

Part 2 of 2

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS **07/25/2002**



State of Oregon
**Department of
Environmental
Quality**

This file is digitized in *color* using Optical Character Recognition (OCR) in a standard PDF format.

Standard PDF Creates PDF files to be printed to desktop printers or digital copiers, published on a CD, or sent to client as publishing proof. This set of options uses compression and downsampling to keep the file size down. However, it also embeds subsets of all (allowed) fonts used in the file, converts all colors to sRGB, and prints to a medium resolution. Window font subsets are not embedded by default. PDF files created with this settings file can be opened in Acrobat and Reader versions 6.0 and later.

Oregon Department of
Environmental Quality

Strategic Directions

2002



March 2002

Dear Oregonians:

Over the years, Oregon's ethic of environmental responsibility has led to groundbreaking legislation and significant gains in protecting public health and Oregon's environment. The Oregon Department of Environmental Quality (DEQ) has helped achieve these gains by regulating pollution from the largest and most obvious sources. Regulations have been successful; Oregon's air, land and water are cleaner and safer today than before regulation.



In the 21st century, however, the challenges we face are more complex. We are feeling the cumulative effects of human activity. Increased population and traffic mean more toxic air pollutants from cars and trucks. Protecting water quality for beneficial uses — including native salmon — now must include control of pollution from urban runoff, agricultural and forest practices, and other sources that traditionally have not been regulated. To respond to these challenges, we need creative thinking, good management and involvement by all Oregonians.

During challenging times, government must provide leadership and clear direction to ensure that important work gets done in a cost-effective manner. This means we must set priorities and measure performance. DEQ has developed these Strategic Directions to sharpen our focus on the priority actions needed to protect public health and the environment. For the next few years, DEQ will focus on four priorities:

- Deliver Excellence in Performance and Product
- Protect Oregon's Water
- Protect Human Health and the Environment from Toxics
- Involve Oregonians in Solving Environmental Problems

This document presents the key actions that we are taking for each of these priorities and includes checkpoints we will use to measure performance. Strategic Directions are by definition dynamic, and we will review our progress periodically. I look forward to working with you as we continue Oregon's proud environmental legacy.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Hallock". The signature is written in dark ink and is positioned above the printed name and title.

Stephanie Hallock
DEQ Director

DEQ's mission is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, water and land.

Beginning of DEQ

Oregon's history of environmental regulation began in 1938, when the Oregon State Sanitary Authority was formed in response to a successful citizen initiative known as the "Water Purification and Prevention of Pollution Bill." In 1969, the Authority became the Oregon Department of Environmental Quality (DEQ), an independent state agency.

DEQ Overview

DEQ monitors and assesses environmental conditions, establishes policies and rules, issues permits, cleans up contamination, enforces environmental laws, and educates businesses and citizens to encourage pollution prevention. DEQ's team of scientists, engineers, technicians, managers and support staff is highly committed to restoring and protecting public health and Oregon's environment.

The Oregon Environmental Quality Commission, a five-member Governor-appointed board, issues orders, judges appeals of fines, adopts rules and appoints the agency director. The Commission also participates in the development of DEQ's Strategic Directions.

In 1993, DEQ moved most of its staff into field offices in order to better understand problems facing Oregon communities and provide more local service. Today, DEQ operates a laboratory, 18 offices around the state, and eight Vehicle Inspection Stations in the Portland area and Medford. Headquarters programs include air, land and water quality, and management services. These divisions develop environmental policy and provide administrative support. Regional offices implement environmental protection programs, working with local

communities and businesses to solve environmental problems. DEQ's laboratory provides monitoring and analytical support for the entire agency.

Accomplishments

In 1980, only 30% of Oregonians lived in clean air areas. Today, 100% of Oregonians live where the air meets national health standards. In Oregon, 64% of rivers monitored by DEQ are improving in water quality and only 1% are declining. Since 1991, citizens have properly disposed of more than three million pounds of household hazardous waste through DEQ-sponsored statewide collection events. These successes were achieved through the collective efforts of DEQ, communities, businesses and citizens.

Although we are proud of what Oregonians have achieved, significant environmental concerns remain. For example, more than 13,000 miles of Oregon rivers fail to meet clean water standards. More people are recycling; however, per capita waste generation continues to rise. Continued population growth makes it a challenge to keep our water, air and land clean.

DEQ's Vision

DEQ's vision is to work cooperatively with all Oregonians for a healthy, sustainable environment. DEQ promotes the following cultural values: Environmental Results, Customer Service, Partnership, Excellence and Integrity, Employee Growth, Teamwork, Diversity.

DEQ's Strategic Directions define DEQ's priority work. Checkpoints established for each priority ensure that we deliver results. These checkpoints will complement Oregon Benchmark performance measurement.



Priority 1

Deliver Excellence in Performance and Product



DEQ recognizes that even well-managed agencies must continue to improve. We are committed to managing and motivating employees to perform professionally in their daily work as well as fostering collaboration internally across program lines.

Whether you are receiving a compliance inspection or technical assistance with a permit, DEQ is dedicated to providing high-quality service. Protecting public health and the environment requires a commitment to science and to effective regulation; however, we recognize that how we do our work is equally important. The key actions that follow outline DEQ's efforts for delivering excellence in all that we do.

Key Action: Make it easier to do business with DEQ

DEQ interacts with many customers – the public, members of the regulated community, tribes, government agencies and other organizations. As an agency, we are striving to improve customer service and streamline our regulatory process. Efforts are already underway to make improvements to programs that affect small businesses and individuals. In 2002, DEQ will conduct a survey of customers to help us identify other service improvement opportunities.

Key Action: Reinforce effective management

The range and complexity of issues facing DEQ are diverse and have grown over time. Managing DEQ's budget, with its large number of dedicated funds, demands constant attention in order to provide accountability to the Legislature and all Oregonians. We have improved our operating budget process; our programs now have more information for managing within budget forecasts.

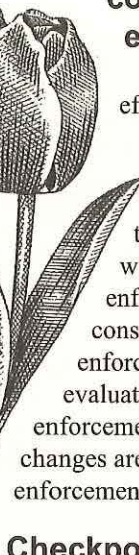
We also recognize that effective staff and management are keys to success. Over the next year, we will be assessing our performance evaluation methods to ensure that our employees are getting the support they need to work effectively.

Key Action: Emphasize cross-program environmental problem solving.

DEQ implements laws and regulations developed and funded along program lines to protect the air, water and land. However, many environmental problems require the attention of more than one DEQ program. For example, abandoned mines and contaminated sediments affect both water and land. To address a need for

greater collaboration among programs, DEQ has identified and is implementing actions that focus on improving cross-program problem solving.

Key Action: Ensure understandable and equitable compliance and enforcement



DEQ is committed to having an effective compliance and enforcement program that is understandable, encourages compliance, is equitable, and appropriately reflects the severity of the violation. DEQ will assess and modify compliance and enforcement procedures to ensure consistent, understandable and timely enforcement actions. DEQ will also evaluate current rules governing enforcement activities to determine whether changes are needed to ensure equity in enforcement.

Checkpoints

DEQ will carefully monitor efforts that promote performance excellence by asking the following questions:

- Are our customers satisfied with the service DEQ provides?
- Is DEQ operating within its budget?
- Do DEQ employees receive the direction and feedback they need to be effective?
- Is cross-program coordination improving?
- Are DEQ enforcement actions equitable, consistent, understandable and timely?



Priority 2

Protect Oregon's Water



Water's many beneficial uses include drinking water, support of industrial processes, agricultural and recreational activities, healthy ecosystems and wildlife habitat. DEQ is committed to doing its part to ensure that Oregon's rivers, lakes, streams and groundwater are clean enough to support these uses.

Historically, water pollution control has been directed at industrial and municipal wastewater. This traditional permitting approach has helped but has not effectively addressed the impacts of other known sources of pollution. Addressing multiple sources of pollution on a watershed basis offers a more integrated and efficient approach to manage expected impacts from water pollution. To improve and maintain water quality, DEQ is implementing the following key actions.

Key Action: Implement a comprehensive watershed approach

DEQ's primary initiative to protect Oregon's water quality takes a watershed approach by focusing our efforts geographically in river basins. Under this approach, DEQ integrates water quality data, pollution load limits, permitting and groundwater protection efforts to manage water quality on a watershed basis.

This approach is consistent with *The Oregon Plan for Salmon and Watersheds*, which brings agencies together to restore healthy aquatic habitats on a watershed basis. The *Oregon Plan* encourages incentives and education to motivate voluntary actions that go beyond regulation. DEQ is committed to success of the *Oregon Plan*.

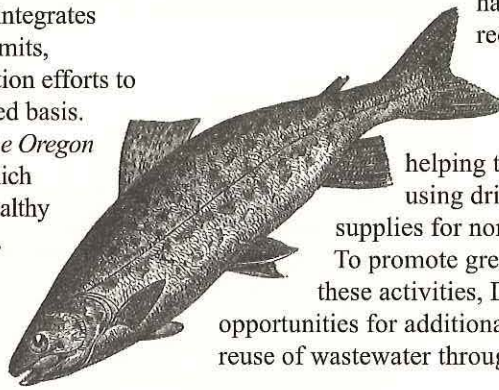
One of DEQ's tools to improve impaired waterbodies is to develop pollution load limits known as Total Maximum Daily Loads (TMDLs). TMDLs define the amount of each pollutant a waterway can receive and still maintain water quality standards. TMDLs take into account pollution from all sources, including industrial and sewage treatment facilities, runoff from farms, forests and urban areas, and natural sources. DEQ is developing TMDLs for all impaired waterbodies in the state by 2007. As of December 2001, the US Environmental Protection Agency had approved 263 TMDLs completed by DEQ.

DEQ is also shifting water quality permit renewal to a watershed basis, simultaneously working to minimize a backlog of permits watershed by watershed.

Key Action: Develop a strategy to encourage broader reuse of wastewater

The direct release of treated wastewater into surface water is a common water quality management practice. This wastewater, while

technically clean, often contains nutrient and temperature levels that exceed natural water conditions. As an alternative, many treatment plants have developed strategies to "reuse" treated water to irrigate or to restore wetland



habitats. This reclamation of wastewater has many potential benefits, including helping to offset the need for using drinking water

supplies for non-drinking purposes. To promote greater investment in these activities, DEQ will foster opportunities for additional reclamation and reuse of wastewater throughout the state.

Checkpoints

DEQ has developed the Oregon Water Quality Index to evaluate improvements in water quality over time. The index integrates eight distinct criteria into a single number expressing water quality. Data points from routine monitoring are used to determine the water quality rating. This index is DEQ's primary indicator of trends in water quality.

