1 million.
- H. Summertime effluent and some wintertime effluent used as a source for constructed mitigation wetlands; wintertime discharge to either S Creek or the Pudding River. **Proposed Choice**. Estimated cost: \$10.2 million to \$11.4 million.

23. OAR 340-041-0026(3)(b)(B) of the *Water Quality Limited Waters Policy* requires the Department to consider the economic effects of the proposed activity, which in this context consists of determining if the social and economic benefits of the activity outweigh the environmental costs of allowing a lowering of water quality. Do the social and economic benefits outweigh the environmental costs of lowering the water quality?

☒ **Yes.** Please provide basis for conclusion. Proceed with Application Process to Interagency Coordination and Public Comment. Go to Step 24.

No. Please provide basis for conclusion. Recommend Preliminary Decision to deny proposed activity (subject to Interagency Coordination and Public Comment). Go to Step 24.

The basis for conclusion should include a discussion of whether the lowering of water quality is necessary and important. "Necessary" means that the same social and economic benefits cannot be achieved with some other approach. "Important" means that the value of the social and economic benefits due to lowering water quality is greater than the environmental costs of lowering water quality. Benefits can be created from measures such as:

- Creating or expanding employment (provide current/expected number of employees, type & relative amount of each type)
- Increasing median family income
- Increasing community tax base (provide current/expected annual sales, tax info)
- Providing necessary social services
- Enhancing environmental attributes

and Environmental Costs can include:

- Losing assimilative capacity otherwise used for other industries/development
- Impacting fishing, recreation, and tourism industries negatively
- Impacting health protection negatively
- Impacting societal value for environmental quality negatively

The socioeconomic analysis requires that the lowering of water quality is "necessary" (no alternatives feasible) and "important" (will result in widespread benefits). The City S has considered a number of alternatives and has settled on a proposal to increase the mass load for the City S Sewage Treatment Plant (including summer discharge to Statename Gardens). In conducting an socioeconomic analysis (see attached spread sheet) of this alternative, the Municipal Preliminary Screener suggested that the financial burden of this alternative would have a mid-range impact on the community which indicated that further community economic health and financial impact tests should be conducted. The following information is recommended for calculating these Secondary Test scores: Bond Rating, Overall Net Debt per capita, Unemployment Comparison, Median Household Income Comparison, Property Tax Collection Rate. A bond rating was not available for City S; however, information was available on the other categories and this led to a Secondary Test score of 1.5. Combining this score with the Municipal Preliminary Screener in the Substantial Impacts Matrix (see attached spreadsheet) led to the conclusion that the impact of the financial burden of this alternative on City S would be unclear. This did not rule out that this alternative was financially feasible. Therefore, further qualitative and quantitative analyses were conducted on the alternative and its probable environmental cost was also assessed.

The City S Sewage Treatment Plant expansion will require an increase in employment at the plant from 2.75 operators to 3.75 operators at the initiation of by September 2000 and 4.75 operators by June 2001. As far as indirect employment effects, the Statename Gardens will require a staff of 19 employees through its official opening in about June 2001 and will eventually have 30-40 employees. Establishment of the Statename Gardens as a major tourist destination will require a number of ancillary services to be developed such as restaurants, hotels/motels, and other services, which will also increase employment opportunities.

At the time of this analysis, information on the expected impact of operations of the City S Sewage Treatment Plant on median household income could not be found. The City S community had a Median Household Income of \$22,644 (\$28,758 estimated for 2000) which is 17% below the State Median Household Income based on 1990 census data. The Sewage Treatment Plant operators get paid an average of about \$32,000 for 2000; therefore, the expansion of the Sewage Treatment Plant will result in the creation of 1 to 2 better-than-median income jobs. In addition, between 1990 and 1997, the population grew by 18.5% with the city becoming a bedroom community for Salem and other larger cities and towns. The development of the Statename Gardens should increase

this growth trend; however, it is not clear what the impact will be on overall community median income.

The continued growth of City S should increase the tax base for the community. In addition, housing prices tend to be about 25% more than for the same square footage in Salem. The development of the Statename Gardens should maintain these higher-than-average property values.

The Sewage Treatment Plant will be providing the Statename Gardens with all of its irrigation water (free of charge) and the development of the Statename Gardens is expected to enhance environmental attributes of the community by providing a 200+ acre "natural" setting that will counter urban sprawl.

The environmental costs of the increased BOD₅ are expected to be negligible because of the over-compensatory decrease in ammonia. The net effect will be a lower impact of the Sewage Treatment Plant on dissolved oxygen in S Creek, which should have positive effects on local fishing, recreation, and tourism. No detrimental effect on health protection is expected.

-
24. On the basis of the Antidegradation Review, the following is recommended:
☒ Proceed with Application to Interagency Coordination and Public Comment Phase.
☐ Deny Application; return to applicant and provide public notice.

Action Approved

Section: _____

Review Prepared By: _____

Phone: _____

Date Prepared: _____

Please provide the following information and submit with the completed application form to:

Department of Environmental Quality
Water Quality Division—Surface Water Management
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Name: _____

Name of Company: _____

Address: _____

Phone: _____

Fax: _____

Appendix E: Socioeconomic Benefits Worksheets for Private Entity Development

Instructions: Fill in the blanks with the appropriate information. For these calculations, the terms "Proposed Project" and "Proposed Pollution Control Project" refer to the discharger/applicant/source's proposed activity that will affect water quality; the term "Alternative Project" and "Alternative Pollution Control Project" refer to one or more technically feasible alternative(s) to the Proposed Project in which either there will be no degradation of water quality or less degradation than the Proposed Project.