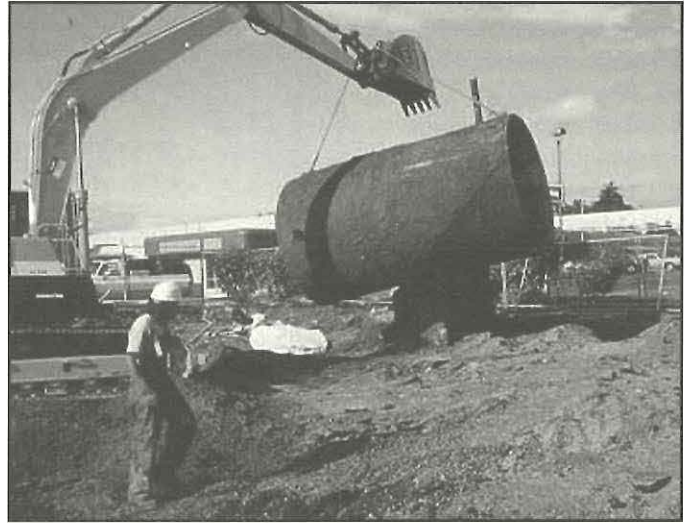
In addition, we will be evaluating performance results by asking the following questions:

- Are we meeting our schedule for reducing permit backlogs and completing TMDLs?
- Are plans being implemented as developed to meet TMDL specifications?
- Has wastewater reuse increased?



Priority 3

Protect Human Health and the Environment from Toxics



Human exposure to toxic chemicals is of increasing concern in Oregon. On a daily basis, Oregonians are exposed to toxics through many sources such as chemical emissions from cars, trucks and industrial plants, or through the food chain where persistent toxics can accumulate. Additionally, the threat of terrorism has elevated the importance of DEQ's preparedness to handle any potential chemical crisis efficiently and effectively. The key actions that follow are DEQ's short-term priority activities for protecting human health and the environment from toxics.

Key Action: Prepare for and minimize the danger posed by catastrophic release of dangerous chemicals

In response to the Sept. 11, 2001 terrorist attacks, Oregon is developing a state preparedness plan to ensure readiness for biological or chemical attacks. DEQ is participating in the development of this statewide plan. In addition, DEQ's Emergency Response Team works to expand the agency's range of preparedness.

Other related activities include our efforts to ensure DEQ's laboratory is prepared to safely analyze unidentified substances for the presence of chemical agents. At the Umatilla Chemical Depot, DEQ works to ensure that the public and the environment are protected from risks associated with the storage and destruction of chemical agents.

Key Action: Develop and implement a strategy to reduce toxic releases to air, water and land

DEQ has a number of initiatives underway to reduce toxics. For example, in Air Quality we are developing a program to reduce exposure to toxic air pollution. We intend to develop community-based air toxics reduction plans built on a foundation of monitoring and technical analysis. The plans will include regulatory and non-regulatory strategies to help achieve emission reductions in communities at greatest risk. This effort will also include strategies for reduction of toxic emissions from groups of pollution sources such as diesel engines.

DEQ will continue to seek new ways to help Oregonians reduce the use of toxic chemicals and the amount of hazardous waste generated. We will look at ways to better inform Oregonians about what toxics are and how they can be reduced. And, we will work with stakeholders to

find cost-effective, comprehensive solutions to reducing toxic pollutants that pose the greatest hazard and have the longest lasting impact on the environment and human health. This effort will focus initially on mercury.

Key Action: Reduce risks from toxic contaminants already in our environment

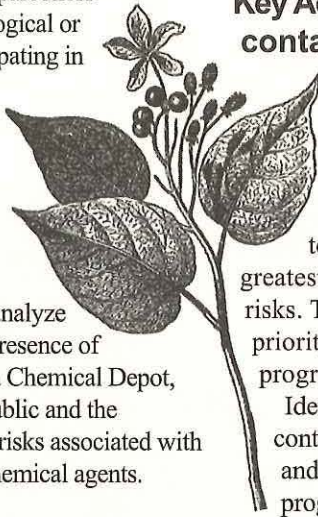
Toxic pollution from sources such as contaminated sediments and abandoned mines represents a long-term environmental concern. DEQ is working to identify abandoned mines that pose the greatest potential environmental and health risks. These "highest risk" mines will be a priority to enter DEQ's Environmental Cleanup program.

Identifying the causes of and cleaning up contaminated sediments can be complex, costly and technologically challenging. A cross-program DEQ group has identified integrated and streamlined strategies to address contaminated sediments cleanup and source control.

Checkpoints

DEQ will monitor the progress and success of measures for each key action by answering the following questions:

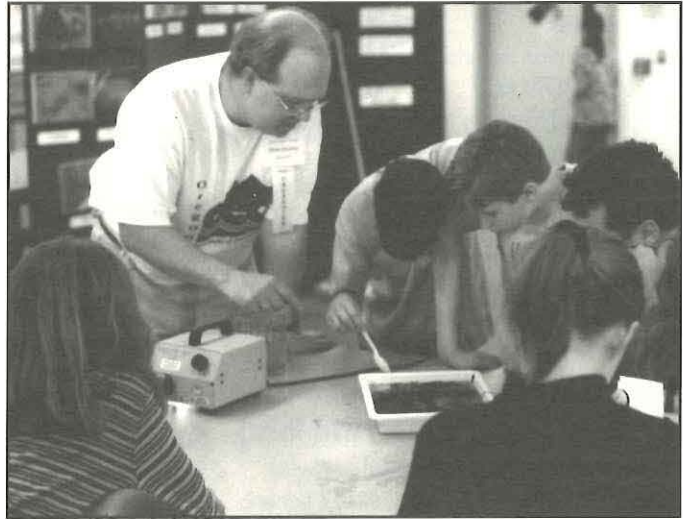
- Are we prepared to appropriately respond to chemical attacks?
- Have we reduced risk through elimination of chemical agents at the Umatilla Army Depot?
- Are we reducing the use of toxic chemicals and the generation of hazardous waste?
- Have we identified and prioritized abandoned mines that pose the greatest risk?
- Have we started cleanup at high-priority abandoned mine sites?
- Have cross-program approaches been implemented, resulting in integrated and streamlined contaminated sediments cleanup and source control?





Priority 4

Involve Oregonians in Solving Environmental Problems



In the 21st century, responsibility for environmental protection needs to expand beyond traditional “command-and-control” regulatory approaches. This older approach has been successful but has not addressed pollution from non-regulated sources. Cumulatively, pollution impacts from non-industrial sources account for the largest percentage of pollution in Oregon. For this reason, the greatest future environmental benefits will come from engaging individuals and small businesses as environmental stewards. To promote greater citizen involvement in solving environmental problems, DEQ will implement the following key actions.

Key Action: Encourage personal actions by Oregonians to protect the environment

DEQ will educate Oregonians on additional ways to reduce their impact on the environment. Simple actions such as using less fertilizer, disposing of household hazardous waste properly, riding a bike, and keeping your car well-tuned all add up. DEQ will survey Oregonians to identify where changes in individual actions will result in the most gains in local environmental protection. An educational campaign that leverages public-private partnerships will be developed to educate and provide incentives to Oregonians.

Key Action: Provide Oregonians with better access to information on local environmental conditions and issues

DEQ is working to increase the quality and quantity of environmental information available to Oregonians. Specifically, we are committed to making environmental monitoring data about pollution levels in geographic areas more accessible. DEQ will expand and improve methods for accessing this information, such as using location-based tools on our Web site.

DEQ will strive to improve the electronic infrastructure and links among programs within the agency and with other state, federal and tribal agencies. Improving connections between information systems will allow for easier access to data from different sources.

We will conduct a thorough evaluation of our information systems to develop a more comprehensive, agency-wide information management strategy.

Key Action: Support communities in solving local problems

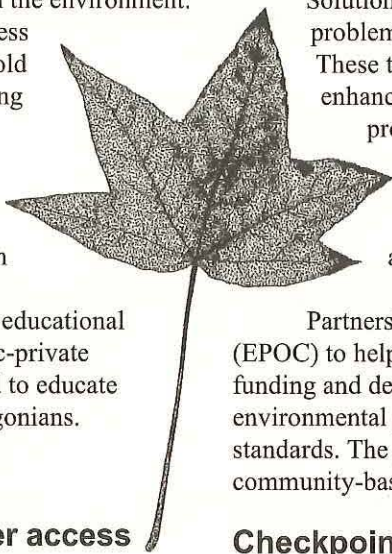
DEQ participates on state agency Community Solutions Teams (CSTs) for collaborative problem solving with local communities. These teams work with communities to enhance livability by coordinating and promoting economic, environmental, land use, transportation and affordable housing goals and projects.

DEQ also formed Environmental Partnerships for Oregon Communities (EPOC) to help small rural communities pursue funding and develop projects that improve environmental protection and meet regulatory standards. The goal of both efforts is to support community-based problem solving.

Checkpoints

DEQ will monitor the progress and success of measures for each key action by answering the following questions:

- Are Oregonians more aware of actions they can take to protect the environment, and have they modified their actions?
- How are Oregonians asking for information, and are they getting the information they want and need?
- Are CST and EPOC efforts helping DEQ assist communities to solve local problems?



For More Information

While this document sets forth DEQ's priorities, it does not reflect all of the work we do. If you would like more specific information, visit DEQ's Web site at www.deq.state.or.us, call 1-800-452-4011 toll-free in Oregon, or contact one of the following:

Strategic Planning (general inquiry): Dawn Farr, 503-229-6935
farr.dawn@deq.state.or.us

Air Quality: Greg Aldrich, 503-229-5687
aldrich.greg@deq.state.or.us

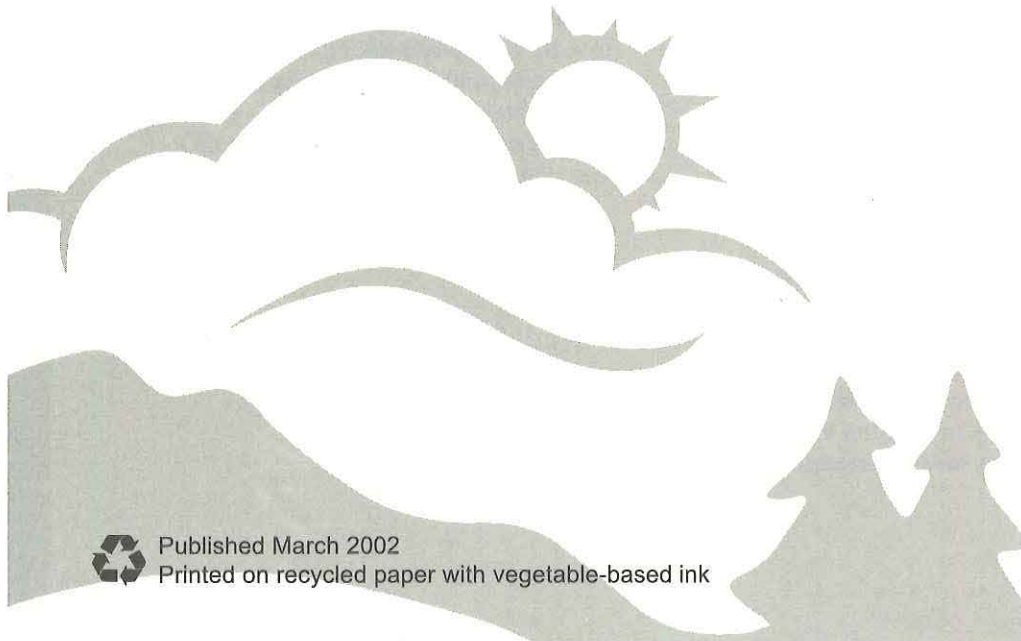
Water Quality: Karen Tarnow, 503-229-5988
tarnow.karen.e@deq.state.or.us

Land Quality: Dave Rozell, 503-229-5918
rozell.dave@deq.state.or.us

Management Services: Holly Schroeder, 503-229-6785
schroeder.holly@deq.state.or.us

DEQ Laboratory: Mary Abrams, 503-229-5983, ext.225
abrams.mary@deq.state.or.us

Office of Compliance & Enforcement: Anne Price, 503-229-6585
price.anne@deq.state.or.us



**Oregon Environmental Quality Commission Meeting
July 25-26, 2002**

Department of Environmental Quality
Headquarters Building
811 S.W. Sixth Avenue, Room 3A, Portland, Oregon

Thursday, July 25, 2002 Regular meeting beginning at 2:00 p.m.