The following worksheets are provided:

- E.1. Private Sector Pollution Control Calculation of Total Annualized Project Costs
- E.2. Calculation of Earnings Before Taxes
- E.3. Calculation of Profit Rates
- E.4. Calculation of Ratios

E.1. Private Sector Pollution Control Calculation of Total Annualized Project Costs

A. Capital Costs of Proposed Project

Capital Cost of Proposed Project to be Financed	\$ _____	(1)
Interest Rate for Financing (expressed as decimal)	_____	(i)
Time Period of Financing (in years)	_____ 10*	(n)
Annualization Factor = $\frac{(i)}{(1+i)^{10}} - 1$ (or see Interest Rate spreadsheet)	_____	(2)

Annualized Capital Cost of Proposed Project (3)
[Calculate: (1) x (2)]

Annual Costs of Operation and Maintenance (4)
(including but not limited to: monitoring, inspection, permitting fees, waste disposal charges, repair, administration and replacement.)

Total Annual Cost of Proposed Pollution Control Project [(3) + (4)] (5)

B. Capital Costs of Alternative Project

Capital Cost of Alternative Project to be Financed	\$ _____	(6)
Interest Rate for Financing (expressed as decimal)	_____	(i)
Time Period of Financing (in years)	_____ 10*	(n)
Annualization Factor = $\frac{(i)}{(1+i)^{10}} - 1$ (or see Interest Rate spreadsheet)	_____	(7)

Annualized Capital Cost of Alternative Project (8)
[Calculate: (6) x (7)]

Annual Costs of Operation and Maintenance (9)

(including but not limited to: monitoring, inspection,
permitting fees,
waste disposal charges, repair, administration and
replacement.)

**Total Annual Cost of Alternative Pollution
Control Project [(3) + (4)]**

\$ (10)

*While actual payback schedules may differ across projects and companies, assume equal annual payments over a 10-year period for consistency in comparing projects.

**Or see Interest Rate spreadsheet for calculated annualization factors

***For recurring costs that occur less frequently than once a year, pro rate the cost over the relevant number of years (e.g., for pumps replaced once every three years, include one-third of the cost in each year).

(based on Worksheet R from EPA's "Economic Guidance for Water Quality Standards Workbook"; <http://www.epa.gov/ost/econ/>)

E.2. Calculation of Earnings Before Taxes

A. Earnings Without Pollution Control Project Costs

$$EBT = R - CGS - CO$$

B. Earnings With Proposed Pollution Control Project Costs

$$EWPR = EBT - ACPR$$

C. Earnings With Alternative Pollution Control Project Costs

$$EWAR = EBT - ACAR$$

Where:

EBT = Earnings Before Taxes

R = Revenues

CGS = Cost of Goods Sold

CO = Portion of Corporate Overhead Assigned to the Discharger

(selling, general administrative, interest, R&D expenses, and depreciation on common property)

ACPR = Total Annual Costs of Proposed Pollution Control Project

(Worksheet R (5))

ACAR = Total Annual Costs of Alternative Pollution Control Project

(Worksheet R (10))

R	(or net sales)	\$ _____	(1)
CGS	(or cost of sales)	\$ _____	(2)
CO	(or selling, general and administrative expenses)	\$ _____	(3)
EBT	[Calculate: (1) - (2) - (3)]	\$ <input type="text"/>	(4)
ACPR	[Worksheet R (5)]	\$ _____	(5)
EWPR	[Calculate (4) - (5)]	\$ <input type="text"/>	(6)
ACAR	[Worksheet R (10)]	\$ _____	(7)
EWAR	[Calculate (4) - (7)]	\$ <input type="text"/>	(8)

(based on Worksheet V from EPA's "Economic Guidance for Water Quality Standards Workbook"; <http://www.epa.gov/ost/econ/>)

E.3. Calculation of Profit Rates

A. Profit Rate Without Pollution Control Project Costs

$$PRT = EBT / R$$

B. Profit Rate With Proposed Pollution Control Project Costs

$$PRPR = EWPR / R$$

C. Profit Rate With Alternative Pollution Control Project Costs

$$PRAR = EWAR / R$$

Where:

PRT = Profit Rate Before Taxes

R = Revenues

PRPR = Profit Rate Without Proposed Pollution Control Project Costs

PRAR = Profit Rate Without Alternative Pollution Control Project Costs

EBT	[Worksheet V (4)]	\$ _____	(1)
R	[Worksheet V (1)]	\$ _____	(2)
PRT [Calculate: (1) / (2)]		\$ <input type="text"/>	(3)
EWPR	[Worksheet V (6)]	\$ _____	(4)
PRPR [Calculate: (4) / (2)]		\$ <input type="text"/>	(5)
EWAR	[Worksheet V (8)]	\$ _____	(6)
PR AR [Calculate (6) / (2)]		\$ <input type="text"/>	(7)

(based on Worksheet W from EPA's "Economic Guidance for Water Quality Standards Workbook";
<http://www.epa.gov/ost/econ/>)

E.4. Calculation of Ratios

A. Current Ratio

$$CR = CA / CL$$

Where: CR = Current Ratio
CA = Current Assets (the sum of inventories, prepaid expenses, and accounts receivable)
CL = Current Liabilities (the sum of accounts payable, accrued expenses, taxes, and the current portion of long-term debt)