Prior to the regular meeting, beginning at 11:00 a.m., the Environmental Quality Commission will tour a Department of Environmental Quality (DEQ) monitoring site on Balch Creek in Northwest Portland. Following the tour, Commissioners will hold a working lunch at DEQ Headquarters to discuss the Department's efforts to locate a new lab facility.

The regular Environmental Quality Commission meeting will begin at approximately 2:00 p.m., in Room 3A at the DEQ headquarters building.

- A. Contested Case No. WQ/M-NWR-00-010 regarding City of Scappoose**
The Commission will consider a contested case between DEQ and the City of Scappoose involving a proposed \$9,600 civil penalty for an alleged violation of the City's wastewater discharge permit. The alleged violation was for intentional submittal of false data on a discharge monitoring report on two occasions in December 1998. The Commission will hear testimony from both parties on the case.
- B. Contested Case No. WQ/OI-ER-01-065 regarding Brian Littleton, dba/Brian's Sewer & Septic Service**
The Commission will consider a contested case between DEQ and Brian Littleton, doing business as Brian's Sewer & Septic Service in the Klamath Falls area. The case involves a \$1,000 civil penalty for allegedly performing sewage disposal services without first obtaining a sewage disposal service license from DEQ. The Commission will hear testimony from both parties on the case.
- C. *Rule Adoption: Permanent Rules to Add Methane, Under Certain Conditions, to the List of Environmental Cleanup Hazardous Substances**
David Rozell, Acting DEQ Land Quality Administrator, will propose Commission adoption of permanent rules to add methane, under certain conditions, to Oregon's list of hazardous substances. In the absence of rules, DEQ lacks the authority to review and approve, order, or investigate and control methane at historic solid waste landfills. Under certain conditions at past landfill sites, methane gas has the potential to build up in confined spaces and create a threat of explosion. To give DEQ management authority in such cases, the Commission passed temporary rules in January 2002. Since then, DEQ has worked with a stakeholder advisory committee to develop permanent rules. At this meeting, the Commission will consider adoption of proposed permanent rules to replace the temporary rules.
- D. Director's Dialogue**
Commissioners will discuss current events and issues involving the Department and state with Stephanie Hallock, DEQ Director.

E. Discussion Item: Preparation for Director's Performance Evaluation

In January 2002, the Commission adopted a formal process for evaluating the Director's performance on a biennial basis. At this meeting, the Commission will review, and if necessary, revise and adopt criteria for conducting the evaluation this fall. The Commission will also appoint a subcommittee to plan for the evaluation, and request a written self-evaluation of performance from the Director.

Friday, July 26, 2002 Regular meeting beginning at 8:30 a.m.

At approximately 8:00 a.m., the Commission will hold an executive session 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, and media representatives may not report on any deliberations during the session.

The regular Environmental Quality Commission meeting will resume at approximately 8:30 a.m., in Room 3A at the DEQ headquarters building.

F. Approval of Minutes

The Commission will review, amend if necessary, and approve draft minutes of the June 6-7, 2002, Environmental Quality Commission meeting.

G. *Rule Adoption: Renewal of NPDES 1200-A, NPDES 1200-Z and WPCF 1000 General Permits

DEQ's Water Quality Division issues General Permits that apply to large groups of facilities with similar water discharge or pollution control systems. These permits are established and renewed through rulemaking for a five-year duration. At this meeting, Mike Llewelyn, DEQ Water Quality Division Administrator, will propose renewal of three general permits, which together, apply to approximately 1,000 facilities for industrial storm water discharges or wastewater disposal at sand and gravel mining operations. The Commission will consider renewal of (1) the National Pollutant Discharge Elimination System (NPDES) General Storm Water Discharge permit #1200-A, which covers industrial scale non-metallic mining, asphalt mix batch plants, and concrete batch plants with storm water runoff, (2) the NPDES General Storm Water Discharge permit #1200-Z, covering approximately 850 industrial facilities with storm water discharges, and (3) Water Pollution Control Facilities (WPCF) General Permit #1000, covering sand, gravel and other non-metallic mineral mining operations that dispose wastewater by recirculation, evaporation or controlled seepage, with no discharge to surface waters.

H. Informational Item: Operation of Brine Reduction Area at the Umatilla Chemical Agent Disposal Facility *This item will begin at approximately 9:00 a.m.*

The Commission will receive a briefing from the Department, the Confederated Tribes of the Umatilla Indian Reservation, the U.S. Army and Washington Demilitarization Company, and G.A.S.P. (Hermiston environmental group). The briefing will focus on the issues surrounding the operation of the Brine Reduction Area at the Umatilla Chemical Agent Disposal Facility and the potential for off-site shipment of liquid brines and other wastewater.

I. Informational Item: Preview of New Air Toxics Rules

Over the past three years, DEQ worked with two stakeholder advisory committees to develop a new state program to reduce air toxics emissions. This program would supplement the federal air toxics program that DEQ has implemented since 1990. The state program would target urban air toxic emissions from mobile and various small sources to compliment the industrial focus of the federal program. Andy Ginsburg, DEQ Air Quality Division Administrator, will brief the Commission on the status of the emerging program in preparation for potential rule adoption later this year.

J. Action Item: Response to Oregon Environmental Council Petition for Air Quality Rulemaking

On July 10, 2002, the Oregon Environmental Council petitioned the Commission for permanent rulemaking to increase the regulation of mercury emissions to the air. The Commission will hear testimony from the Oregon Environmental Council and Department on the petition, and potentially hear comments from interested stakeholders and members of the public.

K. Informational Item: Revision of MOU between the Commission and Oregon Department of Agriculture for the Confined Animal Feeding Operations Permit Program

In 1993, the Oregon Legislature directed the Commission to enter into a Memorandum of Understanding (MOU) with the Oregon Department of Agriculture (ODA) to transition the Confined Animal Feeding Operation (CAFO) permit program from DEQ to ODA. The resulting 1995 MOU transferred the state Water Pollution Control Facilities permit program for CAFOs from DEQ to ODA. In 2001, the Legislature directed DEQ to transfer the National Pollutant Discharge Elimination System permit program for CAFOs to ODA as well, upon approval from the Environmental Protection Agency. Mike Llewelyn, DEQ Water Quality Division Administrator, and Charles Craig, ODA Deputy Director, will discuss revision of the MOU with Commissioners to transfer the NPDES program and define the roles of each agency in the transfer process.

L. Commissioners' Reports

Adjourn

Agenda Notes

*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.

Public Forum: The Commission will break the meeting at approximately 11:30 a.m. on Friday, July 26, to provide members of the public an opportunity to speak to the Commission on environmental issues and concerns not part of the agenda for this meeting. Individuals wishing to speak to the Commission must sign a request form at the meeting and limit presentations to five minutes. The Commission may discontinue public forum after a reasonable time if a large number of speakers wish to appear. In accordance with ORS 183.335(13), no comments may be presented on Rule Adoption items for which public comment periods have closed.

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.

Upcoming Environmental Quality Commission Meetings: September 16-17, 2002
December 12-13, 2002

Copies of staff reports for individual agenda items are available by contacting Emma Snodgrass 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 extension 5990, 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 Snodgrass as soon as possible, but at least 48 hours in advance of the meeting.

Directions and Parking Information: To DEQ Headquarters in downtown Portland, 811 SW 6th Ave.

From I-5 Northbound:

Take I-5 North into Downtown Portland and follow signs for I-405 North. Take I-405 North and merge right to take the 4th Avenue Exit. Drive North on 4th Avenue to SW Taylor St. and take a left. Drive up to Sixth Avenue (there is parking on Salmon between 5th and 6th, and meters along the street). DEQ Headquarters is on the corner of SW 6th and Yamhill Streets (the walk-in entrance is on 6th Avenue).

From I-5 Southbound:

Take I-5 South into Downtown Portland. As you cross the Marquam Bridge over the Willamette River, follow signs to City Center and take I-405 North. Merge right to take the 4th Avenue Exit and follow the directions to DEQ Headquarters and parking above.

Environmental Quality Commission Members

The Environmental Quality Commission is a five-member, all volunteer, citizen panel appointed by the governor for four-year terms to serve as DEQ's policy and rule-making board. Members are eligible for reappointment but may not serve more than two consecutive terms.

Melinda S. Eden, Chair

Melinda Eden is an attorney, farm owner and former reporter for the Associated Press. Her education includes a J.D. from the University of Oregon and a certificate in Natural Resources from the University of Oregon Law School. Chair Eden was appointed to the EQC in 1996 and reappointed for an additional term in 2000. She became vice chair in 1998 and chair in 1999. Chair Eden currently resides in Milton-Freewater.

Tony Van Vliet, Vice Chair

Tony Van Vliet received his B.S. and M.S. in Forest Production at Oregon State University. He has a Ph.D. from Michigan State University in Wood Industry Management. Commissioner Van Vliet served sixteen years as a member of the Public Lands Advisory Committee, has been a member of the Workforce Quality Council, served sixteen years as a State Representative on the Legislative Joint Ways and Means Committee, and served eighteen years on the Legislative Emergency Board. He currently resides in Corvallis. Commissioner Van Vliet was appointed to the EQC in 1995 and reappointed for an additional term in 1999.

Mark Reeve, Commissioner

Mark Reeve is an attorney with Reeve & Reeve in Portland. He received his A.B. at Harvard University and his J.D. at the University of Washington. Commissioner Reeve was appointed to the EQC in 1997 and reappointed for an additional term in 2001. He serves as the Commission's representative to the Oregon Watershed Enhancement Board, for which he is Co-Chair.

Harvey Bennett, Commissioner

Harvey Bennett is a retired educator. He has taught and administered at all levels of education, concluding as president emeritus of Rogue Community College. Commissioner Bennett has a B.S., M. Ed. and Ph.D. from the University of Oregon. Commissioner Bennett was appointed to the EQC in 1999 and he currently resides in Grants Pass.

Deirdre Malarkey, Commissioner

Deirdre Malarkey is a graduate of Reed College and has graduate degrees from the University of Oregon in library science, Middle Eastern urban and arid land geography, and a Ph.D. in geography. Commissioner Malarkey has served on the Water Resources Commission, the Governor's Watershed Enhancement Board, and the Natural Heritage Advisory Board for the State Land Board. Commissioner Malarkey was appointed to the EQC in 1999 and she currently resides in Eugene.

Stephanie Hallock, Director

Department of Environmental Quality

811 SW Sixth Avenue, Portland, OR 97204-1390

Telephone: (503) 229-5696 Toll Free in Oregon: (800) 452-4011

TTY: (503) 229-6993 Fax: (503) 229-6124

E-mail: deq.info@deq.state.or.us

Mikell O'Mealy, Assistant to the Commission

Telephone: (503) 229-5301

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 8, 2002

To: Environmental Quality Commission
From: Mary Abrams
Subject: EQC Biomonitoring Field Sampling Demonstration & Lab Discussion

I'm so glad that you will be joining us for a "field trip" during the upcoming July EQC meeting. We will be driving up to Balch Creek in Portland's West Hills for a field sampling demonstration with Rick Hafele and the Biomonitoring Program staff. The purpose of this field trip is to demonstrate and discuss the basic water quality and biomonitoring approach being used by DEQ throughout the state to evaluate stream quality. We use this data to assess stream conditions, identify trends in conditions, and characterize the major factors affecting aquatic life, especially salmonid survival and recovery. Without this scientific yardstick, we would not be able to tell if the Oregon Plan is working, or whether TMDLs and other state water quality protections are making a positive difference.

After the field trip, we'll head back to DEQ headquarters for lunch where I will update you on our progress on the laboratory relocation project. We have been working closely with the Department of Administrative Services and the Department of Health and Human Services to find a timely, cost-effective solution to the pressing space needs of both the DEQ and Public Health labs.

I have included some materials for your review, including:

- Background information on the DEQ's Water Quality Monitoring program
- The Laboratory relocation timeline, as proposed by DAS Facilities
- The DEQ Laboratory Business Plan, prepared for DAS and other interested parties.

I am grateful for your continued interest in the Laboratory, and look forward to seeing you on July 25th.

DEQ's Water Quality Monitoring Program

Purpose

To effectively protect and restore water quality and meet the beneficial use needs of both present and future citizens of the state, a water quality program must be based upon an accurate understanding of water quality conditions within the state. Monitoring and assessment are the foundations for sound water quality management.

The Oregon DEQ Water Quality Monitoring Strategy is based upon providing reliable, high quality water quality information that will address the short term and long term information needs of the data users.

Key Questions

- Are water quality and stream conditions changing? If so, by how much, and where?
- How do water quality and stream conditions vary spatially across the state?
- Do waters of the state meet standards?
- What pollutants are affecting beneficial uses?

Summary of Specific Monitoring Programs

The water monitoring program is managed within two sections at the DEQ Laboratory: the Surface Water monitoring section and Biomonitoring section. Between these two sections hundreds of samples and thousands of analyses are conducted each year on large streams and rivers, small streams, and coastal estuaries. The monitoring strategy combines both targeted long-term monitoring sites with probabilistic or randomly selected sites. Specific monitoring activities of each section can be summarized as follows:

Surface Water Monitoring

- **Ambient River Monitoring Network:** A targeted network of 156 sites located statewide. Sites are sampled for conventional water chemistry for long-term water quality trending (some sites have been sampled since the 1940's) and standards compliance.
- **Watershed Assessments:** Intensive assessments are conducted at a watershed level to characterize water quality conditions and to determine cause and effect relationships. Most watershed assessments are conducted for the purpose of developing Total Maximum Daily Loads (TMDL's) as required by the Clean Water Act for streams that do not meet water quality standards (water quality limited).

- Estuary monitoring: First, estuaries are monitored for bacteria in cooperation with the Oregon Department of Agriculture, which administers the shellfish sanitation program for Oregon. Second, special studies have been completed in Coos Bay to address toxic concerns related to Tributyltin (TBT), PAHs and metals. Coos Bay has a shellfish consumption advisory posted for certain areas because of TBT contamination in shellfish tissue. In addition Tillamook Bay is the focus of a TMDL assessment study. A model is being developed for the bay as part of the TMDL management process. Additional TMDL work for bacteria is being conducted in the Nestucca and Nehalem estuaries. Finally, in 1999 DEQ received funding from EPA to conduct monitoring as part of the Western Pilot Coastal Environmental Monitoring and Assessment Program (CEMAP). Eighty sites from Oregon's estuaries were randomly selected for sampling. The sampling included water quality, sediment toxics, fish tissue toxics, benthic infauna, and fish species enumeration. Fifty additional sites were sampled from the Columbia River Estuary in 2000.

Biomonitoring

- Oregon Plan Work: The Oregon Plan funds positions at DEQ in the regions, headquarters and the water monitoring section at the lab for TMDL development. It also funds positions in the Biomonitoring section for stream assessment work as part of the interagency Oregon Plan monitoring effort.

The primary objective of the Oregon Plan Biomonitoring work is to determine the status and trends of stream conditions in areas with listed fish species. The studies include physical habitat, chemical, and biological (fish and macroinvertebrates) parameters. This work is focused on wadeable stream segments (1st, 2nd, and 3rd order streams), and uses a random site selection or "probability" sample design. This sampling design allows statistically valid estimates to be made of the number of stream miles within an ecoregion or basin that represent different stream conditions.

- EMAP Western Pilot Study: Since 1994 the Biomonitoring Section has received grant money from EPA to assess stream conditions (physical, chemical and biological parameters) within specific regions of the state. Projects completed to date include:
1994-1996: Oregon Coast Range ecoregion
1997-1998: Upper Deschutes Basin
1999-2000: Western Cascades ecoregion

In 2000, EPA began funding the EMAP (Environmental Monitoring & Assessment Program) Western Pilot Study. This is a five-year project designed to assess stream conditions from 12 western states. The monitoring approach is based on the random site selection method to provide status and trend information. The current Oregon portion of the project is composed of two parts: a statewide assessment and a more intensive assessment in the John Day Basin.

- Reference Site Studies: An important part of the bioassessment program is identifying and characterizing conditions at reference sites, sites with little or no human disturbance. The data from such reference sites provide a baseline for what expected or attainable conditions are for different regions or basins in the state. Because finding streams with minimal human disturbance is difficult, we have been developing methods to standardize the selection process. In 2000 EPA gave the Biomonitoring section a small grant to look at different approaches for identifying and selecting reference sites.
- Grande Ronde Long-term Restoration Assessment Study: Since 1993 the Biomonitoring section has been monitoring 11 sites on five streams in the Upper Grande Ronde Basin near LaGrande as part of a long-term restoration assessment study funded by the 319 program. The restoration work is focused on a one-mile section of McCoy Creek that was historically wet meadow habitat, but was altered through grazing and channelization. The stream is now being diverted back into some historical meandering channels, and wetland recovery is being encouraged through grazing management and riparian plantings. We have been monitoring the habitat, water chemistry (especially stream temperature), and biological communities (macroinvertebrates and fish), in McCoy Creek and selected reference and control sites in the area to evaluate the effectiveness of the restoration work.

Other Monitoring Program Related Activities

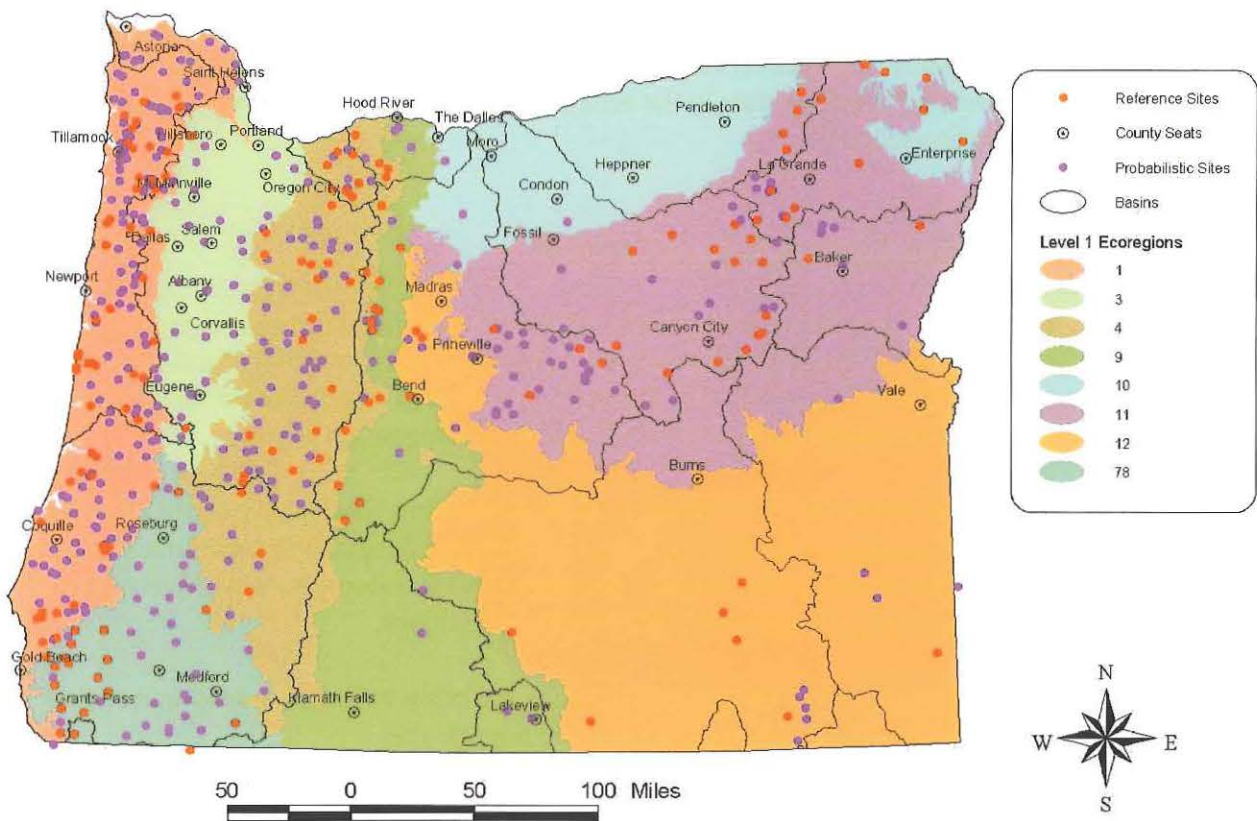
- Numeric Biocriteria Development – Numeric biocriteria are now being developed as part of the current triennial standards review. Narrative biocriteria were adopted by DEQ in 1991. The numeric criteria will clarify the methods and approach for applying biological standards in Oregon's waters.
- Technical Assistance & Training – Both monitoring sections regularly provide technical assistance to other sections of DEQ and the public concerning stream assessment methods and results. We also provide training to watershed councils and other groups interested in monitoring techniques.
- Spill Response – The monitoring sections are often called in to help investigate the impacts of spills that may be toxic to aquatic life.
- Permit Evaluations – When needed the monitoring sections provide input on point source permits such as, NPDES and 401 permits.
- Toxics – Recent toxics monitoring has concentrated on pesticides in the Hood River watershed. Several pesticides have been detected in the surface waters there, with Methyl Azinphos detected at concentrations exceeding surface water toxics criteria. Also, follow-up monitoring of fish tissue for mercury continues in

the Willamette basin where several fish consumption mercury advisories are posted.