CA	\$ _____	(1)
CL	\$ _____	(2)
CR [Calculate (1) / (2)]	\$ <input type="text"/>	(3)

B. Beaver's Ratio

$$BR = CF / TD$$

Where: BR = Beaver's Ratio (indicator of ability to meet fixed & long-term obligations)
CF = Cash Flow
TD = Total Debt

Net income after taxes	\$ _____	(4)
Depreciation	\$ _____	(5)
CF [Calculate (4) + (5)]	\$ <input type="text"/>	(6)
Current Debt	\$ _____	(7)
Long-Term Debt	\$ _____	(8)
TD [Calculate (7) + (8)]	\$ <input type="text"/>	(9)
BR [Calculate (6) / (9)]	\$ <input type="text"/>	(10)

C. Debt to Equity Ratio

$$DER = LTL / OE$$

Where: DER = Debt to Equity Ratio
LTL = Long-Term Liabilities (long term debt such as bonds, debentures, and bank debt, and all other noncurrent liabilities such as deferred income taxes)
OE = Owner Equity (the difference between total assets and total liabilities, including contributed or paid in capital and retained earnings)

LTL	\$ _____	(11)
OE	\$ _____	(12)
DER [Calculate (11) / (12)]	\$ <input type="text"/>	(13)

(based on Worksheets X,Y, & Z from EPA's "Economic Guidance for Water Quality Standards Workbook"; <http://www.epa.gov/ost/econ/>)

Appendix F. Widespread Social and Economic Impact Factors

Factors to consider in making a determination of widespread social and economic impact of Public or Private Sector Developments.

Instructions: Fill in the blanks with the appropriate information.

Public Sector Development

Estimated change in
Median Household
Income for Proposed
& Alternative Pollution
Control Costs

Estimated change in
the unemployment
rate for Proposed &
Alternative Pollution
Control Costs

Estimated change in
overall net debt per
capita for Proposed &
Alternative Pollution
Control Costs

Estimated change in
% of households
below the poverty line
for Proposed &
Alternative Pollution
Control Costs

Impact on commercial
development potential
for Proposed &
Alternative Pollution
Control Costs

Impact on Property
Values for Proposed &
Alternative Pollution
Control Costs

(based on Worksheet AA from EPA's "Economic Guidance for Water Quality Standards Workbook";
<http://www.epa.gov/ost/econ/>)

Private Sector Development

- Define the affected community; which areas are included? _____ (1)

- Current unemployment rate in affected community (if available) _____ (2)

- Current national unemployment rate _____ (3)

- Additional number of persons expected to collect unemployment in affected community due to compliance with water quality standards _____ (4)

- Expected unemployment rate in affected community after compliance with water quality standards [(current # of persons collecting unemployment in affected community + (4)) / (labor force in affected community)] _____ (5)
- Median household income in affected community _____ (6)
- Total number of households in affected community _____ (7)
- Percent of population below the poverty line in affected community _____ (8)
- Current expenditures on social services in affected community _____ (9)
- Expected expenditures on social services due to job losses in affected community _____ (10)
- Current total tax revenues in the affected community _____ (11)
- Tax revenues paid by the private entity to the affected community _____ (12)

(based on Worksheet AB from EPA's "Economic Guidance for Water Quality Standards Workbook"; <http://www.epa.gov/ost/econ/>)

Environmental Quality Commission

FINAL DRAFT

Performance Evaluation
Director, Department of Environmental Quality

I. Purpose

II. Process

III. Performance Measures and Evaluation Form

Attachment: Director's Suggestions for Performance Appraisal

I. Purpose

The Environmental Quality Commission (Commission) is responsible under ORS 468.045 for directing the performance of the Director of the Department of Environmental Quality (DEQ). The Commission exercises part of its responsibility by performing a performance evaluation of the Director. Such evaluation is intended to increase and improve communications both within the Department and the broad spectrum of outside agencies, governments, and private parties with whom the Director interacts. The evaluation further allows the Commission to review goals, establish criteria, provide commendations, and broadly recognize the work of the Director.

II. Process

1. The Commission shall evaluate the performance of the DEQ Director on at least a biennial basis. Normally, the process will require an eight-week period.
2. The Commission may solicit and review information concerning the performance of the Director from any source.
3. Immediately before an evaluation, the Commission shall:
 - a. Appoint a subcommittee of the Commission to prepare for and schedule the evaluation.
 - b. Review and adopt criteria for the evaluation.
4. In keeping with the Commission-adopted criteria, the Director shall provide the Commission with a written self-evaluation.
5. The Commission shall review the Director's self-evaluation in Executive Session, absent the Director.
6. The Commission shall follow the review of the Director's self-evaluation with an Executive Session with the Director.
7. The Commission shall accept and compile all input from appropriate sources and provide due consideration within the overall performance review process.
8. The Commissioners shall then complete their own individual evaluations of the Director using adopted criteria.
9. The Commissioners' evaluations shall be submitted to the Commission Chair for compilation. Evaluations and compilations shall be kept confidential to the extent allowed under Oregon law.
10. Based upon all input and the individual evaluations and their compilations, an executive session will be held with the Director to review results.
11. The evaluation will become a basis for all aspects of employment.
12. The Commission will prepare a public release of the performance evaluation in summary form. Before such release, the Commission Chair will review such document with the Director.

III. Performance Measures and Evaluation Form

Commissioner Name _____

Performance Period: July 1, 2001 to June 30, 2003

Mid-Rating Period: June 30, 2002

Performance Measures

Performance Ratings (Circle one number)

<p>1. POLICY AND DIRECTIVES Director will give clear direction to staff to ensure implementation of Commission policy in a timely manner. Include evidence from DEQ activities, processes and actions underway or completed during the past review period. Director ensures, through subordinates, that staff field decisions are based on existing statutes, goals, executive orders, Commission rules and Department policies.</p> <p>COMMENTS</p>	<p>Outstanding 5 Exceeds expectations 4 Fully meets expectations 3 Needs improvement 2 Unsatisfactory 1 Not Rated N</p> <hr/> <p>Weight¹ _____%</p>
<p>2. SERVICES AND RELATIONS Director ensures effective services to and relations with the Commission. Upon confirmation, all new Commissioners receive up-to-date Department goals and applicable enabling, operational and regulatory statutes and rules; a handbook including Commission and staff names, mailing, fax and email addresses, telephone numbers; and business cards. Per diem/mileage forms will be provided at each meeting to be submitted together for payment. Any required tax information will be provided on a timely basis. Commission/staff disagreements will be openly discussed with resolution/outcome reflected in meeting minutes. Meeting materials will be provided to all Commission members for review in a timely manner. Any written communication to the Commission from work groups and/or advisory committees will be included in agenda packets. Clerical and other necessary support services will be available.</p> <p>COMMENTS</p>	<p>Outstanding 5 Exceeds expectations 4 Fully meets expectations 3 Needs improvement 2 Unsatisfactory 1 Not Rated N</p> <hr/> <p>Weight _____%</p>

¹ Assign a weight between 0 and 100 percent to each of the ten Performance Measures so that the combined total of all ten weights is 100 percent.

<p>3. COMMUNICATION Clearly and effectively communicate issues, ideas, resources and/or information in a timely manner. Emphasis will be placed on collaborative processes and high-quality, informative materials including applicable analyses, documents, surveys and reports to facilitate a range of policy implications for discussion. The Commission will be kept informed so as not to be surprised by significant issues.</p> <p>COMMENTS</p>	<table> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
Outstanding	5												
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Unsatisfactory	1												
Not Rated	N												
<p>4. INTER/INTRA GOVERNMENTAL RELATIONSHIPS Effectively represents the agency and the State within the state, federal and local government organizational structures.</p> <p>COMMENTS</p>	<table> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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Fully meets expectations	3												
Needs improvement	2												
Unsatisfactory	1												
Not Rated	N												
<p>5. IMPLEMENTATION OF STRATEGIC PLAN Progress toward accomplishing priorities, objectives and strategies as approved by Commission.</p> <p>COMMENTS</p>	<table> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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<p>6. PROBLEM SOLVING Identifies challenges, opportunities and problems clearly and aids DEQ in the analysis of possible actions or responses as necessary.</p> <p>COMMENTS</p>	<table> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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<p>7. RECRUITMENT/RETENTION/DIVERSITY Appoint(s), re-appoints, assigns and reassigns as necessary all subordinate offices and employees of the department, clearly prescribes their duties and fixes their compensation, subject to State Personnel Relations Law ORS 179.090. Department personnel are to be highly qualified and responsive to DEQ's entire customer base, including EQC.</p> <p>COMMENTS</p>	<table> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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Unsatisfactory	1												
Not Rated	N												
<p>8. DECISION-MAKING Director's decisions and actions reflect a high level of understanding of Oregon state government and the political environment in which the agency must function.</p> <p>COMMENTS</p>	<table> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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<p>9. COMMISSION EFFECTIVENESS In order to assist the Commission in being as effective as possible, the Director will provide information monthly that is relevant to DEQ issues. Such information may include explanation of the State's interest when amending and adopting goals, rules, policies and/or guidelines. The Director also will communicate opportunities within State government for training and educational experiences to enhance high-quality board service.</p> <p>COMMENTS</p>	<table> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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Unsatisfactory	1												
Not Rated	N												
<p>10. RESULTS Responses and actions are productive; results are appropriate and positive, timely, consistent, and of high quality.</p> <p>COMMENTS</p>	<table> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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11. OVERALL PERFORMANCE

Multiply the number circled in each section by the weight given² and add the totals from each of the 10 measures to find the overall rating.

COMMENTS

Overall Rating _____

Outstanding	5
Exceeds expectations	4
Fully meets expectations	3
Needs improvement	2
Unsatisfactory	1

Date of Approval: _____

Melinda S. Eden, Chair
Environmental Quality Commission

² Example: If "Fully meets expectations" was given a 20% rating for one performance measure, multiply 3 by 0.20 to get a 0.80 rating for that measure. Add ratings from each of the 10 measure to get the overall rating.

Definitions

Performance Ratings:

<i>Outstanding</i>	Performance at this level far surpasses expected performance and is among the top 10% of state agency managers
<i>Exceeds Expectation</i>	Performance at this level meets expectations and in some cases exceeds expectations
<i>Fully Meets Expectations</i>	Performance at this level meets expectations
<i>Improvement Needed</i>	Performance at this level is partially met but requires some improvement
<i>Unsatisfactory</i>	Performance at this level is unacceptable and requires a development plan

Skills Listing:

Leadership

- Establishes a high-performance climate by using techniques of coaching, leadership and mentoring.
- Increases a group's energy and creative potential.
- Maintains group cohesiveness and cooperation.
- Demonstrates working knowledge of staffing, compensation, performance management and employee relations processes.
- Demonstrates high ethical standards and fiscal accountability in managing public resources.