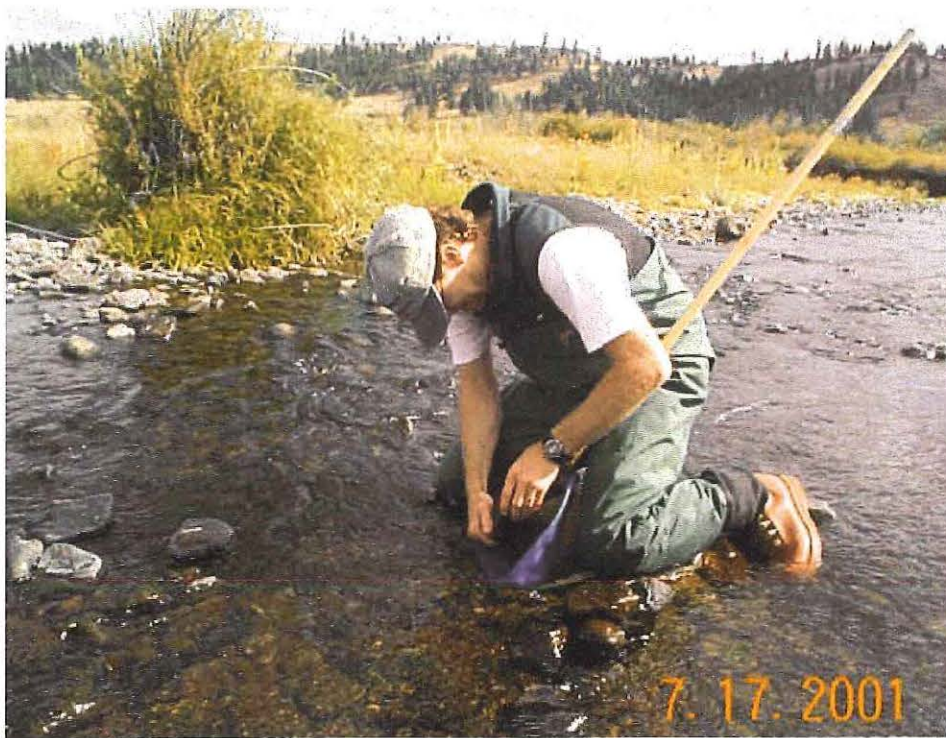
Reports

Numerous monitoring reports are available on DEQ's laboratory web page at: <http://www.deq.state.or.us/lab/lab.htm>

Oregon DEQ Biomonitoring Sites



Macroinvertebrate Sampling

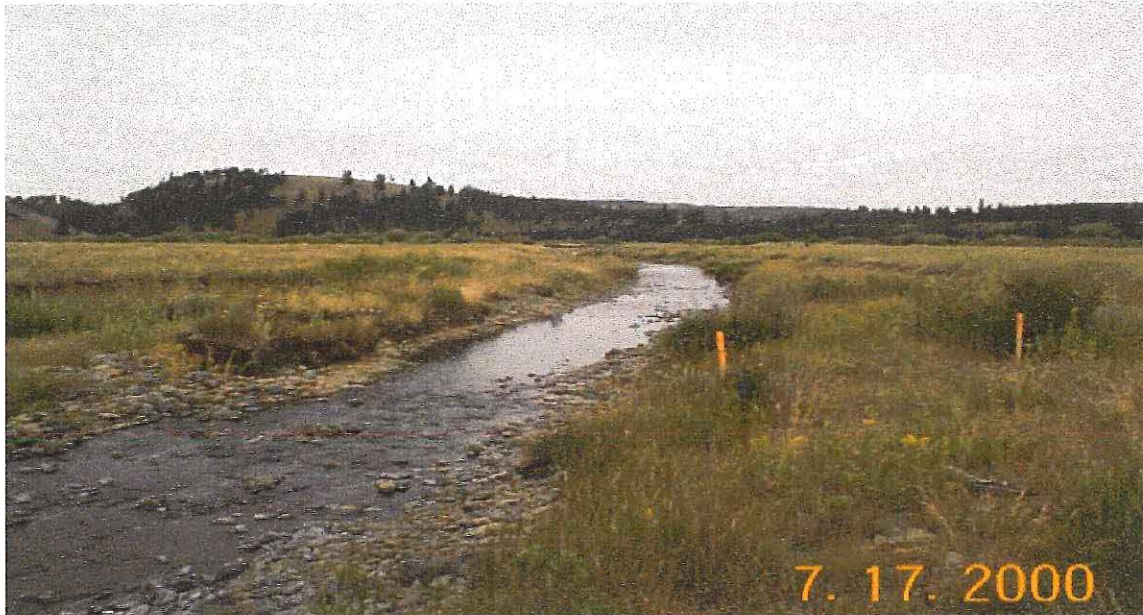


Fish Sampling



Grande Ronde River Restoration Study

McCoy Creek: Un-restored Reach
*McCoy Creek below restored reach. Example
of conditions before restoration.*



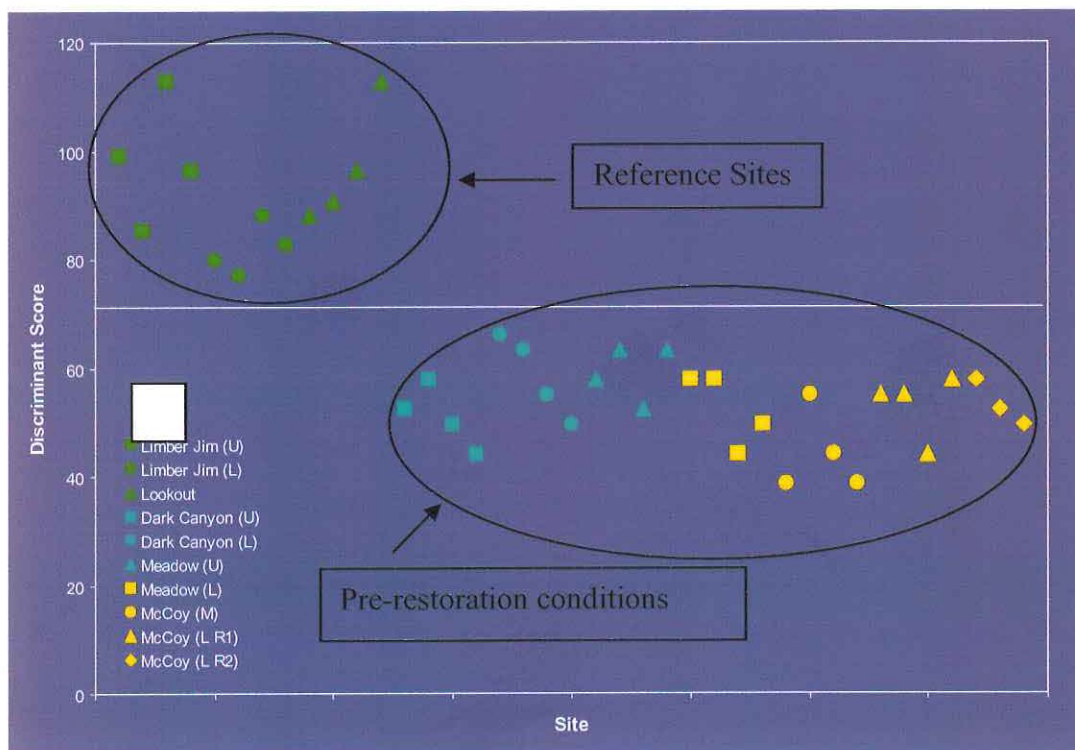
McCoy Creek: Restored Reach
*Restored reach showing conditions after
restoration.*



Reference Site



Macroinvertebrate Results



Baseline conditions show impaired invertebrate communities prior to restoration relative to reference sites in the basin. Following restoration invertebrate communities at restored reaches should resemble reference sites.

Projected Timeline for DEQ/PHL Laboratory Relocation

Updated July 3, 2002

July 2002

Concept agreement between DEQ and Department of Human Services on a joint facility
Development of criteria for the property Request for Proposals (RFP)

August 2002

Budget submittals for '2003-'2005 rent increases
DAS submits policy package for property acquisition and construction

September 2002

Publish RFP to solicit potential properties to purchase

4th Quarter 2002

Evaluate Property Responses
Select Finalists
Begin Due Diligence
DAS to go to November E-Board to request option funds to hold property until July 2003

1st Quarter 2003

Legislative Session begins
Option Agreement signed for property acquisition

2nd Quarter 2003

Revised budget proposal to legislature to reflect exact costs

3rd Quarter 2003

Property Purchase finalized
Project Consultants selected for design of property renovation

4th Quarter 2003 – 3rd Quarter 2004

Design process to renovate property

3rd Quarter 2004

Construction/renovation begins
DEQ and the Oregon State Public Health Laboratory (PHL) submit policy packages for rent increase in new facility

October, 2005

DEQ and PHL occupy new laboratory

Assumptions:

DEQ and PHL will co-locate
Project will be a state-owned facility, leased to DEQ and PHL
An existing building will be located and redeveloped
Brownfield sites will be actively considered

Bring to court to file later

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of)	
	)	Final Contested
Brian Littleton, dba/	)	Case Hearing Order
Brian's Sewer & Septic Service,)	
)	
Petitioner	)	No. WQ/OI-ER-01-065

On July 25, 2002, the Environmental Quality Commission considered the appeal of Brian Littleton, dba/Brian's Sewer & Septic Service, to the Order issued by Hearing Officer Ken L. Betterton on November 30, 2001. The Commission considered the exceptions and brief submitted by the Petitioner and the brief submitted on behalf of the Department of Environmental Quality. The Commission also heard oral argument presented by Dorthy Littleton on behalf of the Petitioner and Bryan Smith, Environmental Law Specialist, on behalf of the Department.

The Commission affirms the Hearing Order in all respects and incorporates it herein as Attachment A.

Dated this 20th day of August, 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.

Attachment A

GENC8277

Ref No.: G60573
Case No: 01-GAP-00090
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: 11/30/01
Mailed by: DVL

HEARING DECISION

BRIAN H. LITTLETON, DBA
BRIAN'S SEWER & SEPTIC SERVICE
2252 VINE AVE
KLAMATH FALLS OR 97601 3463

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

BRYAN SMITH
811 SW 6TH AVE

PORTLAND OR 97204 1334

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

**STATE OF OREGON
BEFORE THE HEARING OFFICER PANEL
FOR THE ENVIRONMENTAL QUALITY COMMISSION**

IN THE MATTER OF:)	
	)	PROPOSED ORDER
)	
Brian Littleton, dba/Brian's	)	Hearing Officer Panel Case No. G60573
	)	Agency Case No. WQ/01-ER-01-065
Sewer & Septic Service,	)	KLAMATH COUNTY
)	
Respondent.)	

HISTORY OF THE CASE

The Department of Environmental Quality (DEQ) issued a Notice of Assessment of Civil Penalty pursuant to Oregon Revised Statutes (ORS), ORS 468.126 through 468.140, ORS Chapter 183, and Oregon Administrative Rules (OAR), OAR Chapter 340, Divisions 11 and 12, to Respondent Brian Littleton, doing business as Brian's Sewer & Septic Service, on June 15, 2001. The notice alleges that between July 1, 2000 through December 19, 2000, respondent violated ORS 454.695(1) and OAR 340-071-0600(2)¹ (*sic*) by performing sewage disposal services and representing himself to be in business to perform such services without first obtaining a valid sewage disposal service license from DEQ. The notice assesses a civil penalty in the amount of \$1,000.

On or about July 12, 2001 respondent filed a written answer and request for hearing.