Strategic Thinking

- Recognizes the environmental context in which the organization operates.
- Understands current and future problems and challenges faced by the organization.
- Demonstrates ability to apply strategic objectives to departmental operations.

Communications

- Speaks clearly and expresses self well in groups and in conversations with individuals.
- Demonstrates strong listening and writing skills, including grammar, organization and structure.
- Shares appropriate information on a timely basis.

Teamwork

- Works cooperatively.
- Contributes to the team by supporting and encouraging team members.
- Supports consensus decision-making by the team.

Customer or Constituent Service/Focus

- Identifies customers.
- Anticipates and understands customer needs.
- Acts to meet customer needs.
- Continues to search for ways to increase customer satisfaction.

Personal Responsibility/Accountability

- Inspires self and others to set and maintain high standards of excellence.
- Works with high energy, focus and persistence.

Definitions

(Groupings by performance/goal results and supporting skills/behavioral traits.)

1. Outstanding

Performance/Goal Results

- ☐ Significantly exceeds goals.
- ☐ Always produces more than required.
- ☐ Project plans and actions serve as a model for effective staff and resource activities.
- ☐ Provides exceptional presentations that inform and educate.
- ☐ Resolves controversial and complex decisions.
- ☐ Implements creative solutions to long-standing or especially troublesome problems.

Supporting Skills

- ☐ Serves as a model for working productively.
- ☐ Always performs special assignments and projects or unanticipated activities and completes them ahead of deadlines.
- ☐ Works with an unusually high degree of energy, focus and persistence.
- ☐ Produces work at the highest level of accuracy.
- ☐ Works independently with broad direction and little, or no, follow-up.
- ☐ Develops highest quality products or services.
- ☐ Gives life to the agency.
- ☐ Motivates employees to exceed departmental goals while focusing on organization wide issues.
- ☐ Frequently helps others within DEQ, even when it is "not in the job description."
- ☐ Can always be relied upon to serve as the source of accurate information.
- ☐ Serves as a leader in team discussions, yet does not monopolize team discussions.
- ☐ Contributes constructive ideas and suggestions that have major impact.
- ☐ Significantly improves work area by leading collaboration and cooperation.
- ☐ Always assists coworkers in completing assignments, with the only goal of improving organization effectiveness.
- ☐ Displays exceptional skill at organizing and responding to complex project issues.
- ☐ Serves as a model for outstanding customer service.
- ☐ Is highly respected by peers and colleagues

2. Exceeds Expectations

Performance/Goal Results

- ☐ Often exceeds goals.
- ☐ Frequently produces more than required
- ☐ Handles controversial or complex decisions.

Supporting Skills

- ☐ Self-motivated and sets high productivity levels.
- ☐ Anticipates developments or delays and makes adjustments.
- ☐ Goes the extra mile to ensure that goals and objectives are met.
- ☐ Serves as a facilitator in ensuring clear and effective communication among involved parties.
- ☐ Meets targets, timetables and deadlines, and is often prepared ahead of schedule.
- ☐ Frequently handles difficult pressure situations and distractions.
- ☐ Motivates employees to exceed departmental goals and objectives.
- ☐ Can always be counted on to add something new or innovative to each project.
- ☐ Exhibits excellent oral and written communication to all levels of staff.
- ☐ Frequently performs special assignments and projects or unanticipated activities and appears to be positively challenged by them.
- ☐ Puts success of team above own interests.
- ☐ Takes great initiative to ensure that customer needs are exceeded.
- ☐ Serves as the ideal standard for collaboration and cooperation.
- ☐ Consistently analyzes all problems and crafts workable, creative solutions.
- ☐ Views problems as an opportunity to use new technology or implement better methods.

3. Fully Meets Expectations

Performance/Goal Results

- ☐ Meets all goals.
- ☐ Completes all regularly assigned duties.
- ☐ Performs all assignments regardless of distractions or pressure situations.
- ☐ Completes work with acceptable level of accuracy and professionalism.
- ☐ Is prompt and prepared for meetings and other scheduled events.
- ☐ Responds quickly and appropriately to unanticipated delays or developments.

Supporting Skills

- ☐ Recognizes and analyzes complex problems and takes action or recommends effective, creative solutions.
- ☐ Adjusts priorities as needed.
- ☐ Provides follow-up directives and continually communicates a shared vision.
- ☐ Recognizes, responds, and supports employees with changing conditions.
- ☐ Assists other management in communicating difficult issues.
- ☐ Develops project plans that are creative and innovative and makes good use of staff and organization resources.
- ☐ Actively participates in group discussions.
- ☐ Contributes constructive activities and suggestions that are implemented.
- ☐ Frequently helps others achieve their goals through support and/or assistance.
- ☐ Recognizes and analyzes problems and takes appropriate action.
- ☐ Researches and efficiently prepares products and activities at acceptable standards.
- ☐ Handles routine pressure situations and distractions of the job while maintaining normal workload.
- ☐ Demonstrates reliable and predictable attendance and/or punctuality.
- ☐ Rarely is gone due to unscheduled absences.
- ☐ Meets targets, timetables and deadlines.
- ☐ Works quickly and strives to increase productivity.
- ☐ Is prompt and prepared for meetings and other scheduled events.
- ☐ Responds to routine developments appropriately.
- ☐ Motivates employees to meet departmental goals and objectives.
- ☐ Provides direction to employees by clearly communicating a shared vision.
- ☐ Is flexible when dealing with changing conditions.
- ☐ Helps the team accomplish its goals.
- ☐ Assesses individuals' strengths and weaknesses and suggests methods for improvement.
- ☐ Proactively changes and communicates progress to all.
- ☐ Successfully manages project team activities.
- ☐ Follows policies, procedures and regulations.
- ☐ Ensures customer satisfaction through consistent or special effort in response to customer need.
- ☐ Provides requested assistance and information to others in a prompt and courteous manner.
- ☐ Works to enable understanding and obtains clarification when needed.

(continued)

- ☐ Responds appropriately to questions.
- ☐ Demonstrates good presentation skills.
- ☐ Participates in team discussions.
- ☐ Performs special assignments and projects or unanticipated activities.
- ☐ Contributes ideas and suggestions.
- ☐ Volunteers to serve for special projects
- ☐ Takes initiative to understand new or more complex equipment, software or changes in operational procedures.
- ☐ Exhibits positive attitudes, especially during times of change and disruption.
- ☐ Recognizes and provides support and/or assistance to coworkers.
- ☐ Works actively to resolve conflicts.
- ☐ Demonstrates strong problem solving skills to ensure smooth operations.
- ☐ Consistently analyzes problems and applies logical solutions.
- ☐ Makes effective decisions on a timely basis.

4. Improvement Needed

Performance/Goal Results

- ☐ Assignments occasionally are not completed on time.

Supporting Skills

- ☐ Does not understand some basic functions or activities of the unit.
- ☐ Inconsistently organizes activities and information.
- ☐ Occasionally fails to make proficient use of technology.
- ☐ Inconsistently uses correct practices or procedures
- ☐ Is inconsistent in meeting targets, timetables or deadlines.
- ☐ Is inconsistent in promptness or preparation for meetings or other scheduled events.
- ☐ Some routine assignments and duties require supervisory guidance.
- ☐ Is inconsistent in completing assigned work.
- ☐ Recognizes problems, but requires some assistance to develop workable solutions.
- ☐ Occasionally unable to meet an acceptable standard of quality
- ☐ Is inconsistent in organization or maintaining operations.
- ☐ Occasionally communicates in an inappropriate manner.
- ☐ Occasionally and reluctantly performs special assignments and projects or unanticipated activities.
- ☐ Is inconsistent in making decisions on a timely basis.
- ☐ Is inconsistent in analysis of problems or application of logical solutions.
- ☐ Marginally courteous; may provide requested assistance and information to others in a less than prompt or courteous manner.

5. Unsatisfactory

Performance/Goal Results

- ☐ Assignments often not completed on time.

Supporting Skills

- ☐ Rarely performs special assignments and projects or unanticipated activities.
- ☐ Is often not at work due to unscheduled absences.
- ☐ Attendance and/or punctuality habits cause hardship for colleagues.
- ☐ Frequent errors.
- ☐ Low tolerance to pressure situations or distractions.
- ☐ Rarely motivates employees.
- ☐ Rarely available to staff.
- ☐ Rarely manages changing conditions.
- ☐ Project activities often need to be redone.
- ☐ Budget and staff time are not used in an effective manner.
- ☐ Rarely communicates.
- ☐ Rarely participates in team discussion.
- ☐ Rarely contributes ideas and suggestions.
- ☐ Reluctantly cooperates with others to achieve agency goals.
- ☐ Reluctantly accepts direction from supervisor.
- ☐ Minimally supports team leader.
- ☐ Rarely develops and maintains cooperative relationships with team or with others outside the work unit.
- ☐ Often the source of negative conflict.
- ☐ Unit and individual productivity is significantly disrupted by unreliable attendance and/or punctuality.
- ☐ Often does not meet requirements.
- ☐ Frequently does not meet targets, timetables or deadlines.
- ☐ Frequently lacks promptness or preparation for meeting or other scheduled events.
- ☐ Routine developments require supervision.
- ☐ Rarely recognizes problems or unable to recommend effective solutions.
- ☐ Frequent errors that have negative impact.
- ☐ Must be reminded about customer service standards.
- ☐ Rarely able to work under pressure situations or handle distractions.
- ☐ Rarely effective in organizing or maintain operations.
- ☐ Occasionally does not provide assistance and information to others in a prompt or courteous manner.