A hearing was held in Klamath Falls, Oregon on November 6, 2001 before Ken L. Betterton, administrative law judge. Bryan Smith, environmental law specialist, represented DEQ. Brian Littleton appeared *pro se*. Angela Scott, Robert Baggett and Sandra McClure testified as witnesses for DEQ. Brian Littleton and Dorothy Littleton testified for the respondent.

I closed the record at the conclusion of the hearing on November 6, 2001 and took the case under advisement.

¹ The reference to subsection (2) is an obvious typographical error. It should read OAR 340-071-0600(1). Subsection (1) of OAR 340-071-0600 addresses the necessity of a valid license in order to operate. Subsection (2) addresses two types of license endorsements, installer or pumper, that may be issued. OAR 340-071-0600(2) read:

(2) Two types of license endorsements may be issued:

(a) Installer. * * *

(b) Pumper. * * *

EVIDENTIARY RULING

Administrative Law Judge Exhibits A through E, DEQ Exhibits 1 through 9, and respondent Exhibit 101 were admitted into the record without objection.

ISSUES

(1) Did respondent perform sewage disposal services or advertise or represent himself as being in the business of performing such services without first obtaining a license from DEQ, in violation of ORS 454.695 and OAR 340-071-0600(1)?

(2) If respondent performed such services or advertised or represent himself in business to perform such services without a valid license, what penalty, if any, should be imposed under OAR Chapter 340, Division 11 and 12?

FINDINGS OF FACT

(1) Brian Littleton (Littleton) has operated Brian's Sewer & Septic Service as a sole proprietorship in the Klamath Falls, Oregon area since the 1980s. He provides septic tank cleaning and pumping services to residences and businesses in the Klamath basin. Dorothy Littleton, Littleton's wife, also works in the business, answering the phone and keeping the firm's books. Littleton had a valid license with DEQ to operate his business through June 30, 1998.

(2) No person can legally perform sewage disposal services or advertise or represent themselves as being in the business of performing such services without first obtaining a business license from DEQ. In order to obtain a license, a person must, among other requirements, pay the appropriate license fee and show DEQ evidence of a valid bond. DEQ issues licenses for sewage disposal service businesses annually on a fiscal year basis from July 1 through June 30. Insurance companies generally issue bonds to sewage disposal service businesses for a three year period.

(3) In May 1998 Littleton's insurance agent notified him in writing that his bond would be cancelled shortly due to his failure to pay his bond renewal premium. (Ex. 5 at 3.) Littleton was in the process in 1998 of changing insurance agents to obtain his bond. Littleton did not secure a bond and pay the bond premium for the time period after mid 1998, until early December 2000, when DEQ notified him that he would be cited for operating his business without a license.

(4) Littleton paid a license renewal fee of \$190 to DEQ in early July 1998 for the July 1998 through June 1999 licensure period. DEQ cashed Littleton's check, but did not issue Littleton a license for that period because Littleton did not provide evidence of a valid insurance bond. Littleton had no valid license from DEQ to operate his business for the July 1998 through June 1999 license period.

(5) Littleton mailed a sewage license renewal packet to DEQ, including a check for \$190 for the license renewal fee, prior to July 1, 1999 for the July 1999 through June 2000 licensure period. (Ex. 101.) DEQ cashed Littleton's \$190 check. On July 27, 1999 DEQ mailed a notice to Littleton informing him that his license renewal application was incomplete, that his license could not be issued, that he needed to mail additional money to apply for a new license, rather than for a license renewal because he had not been issued a license for the previous year, and that DEQ had no record of a valid bond for his business. (Ex. 7.) DEQ mailed the notice to Littleton at his correct business address on file with DEQ. The U.S. Postal Service did not return the notice DEQ mailed to Littleton as not deliverable. Littleton did not secure a bond and did not respond to DEQ's July 27, 1999 notice. Sometime in August or September 1999 DEQ mailed stickers for Littleton to put on his pump truck. DEQ should not have mailed respondent those stickers because he lacked a valid license to operate his business. Littleton had no valid license from DEQ to operate his business for the July 1999 through June 2000 license period.

(6) On October 22, 1999 DEQ mailed a copy of the July 27, 1999 notice to Littleton, with an additional handwritten note for Littleton to call DEQ about his license, or have his bond issued immediately. (Ex. 8.) DEQ mailed the October 22 notice to Littleton's correct business address. The U.S. Postal Service did not return the October 22 notice to DEQ as not deliverable. Littleton did not respond to the October 22 notice, nor did he secure a bond and provide evidence of the bond to DEQ.

(7) Littleton continued to operate his septic tank and sewage disposal business, advertise his business in the local telephone directory, and charge and collect fees from customers for his services after June 30, 1998 and through early December 2000. On November 16, 2000 Littleton pumped the septic tank for the Klamath Humane Society in Klamath Falls, and billed the society \$619 for his work. (Ex. 1.) The Klamath Falls Environmental Health Agency inspected the job and discovered that Littleton did not have a current license from DEQ to operate his business. The agency alerted DEQ, which started an investigation that led to the Notice of Assessment of Civil Penalty it issued to Littleton.

(8) Littleton secured a bond on December 8, 2000 and obtained a valid license from DEQ on December 19, 2000 to operate his sewage disposal business through June 30, 2001. (Ex. 9.)

(9) Dorothy Littleton had back surgery October 23, 2000. She remained in the hospital for a few days, then recuperated at home. Dorothy Littleton experienced health problems for several months leading up to her surgery in October 2000. She took medications both before and after her surgery that made her sleepy and lethargic. Because of her health problems, she did not pay as close attention to the business's correspondence and paperwork as she did when her health was better.

(10) Littleton believed he could operate his business after July 1999 because DEQ cashed his two license renewal checks, and because DEQ issued him stickers for his pump truck.

CONCLUSIONS OF LAW

(1) Respondent Littleton violated ORS 454.695(1) and OAR 340-071-0600(1) by performing sewage disposal services and by advertising his sewage disposal business between July 1, 2000 and December 19, 2000 without a valid license from DEQ.

(2) A \$1,000 civil penalty should be imposed against respondent.

OPINION

Oregon law requires that persons be licensed by DEQ to perform sewage disposal services or to advertise or purport to be in the business of performing such services.

ORS 454.695 provides:

(1) No person shall perform sewage disposal services or advertise or purport to be in the business of performing such services without first obtaining a license from the Department of Environmental Quality.

* * * * *

(3) Application for a license required under subsection (1) of this section must be accompanied by * * * the bond described in ORS 454.705.

* * * * *

ORS 454.705(1) states:

(1) An applicant for a license required by ORS 454.695 shall execute a bond in favor of the State of Oregon. * * *

OAR 340-071-0600(1) provides:

(1) No person shall perform sewage disposal services or advertise or represent himself/herself as being in the business of performing such services without first obtaining a business license from the Department. Unless suspended or revoked at an earlier date, a Sewage Disposal Service business license issued pursuant to this rule expires on July 1 next following the date of issuance. * * *

Respondent did not have a valid license during the period July 1, 2000 through December 19, 2000.²

DEQ issues licenses for persons to operate sewage disposal businesses annually to cover a license period for the fiscal year from July 1 through June 30. Applicants or licensees renewing their license must provide DEQ with evidence that their business is bonded.

² In fact, respondent lacked a valid license after June 30, 1998 until December 19, 2000. DEQ apparently chose not to assess civil penalties against respondent for those earlier two license periods, July 1998 through June 1999, and July 1999 through June 2000.

Respondent got off track in mid 1998 by not providing DEQ with evidence of his bond. Apparently respondent was in the process of changing his insurance company or purchasing a new bond, but failed to follow through with that effort and let his bond lapse. Respondent bears the responsibility, however, of making certain that his bond was in force and evidence of its validity properly submitted to DEQ.

Respondent argues that DEQ bears responsibility for his predicament because the agency cashed his license renewal checks in July 1998 and June 1999 and issued him stickers for his pump truck. However, respondent is responsible for making certain that all the requirements of his application for a license are in order each year. Although DEQ should not have issued the stickers for respondent's truck, DEQ did not issue a license to respondent in 1998 and 1999 because respondent did not comply with ORS 454.695(1) and OAR 340-071-0600(1) by providing evidence of a bond and paying the required license fee. Respondent needed a valid license in order to operate. Moreover, respondent presented no evidence that he mailed DEQ any license renewal fee prior to July 2000 for the license period beginning July 1, 2000, the time period encompassing the cited violation.

If DEQ had issued a license to respondent in 1998 and 1999, the license would have looked like the license the agency finally issued him in December 2000, as shown on Exhibit 9, that allowed him to operate legally after December 19, 2000. Respondent did not have a valid license for 1998 through 1999 and 1999 through 2000. However, DEQ has cited respondent only for operating without a valid license for the period July 2000 through early December 2000.

Respondent operated his business after July 1, 2000 by responding to calls for service, pumping septic tanks with his truck, collecting fees, and advertising his business. On November 16, 2000 he pumped a septic tank for the local humane society, which apparently triggered an inspection that led to the investigation resulting in the assessment of a civil penalty against respondent.

Respondent also argues that his wife's health problems were partly responsible for his failure to obtain a valid license. Respondent's wife had serious health problems during much of 2000, resulting in her back operation in October 2000. Respondent's wife keep the firms books. Her health problems no doubt distracted both respondent and his wife from tending to the firm's paperwork and books. However, respondent's license problem started long before mid 2000. DEQ mailed respondent two letters in 1999, on July 27 and on October 22, alerting respondent to the fact that his license and bond were not in order. Respondent had ample opportunity to correct the problem long before July 2000. Had respondent not allowed his bond and license to lapse before July 2000, he would have found it easier simply to renew his license for the July 2000 through June 2001 license period. Ultimately, respondent bears the responsibility for making certain that he has a valid license to operate his sewage disposal business each licensing period.

Respondent violated ORS 454.695(1) and OAR 340-071-0600(2) by operating his sewage disposal business without a license between July 1, 2000 and December 19, 2000.

CIVIL PENALTY

DEQ calculated the requested penalty of \$1,000 according to the factors set forth in Exhibit 1 to the Notice of Assessment of Civil Penalty. (Ex. B.)

Performing sewage disposal services without first obtaining a sewage disposal service license from DEQ is a Class I violation according to OAR 340-012-0060(1)(b).

The magnitude of the violation is minor pursuant to OAR 340-012-0045(1)(a)(ii)(B). The violation had no potential for, or actual adverse impact on the environment, and did not pose any threat to public health or other environmental receptors.

The formula for determining the amount of penalty of each violation is:

$$BP = [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$

“BP” is the base penalty which is \$1,000 for a Class I minor magnitude violation in the matrix listed in OAR 340-012-0042(1)(c).

“P” is respondent’s prior significant action(s) and receives a value of 0 according to OAR 340-012-0045(1)(c)(A)(i) and OAR 340-012-0030(14) because respondent has no prior significant actions.

“H” is the past history of respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of 0 according to OAR 340-012-0045(1)(c)(B)(ii) because respondent has no prior significant actions.

“O” is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 2 according to OAR 340-012-0045(1)(c)(C)(ii) because the violation existed for more than one day.

“R” is the cause of the violation and receives a value of 0 according to OAR 340-012-0045(1)(c)(D)(i) because of insufficient evidence upon which to make a determination.