Director's Suggestion for Performance Appraisal

Evaluation Process

- Minimum of once per biennium; could be annual
- If deficiencies noted in any area, establish expectations for improvement and evaluate in six months
- Director provides EQC one- to two-page written summary of key accomplishments and deficiencies
- EQC makes contacts outlined below; envisioned as brief telephone conversations with or without prepared questions
- Executive session meeting with Director
- Optional: Written evaluation to the Governor with compensation and/or performance improvement recommendations if appropriate

Contacts

- Responsiveness to Governor's Office needs. Contact: Louise Solliday, Governor's Natural Resource Policy Advisor (503) 378-6206; Robin McArthur-Phillips, Governor's Community Development Office (503) 378-6892 ext. 33; Mike Greenfield, Director, Department of Administrative Services (503) 373-0957
- Effectiveness with stakeholders. Contacts: John Ledger, Associated Oregon Industries (503) 588-0050; Janet Gillaspie, Assoc. of Clean Water Agencies (503) 236-6722; Jeff Allen, Oregon Environmental Council (503) 222-1963; Maureen Kirk, OSPIRG (503) 231-4181; Kathryn Van Natta, NW Pulp & Paper (503) 393-0007; Dave Barrows (503) 227-5591; Nina Bell, NW Environmental Advocates (503) 295-0490; Paulette Pyle, Agriculture lobbyist (503) 370-8092
- Effectiveness with other government agencies. Contacts: Dan Opalski, EPA (503) 326-3250; Willie Tiffany, League of Oregon Cities (503) 588-6550; Cheryl Koshuta, Port of Portland (503) 944-7236; Jim Brown, State Forester (503) 945-7211; Lindsay Ball, Director, ODFW (503) 872-5272; Ann Hanus, Director, Division of State Lands (503) 378-3805 ext. 224; Ken Rocco, Legislative Fiscal Office (503) 986-1844
- Effectiveness in management of agency. Contacts: Any member of DEQ Executive Management Team and Union Officials Doug Drake (503) 229-5350 and Leslie Kochan (503) 229-5529
- Effectiveness in supporting Environmental Quality Commission: Commissioners

Criteria for Evaluation

Effectiveness in Management of the Agency

- Chair or EQC designee meets with Executive Management Team for confidential discussion of Director performance
- Chair or EQC designee meets with agency union representatives for confidential discussion of Director performance
- Brief write up of results

Effectiveness with stakeholders

- Each EQC member contacts his or her legislative representatives and/or key legislators (i.e., chairs or members of legislative committees with which the Department regularly interacts)
- Each EQC member contacts one of the stakeholders from the contact list (or others)
- Brief write-ups of results

Effectiveness with other government agencies

- Each EQC member contacts one agency rep from the contact list
- Brief write-ups of results

Effectiveness in Supporting Environmental Quality Commission

- Review and discuss Director's self-evaluation
- Review and discuss write-ups from various contacts
- Review and discuss quality of materials and presentations to EQC by DEQ
- Discuss quality and timeliness of EQC involvement in key policy issues
- Identify expectations and areas of importance for upcoming evaluation

Responsiveness to Governor's Office

- Chair contacts Governor's Office representatives and the Director, Department of Administrative Services
- Brief write-up of results

Minutes are not final until approved by the Commission.

Environmental Quality Commission Minutes of the Three Hundredth Meeting

**January 24-25, 2002
Regular Meeting¹**

The following Environmental Quality Commission members were present for the regular meeting, held at the World Trade Center, Plaza Conference Room, 121 S.W. Salmon Street, Portland, Oregon.

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

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

Thursday, January 24, 2002

Prior to beginning the regular meeting, the Commission toured the DEQ and Public Health Laboratories on the Portland State University campus in downtown Portland.

Chair Eden called the meeting to order at approximately 2:00 p.m. Agenda items were taken in the following order.

A. Contested Case: Case No. WPM/SP-WR-00-009 regarding Ronald C. La Franchi

Larry Knudsen, Assistant Attorney General, introduced the case and explained the Department's appeal of a proposed order, dated July 30, 2001, that assessed Ronald C. La Franchi a \$6,000 civil penalty for discharging wastes to waters of the state without a permit. Mr. Knudsen summarized the findings of fact made by the Hearing Officer and asked Commissioners to declare any ex parte contacts or conflicts of interest regarding the case. All Commissioners declared they had no ex parte contacts or conflicts of interest. Anne Price, DEQ Manager of the Office of Compliance and Enforcement, Jeff Bachman, Environmental Law Specialist, and Lynne Perry, Department of Justice, summarized arguments on behalf of the Department. Frederick J. Carleton² summarized arguments on behalf of Mr. La Franchi.

The primary legal issue before the Commission was whether the Hearing Officer correctly interpreted and applied the penalty formula and R-factor found in Oregon Administrative Rule 340-012-0045. The Commission discussed alternatives for resolving the case and concluded:

1. The discharge of gasoline into Knowles Creek was caused by Mr. La Franchi's negligence.
2. The Department's method of calculating the civil penalty was correct.

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; phone: (503) 229-5990.

² Mr. Carleton participated in the meeting by conference call from Bandon, Oregon.

3. The \$6,000 civil penalty assessed to Mr. La Franchi was correct. Commissioner Reeve moved the Commission grant the Department's exception to the proposed order, affirm the \$6,000 civil penalty, and uphold the proposed order in all other respects. Commissioner Malarkey seconded the motion and it passed with five "yes" votes. The Commission asked Mr. Knudsen to prepare the order for the Director's signature on the Commission's behalf.

B. Informational Item: Improvements in the Office of Compliance and Enforcement

Anne Price, DEQ Manager of the Office of Compliance and Enforcement, summarized changes in DEQ's compliance and enforcement work and gave an overview of ongoing and upcoming improvements. The Commission discussed process improvement plans and gave suggestions for reviewing and revising enforcement rules. Commissioners asked Ms. Price to give an update on the status of the enforcement rule review later in 2002.

Chair Eden adjourned the meeting for the day at approximately 4:30 p.m.

Friday, January 25, 2002

The Commission held an executive session at 8:00 a.m. on Friday, January 25, to consult with counsel concerning legal rights and duties with regard to current and potential litigation involving the Department. Executive session was held pursuant to ORS 192.660(1)(h).

At approximately 8:30 a.m., Chair Eden called the regular meeting to order and agenda items were taken in the following order:

C. Approval of Minutes

Commissioner Van Vliet moved the Commission approve draft minutes of the December 6-7, 2001, EQC meeting. Commissioner Malarkey seconded the motion and it passed with five "yes" votes.

D. Rule Adoption: Amendment and Clarification of Asbestos Rules

Andy Ginsburg, DEQ Air Quality Administrator, described the need for changes to asbestos rules and introduced David Wall and Audrey O'Brien, Air Quality staff, to present proposed rule amendments. Mr. Wall described problems that can result from improper asbestos handling and recommended the Commission amend rules to provide greater protection to public health and the environment, make the rules easier to understand, and improve DEQ's enforcement ability. The Commission discussed the asbestos regulation with Mr. Ginsburg and Director Hallock, and gave suggestions for informing homeowners and building contractors of rule changes. Commissioner Bennett moved the Commission adopt the proposed rules. Commissioner Van Vliet seconded the motion and it passed with five "yes" votes.

E. Rule Adoption: Water Quality NPDES and WPCF Permit Fee Increase

Mike Llewellyn, DEQ Water Quality Administrator, explained the need for a fee increase in the Wastewater Permitting Program to continue current service levels, as approved by the 2001 Legislature. Mike Kortenhoff and Ranei Nomura, Water Quality staff, described a proposed twenty percent, across-the-board increase in National Pollutant Discharge Elimination System (NPDES) and Water Pollution Control Facility (WPCF) permit fees. Commissioners discussed the proposed fee increase and funding issues in the wastewater permitting program with Mr. Llewellyn and Director Hallock. Commissioner Reeve moved the Commission adopt the proposed rules. Commissioner Malarkey seconded the motion and it passed with five "yes" votes.

G. Action Item: Consider Department Plan for Methane Regulation

Alan Kiphut, DEQ Land Quality Manager, summarized past and current actions of the Commission and Department to address methane regulation at unpermitted landfills. In August 2001, a citizen association

called CLEAN petitioned the Commission for temporary and permanent rulemaking to add methane, under certain conditions, to the list of hazardous substances subject to the state's environmental cleanup rules. In September 2001, the Commission denied the petition for temporary rulemaking and directed the Department to work with stakeholders on permanent rules to address methane issues at unpermitted landfills. In November 2001, CLEAN filed a second petition with the Commission seeking the adoption of temporary rules relating to methane regulation. The Commission denied this petition in December 2001, but agreed that the Department's inability to regulate methane gas at unpermitted landfills was a significant concern. The Commission asked the Department to evaluate whether a temporary rule that effectively addressed methane issues would serve the public interest.

At this meeting, Mr. Kiphut explained the Department's evaluation of this issue and recommended the Commission adopt a temporary rule to designate methane as a hazardous substance under certain conditions to enable methane regulation at unpermitted landfills. Commissioners discussed the recommendation and Department plans for developing a permanent solution for this issue. Commissioner Bennett moved the Commission adopt the temporary rule and the required statement of need and rule justification. Commissioner Van Vliet seconded the motion and it passed with five "yes" votes.

F. Director's Dialogue

Director Hallock and Commissioners discussed a number of current issues and recent events, including status of the state budget, efforts to stimulate the economy and streamline regulations, and various ongoing agency initiatives.

Public Forum

At approximately 11:30 a.m., Chair Eden asked whether anyone wished to provide public comment. No public comment was provided. After breaking for lunch, Chair Eden called the meeting back to order and granted a request from Michael Jones to give comments to the Commission on the St. John's Landfill.

H. Informational Item: Port Westward Energy Facilities

Bob Baumgartner, DEQ Water Quality Manager in Northwest Region, introduced the proposed Port Westward Energy Facilities project to Commissioners in preparation for future action. Mr. Baumgartner explained that the project would create two natural gas fired power plants and one ethanol production plant on land owned by the Port of St. Helens adjacent to the Columbia River near Clatskanie. The Port proposed to act as the permittee for collection and discharge of wastewater from the new facilities to the Columbia River. Because this project would include a major new discharge to the river, Commission approval of the Department's antidegradation review would be required to issue the wastewater permit for the facilities. Mr. Baumgartner explained plans to update the Commission on the status of permit development prior to requesting Commission action on this project. Chair Eden invited Paul Langner, Marine Industrial Manager for the Port of St. Helens, to comment on the project and socioeconomic condition in Columbia County and surrounding areas. Commissioners thanked Mr. Baumgartner and Mr. Langner for their information.

I. Discussion Item: Development of Performance Appraisal Process for Director

The Commission reviewed a final draft proposal for evaluating the Director's performance, which was developed and discussed at many meetings in 2001. Commissioner Bennett moved the Commission adopt the purpose, process and performance measures for evaluation. Commissioner Van Vliet seconded the motion and it passed with five "yes" votes. Commissioners asked Mikell O'Mealy, Assistant to the Commission, to prepare a potential schedule for appraising the Director's performance in late 2002 for discussion at the March 7-8, 2002, meeting.

J. Commissioners' Reports

Commissioner Bennett reported that he will be absent from the March 7-8, 2002, EQC meeting.

Chair Eden adjourned the meeting at approximately 1:40 p.m.