“C” is respondent’s cooperativeness in correcting the violation and receives a value of -2 according to OAR 340-012-0045(1)(c)(E)(i) because respondent took reasonable action to correct the violation.

“EB” is the approximate dollar sum of the economic benefit that the respondent gained through noncompliance according to OAR 340-012-0045(1)(c)(F) and receives a value of 0 because of insufficient evidence upon which to make a determination.

Penalty Calculation:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 2 + 0 - 2)] + \$0 \\ &= \$1,000 + (\$100 \times 0) + \$0 \\ &= \$1,000 + \$0 + \$0 \\ &= \$1,000\end{aligned}$$

PROPOSED ORDER

I propose that the Commission enter an order finding that Respondent Brian Littleton, dba/Brian's Sewer & Septic Service, violated ORS 454.695(1) and OAR 340-071-0600(1), and impose a civil penalty in the amount of \$1,000.

Dated this 30th day of November, 2001.



Ken L. Betterton
Administrative Law Judge
Hearing Officer Panel

Appeal Procedures

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:

Stephanie Hallock, Director
Department of Environmental Quality
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

Proposed Order (DEQ)
Page 8
Brian Littleton, dba/Brian's
Sewer & Septic Service

Commission's meeting. The requirements for filing a petition, exceptions and briefs are set out in OAR 340-011-0132.

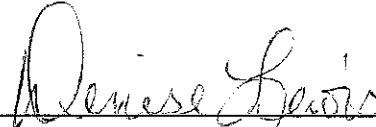
Unless you timely and appropriately file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Environmental Quality Commission 30 days from the date of service on you of this Proposed Order. If you wish to appeal the Final Order, you have 60 days from the date 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.*

STATE OF OREGON - HEARING OFFICER PANEL - EMPLOYMENT DEPARTMENT

Certificate of Service

County of Marion)
)
State of Oregon)

I certify that on 11/30/01 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.



Denise Lewis
Hearing Officer Panel

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 3, 2002
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item B: Contested Case No. WQ/OI-ER-01-065 regarding Brian Littleton, doing business as Brian's Sewer & Septic Service, July 25, 2002 EQC Meeting

Appeal to EQC On December 30, 2001, Brian Littleton appealed the Proposed Order (Attachment D) assessing him a \$1,000 civil penalty for performing sewage disposal services without first obtaining a sewage disposal service license from the Department.

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

Brian Littleton has operated Brian's Sewer & Septic Service as a sole proprietor in the Klamath Falls area since the 1980s.

It is illegal to perform sewage disposal services, or advertise or represent oneself as being in the business of performing such services without first obtaining a business license from the Department. To obtain a license, a person must, among other requirements, pay the appropriate license fee and provide evidence of a valid insurance bond. The Department issues licenses for sewage disposal service businesses annually on a fiscal year basis from July 1 through June 30.

Brian Littleton had a valid license with the Department to operate his sewage disposal services business through June 30, 1998. In May 1998, Mr. Littleton's insurance agent notified him in writing that his bond would soon be cancelled due to his failure to pay his bond renewal premium. Mr. Littleton did not secure a bond and did not pay the bond premium for the time period after mid-1998 until December 8, 2000. Mr. Littleton had no valid license from the Department to operate his business from July 1, 1998, through December 19, 2000.

Mr. Littleton continued to operate his sewage disposal services business, advertise his business in the local telephone directory, and charge and collect fees from customers for his services from July 1, 1998 and through early December, 2000.

On July 27, 1999, and October 22, 1999, the Department mailed notices to Mr. Littleton explaining that his license could not be issued, and that the Department did not have evidence of a valid insurance bond on file for his business. The letters were sent to Mr. Littleton's correct business address and were not returned to the Department.

On November 16, 2000, Mr. Littleton pumped the septic tank for the Klamath Humane Society in Klamath Falls, Oregon, and billed the society \$619 for his work.

On December 8, 2000, Mr. Littleton secured an insurance bond and on December 19, 2000, obtained a valid license from the Department to operate his business through June 30, 2001.

The Department issued a Notice of Noncompliance (NON, Attachment J.3.) to Mr. Littleton on January 25, 2001. The NON informed Mr. Littleton that performing sewage disposal services, and advertising or purporting to be in the business of performing such services, without first obtaining a license from the Department, is a Class I violation. The NON stated that the violation would be referred to the Department's Office of Compliance and Enforcement for enforcement action.

The Department issued a Notice of Civil Penalty Assessment (Attachment J.B.) on June 15, 2001, finding Mr. Littleton liable for a civil penalty in the amount of \$1,000 for the violation. On November 13, 2001, the Hearings Officer upheld the Department's finding and \$1,000 civil penalty.

In his appeal brief (Attachment F), Mr. Littleton took the following exceptions to the Proposed Order:

- 1) he did not receive notice from his insurance agent that his bond was due to be cancelled in the near future;
- 2) he had a valid bond through December 1998 and possibly into January 1999;
- 3) he did not receive the notices that the Department mailed him in July and October 1999; and
- 4) he believed he could operate the business because the Department cashed his checks for license renewals and issued vehicle tags to him for the 1999-2000 license year.

With his appeal brief, Mr. Littleton enclosed two exhibits: a copy of a \$100 check made out from Dorothy Littleton (Mr. Littleton's wife) to Midland Empire Insurance Agency and dated January 15, 1998, and photographs of vehicle tags on his truck for the license years of 1997-1998, 1999-2000, and 2000-2001.

In its reply brief (Attachment D), the Department argued that Mr. Littleton's exceptions relate to events that occurred prior to the time period for which the Department assessed the civil penalty, and therefore do not affect the Hearing Officer's finding that Mr. Littleton did not have a license during the 2000-2001

license period.

The Department also argued that Mr. Littleton improperly requested the Commission to admit new evidence that was not introduced at the hearing. Oregon Administrative Rule (OAR) 340-011-0132(4) requires that a request to present additional evidence must be submitted by motion and be accompanied by a statement specifying the reason for the failure to present the evidence to the Hearing Officer. Mr. Littleton's request did not comply with this requirement.

**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, uphold the Hearing Officer's Proposed Order finding that Mr. Littleton performed sewage disposal services, or advertised or represented himself as being in the business of performing such services, without first obtaining a business license from the Department and is liable for the \$1,000 civil penalty.
2. As requested by Mr. Littleton, reverse the Hearing Officer's decision, based on his exceptions and reasoning.
3. Uphold the Hearing Officer's decision but adopt different reasoning.
4. Remand the case to the Hearing Officer for further proceeding and to consider the new evidence.

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 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

¹ OAR 340-011-0132.

² Or Laws 1999 Chapter 849.

³ *Id.* at § 5(2); § 9(6).

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

Attachments The complete, official case record is attached.

- A. Letter from Mikell O'Mealy, dated June 14, 2002
- B. Appellant's Response Brief, dated April 10, 2002
- C. Letter from Stephanie Hallock, dated March 14, 2002
- D. Department's Reply Brief, dated March 13, 2002

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.

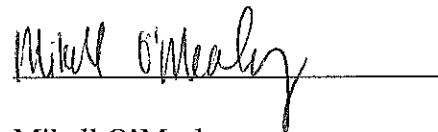
⁸ OAR 340-011-132(3)(a).

⁹ *Id.* at (4).

- E. Department's Amended Motion to Extend Time for Filing of Respondent's Brief, dated March 13, 2002
- F. Appellant's Exceptions and Brief, dated February 10, 2002
- G. Letter from Mikell O'Mealy, dated January 10, 2002
- H. Appellant's Petition for Commission Review, dated December 30, 2001
- I. Proposed Order for Assessment of Civil Penalty, dated November 30, 2001
- J. Exhibits from Hearing of November 6, 2001
 - A. Notice of Contested Case Rights
 - B. Notice of Assessment of Civil Penalty and Exhibit 1, dated June 15, 2001
 - C. Cover Letter to Notice of Assessment of Civil Penalty
 - D. Appellant's Answer and Appeal, dated July 13, 2001
 - E. Notice of Hearing, dated October 11, 2001
 - 1. Receipt for performing sewage disposal services at Klamath Humane Society, dated November 16, 2001
 - 2. Yellow pages phone book advertisement for Brian's Sewer & Septic Service
 - 3. Notice of Noncompliance, dated January 25, 2001
 - 4. Sandy McClure's phone log for December, 2000
 - 5. Faxes and letters from Midland Empire Insurance Agency
 - 6. Fax from Webb Wilson (Insurance company)
 - 7. Letter from the department to Mr. Littleton, dated July 27, 1999
 - 8. Letter from the department to Mr. Littleton, dated October 22, 1999
 - 9. License application information from Mr. Littleton
 - 101. Check Report

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

Report Prepared by:



Mikell O'Mealy
Assistant to the Commission
Phone: (503) 229-5301



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

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

~~March~~ June 14, 2002

Brian H. Littleton, DBA
Brian's Sewer & Septic Service
2252 Vine Ave.
Klamath Falls, OR 97601-3463

Bryan Smith
Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204-1334

RE: Case No. WQ/01-ER-01-065

The appeal in the above referenced matter has been set for the regularly scheduled Environmental Quality Commission meeting on Thursday, July 25, 2002. The matter will be heard in the regular course of the meeting. The meeting will be held at the Department of Environmental Quality headquarters building, room 3A, 811 S.W. Sixth Avenue, in Portland, Oregon. As soon as the meeting agenda and case record are available, I will forward those documents 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

**IN THE MATTER OF;
BRIAN LITTLETON,
dba/BRIAN'S SEWER & SEPTIC SERVICE**

PETITIONER

**No. WG/OI-ER-01-065
KLAMATH COUNTY**

By FAX: 503-229-6762

RESPONSE BRIEF

The petitioner wishes to object to the granting of the extension of time for the filing of the Department's Brief. "While the Department was in error, it contends the the error was harmless - - - -".

This action leaves the petitioner to assume that the errors of the Department are allowed to circumvent the law and the guidelines of the State of Oregon and the Department, and wonder if the petitioner would have been afforded the same consideration. From the position of the petitioner, this is the basis of the case before us. A "harmless error" on the part of the Department, which caused an "error" on behalf of the petitioner, which now the petitioner has been assessed a civil penalty.

IV. Arguments

A. Petitioner believes that his exceptions do challenge the Finding of Fact. As the exceptions relate to events that took place prior to the July 1, 2000 event. They are proof that the allegations testified to by the Department for the two (2) years previous were in "error".


Although, it may be expected that the "Petitioner is responsible for making certain that all the requirements of his application for a license are in order each year", it is also expected that when that Agency of the State of

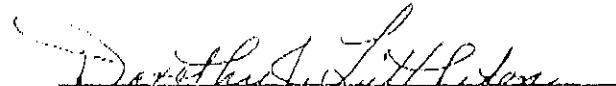
Oregon has a Department that licenses businesses for that Department, and has an application, certain, for that licensing, which makes changes in the application format, should send out that current application to the licensed businesses, as they had in previous years. But, the Department, did not send out the current application to the petitioner for the year in question. This, I can only assume was again a Department "error".

B. Petitioner did not improperly ask the commission to admit new evidence and evidence that is inconsistent. Petitioner presented physical evidence to rebut testimony that was presented by the Department at the hearing that was not stated in the original allegations and the petitioner had no opportunity to present evidence, except to verbally rebut, and thus was not considered in the Finding of Facts.

The Department testified that the Petitioner "was not licensed for the previous two (2) years" and that the tags and licenses that the petitioner received, "was sent out in error", although the Department cashed the checks and did not refund the fee's for the licensing of those two (2) years to the petitioner.

April 10, 2002


Brian Littleton


Dorothy Littleton



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

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

March 14, 2002

Brian H. Littleton, DBA
Brian's Sewer & Septic Service
2252 Vine Ave.
Klamath Falls, OR 97601-3463

Bryan Smith
Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204-1334

RE: Case No. WQ/01-ER-01-065

On March 13, 2002, the Environmental Quality Commission received a request for an extension of the deadline for filing briefs on behalf of the respondent in the above referenced case. The respondent's brief was due on March 10, 2002. Due to an error on the part of the respondent's representative, the brief was not filed until March 13, 2002. An extension of the deadline to March 13, 2002, has been granted. If you have any questions, please feel free to contact Mikell O'Mealy, Assistant to the Commission, at (503) 229-5301 or (800) 452-4011 ex. 5301 within the state of Oregon.

Sincerely,

Stephanie Hallock
Director

1 IV. ARGUMENTS

2 **A. Petitioner's exceptions do not challenge any Finding of Fact on which the**
3 **Hearing Officer's Proposed Order is based.** Petitioner makes five exceptions to the Hearing
4 Officer's Proposed Order. Petitioner's exceptions relate to alleged events that took place prior to
5 July 1, 2000, and his beliefs at that time, and do not address the 2000-2001 license period for
6 which the Department has assessed a civil penalty. Furthermore Petitioner's beliefs would only
7 relate to the mental state component, or "R" factor, of the Department's civil penalty assessment.
8 However, the R factor can not be reduced because the Department has already assessed
9 Petitioner the lowest R factor possible. As the Hearing Officer noted in the Opinion, Petitioner is
10 responsible for making certain that all the requirements of his application for a license are in
11 order each year. Petitioner also bears the responsibility for making certain that he has a valid
12 license to operate his sewage disposal business each licensing period. None of petitioner's
13 exceptions would change the Hearing Officer's findings that Petitioner did not have a license
14 during the 2000-2001 license period, and that the Department's assessment of a \$1,000 civil
15 penalty for providing sewage disposal services without a license during this time period is correct
16 and should be upheld.

17 **B. Petitioner improperly asks the Commission to admit new evidence and**
18 **evidence that is inconsistent with the Hearing Officer's Findings of Facts.** In his exceptions,
19 Petitioner requests that the Commission consider evidence that was not introduced at the Hearing,
20 evidence that was not included in the Findings of Facts, and evidence that is inconsistent with the
21 Findings of Facts. Regarding Petitioner's request to consider new evidence, OAR 340-011-0132(4)
22 requires that a request to present additional evidence must be submitted by motion and be
23 accompanied by a statement specifying the reason for the failure to present the evidence to the
24 hearing officer. Petitioner's requests do not comply with this requirement. Regarding Petitioner's
25 exceptions that are inconsistent with the Findings of Fact, OAR 137-003-0665(4) states that an
26 agency may modify a finding of historical fact made by the Hearing Officer only if the agency
27 determines the finding made by the Hearing Officer is not supported by a preponderance of the

1 evidence in the record. Petitioner has not shown why the Hearing Officer's Findings of Fact
2 were in error. For these reasons the Commission should not consider Petitioner's exceptions.

3
4 3/12/02
Date

Bryan Smith
Bryan Smith, Environmental Law Specialist

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:	)	AMENDED MOTION TO EXTEND
BRIAN LITTLETON,	)	TIME FOR FILING OF
dba/BRIAN'S SEWER & SEPTICE SERVICE,	)	RESPONDENT'S BRIEF
PETITIONER	)	No. WQ/OI-ER-01-065
		KLAMATH COUNTY

On November 30, 2001, the Commission's Hearing Officer issued a Proposed Order in the referenced case. Mr. Littleton timely filed a Petition requesting that the Commission review the Hearing Officer's Proposed Order. Mr. Littleton's Exceptions and Brief were also timely filed. that the Commission issue a Final Order upholding the Hearing Officer's Proposed Order.

The Department's Brief was due to be filed March 10, 2002. Due to an error on the part of the Department's lay representative, the Department's Brief was not filed until March 13, 2002.

Oregon Administrative Rule 340-011-132(3)(e) grants the Chair of the Commission or the Director of the Department unlimited discretion to grant extensions on the filings of briefs in Petitions for Commission Review. The Department moves the Chair and the Director to extend the deadline for filing of the Department's Brief to March 13, 2002. While the Department was in error, it contends that the error was harmless because the Petitioner was not prejudiced in any manner as a result of the late filing, nor were the proceedings in this case unduly delayed.

3/13/02
Date

Bryan Smith
Bryan Smith, Environmental Law Specialist

Brian's Sewer & Septic Service

Brian H. Littleton, Owner/Operator
 2252 Vine Avenue 541-882-6478
 Klamath Falls, OR 97601

Department of Environmental Quality
 811 SW Sixth Avenue
 Portland, OR 97204-1390

Att'n: Mikell O'Mealy
 Assistant to the Commission

Via FAX 503-229-6762

RE: Case No. WQ/01-ER-01-065

Under OAR 340-011-0132, we wish to file exceptions and brief.

We take exception to the FINDINGS OF FACT, No. 3, No. 4, No. 5, No. 6, No. 10.

No. 3: We received no notice from our insurance agent that our bond was shortly due to be canceled, as we had a valid bond at the running through December 1998, possibly into January 1999, Enclosed exhibit No. 1: copy of canceled check written to Midland Empire Insurance dated 1/15/98, deposited in their bank 1/30/98 for DEQ bond.

No. 4: We were issued the 1998-1999 license and tags for the truck as we had a valid bond at the time.

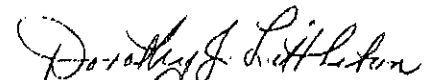
No. 5: To the best of my knowledge, we received no notice from the DEQ in July 1999. But, we did receive a phone call from Ms. Sandy McClure about July 7 to possibly July 10, 1999, informing us that the name on our application did not correspond with what was reportedly on the truck. It was said that the name on the truck was Brian's Septic Service, and our license said Brian's Sewer & Septic service. I had to go and take pictures of the truck and send them to Ms. McClure, to prove the truck said the same as our renewal application, Brian's Sewer & Septic Service. Nothing was said about our not having a valid bond.

No. 6: We did not receive a letter from the DEQ in October 1999. We did receive a phone call, About December 10 or 11, 1999, again from Ms. McClure, apologizing that the renewal had not been sent out yet. It was taking longer because everyone's renewal were being inspected for mistakes or omissions, and she asked if I knew our assumed business name had expired. I told her, no I did not know, that I would renew it immediately, Which I did with a check dated December 12, 1999. Nothing was said about our not having a valid bond.

No.10: We believed we could operate the business because DEQ cashed our check and we were issued tags for the 99-00 year, and the license was always included in the envelop with the tags. We were never informed that we did not have a valid license, until we received the summons or complaint from DEQ in early December 2000.

Enclosed are two (2) exhibits; 1.) Copy of check 2) picture of tags on the truck.


 Brian H Littleton


 Dorothy J. Littleton

Billing 541-884-9111
 OR CCB# 39964 PUC Auth. 32927

FAX 541-882-6351
 DEQ Permit# 36585

13916 01/30/98 20000648
41-883-3368
> 12000012 <
> 12000012 <
SOUTH VALLEY BANK TRUST
02-02-1998 10000001 8661-20-20

AGENCY
TRUST ACCOUNT
FUND

020470012
323070380 25
BOX 2225 SM 1ST FDX OR O
01301998 2094700101

BRIAN'S SEWER & SEPTIC SERVICE		WESTERN BANK	11206
BRIAN H. LITTLETON 2252 VINE AVE. (541) 882-6478 KLAMATH FALLS, OREGON 97601		KLAMATH FALLS, OREGON 97601-0234 96-45671282	
<i>Pay to the Order of</i>	Midland Empire Insurance Agency	1/15/98	\$****100.00
One hundred and 00/100*****		<i>Dollars</i> Security features included. Details on back	
Midland Empire Insurance 527 Main Street Klamath Falls, OR 97601-6031		Fidelity & Deposit Ins.	VOID IF NOT CASHED OR DEPOSITED WITHIN 90 DAYS
memo	Pol# 09947621	BKIA 11-1	<i>Dorothy J. Littleton</i>
⑆ 23204550⑆ 1206 4838593 1⑆ 01 ⑆00000⑆10000⑆			

13916 01/30/98 20000678
41-882-0366
1220010 >
1220010 <
SOUTH VALLEY BANK & TRUST
02-02-1998 100000010 8661-20-20

AGENCY
TRUST ACCOUNT

020470072
323070380 25
R04 2525 SM 1ST FDX CR D
01301998 2094700101

BRIAN'S SEWER & SEPTIC SERVICE		WESTERN BANK	11206
BRIAN H. LITTLETON 2252 VINE AVE. (541) 882-6478 KLAMATH FALLS, OREGON 97601		KLAMATH FALLS, OREGON 97601-0234 90-45611232	
<i>Pay to the Order of</i>	Midland Empire Insurance Agency	1/15/98	*****100.00
	One hundred and 00/100*****		<i>Dollars</i> Security features included. Details on back.
	Midland Empire Insurance 527 Main Street Klamath Falls, OR 97601-6031	Fidelity & Deposit Ins.	VOID IF NOT CASHED OR DEPOSITED WITHIN 90 DAYS
<i>memo</i>	Pol# 09947621	BRIAN 11-1	<i>Dorothy J. Littleton</i>
⑆ 123204550⑆ 1206 48385931⑆ 01 ⑆0000010000⑆			







Oregon

John A. Kitzhaber, M.D., Governor

January 10, 2002

Department of Environmental Quality

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

Via Certified Mail

Brian H. and Dorothy J. Littleton
DBA: Brian's Sewer and Septic Service
2252 Vine Avenue
Klamath Falls, OR 97601

RE: Case No. WQ/01-ER-01-065

Dear Mr. and Mrs. Littleton:

On January 2, 2002, 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. The hearing decision and Oregon Administrative Rules (OAR 340-011-0132) state that you must file exceptions and brief within thirty days from the filing of your request. However, because of my delay in getting this letter to you, I am extending the timeline for your submittal of exceptions and briefs to be thirty days from the date of this letter (i.e., submit by February 10, 2002). Your exceptions should specify the findings and conclusions that you object to in the Proposed Order and include alternative proposed findings. Once your exceptions have been received, or, if no exceptions have been received by February, 10, 2002, the Department will file an answer brief within thirty days. I have enclosed a copy of the applicable administrative rules.

To file exceptions and briefs, please mail these documents to Mikell O'Mealy, on behalf of the Environmental Quality Commission, at 811 SW 6th Avenue, Portland, Oregon, 97204, with copies to Bryan Smith, Department of Environmental Quality, at 811 SW 6th Avenue, Portland, Oregon, 97204.

After both parties file exceptions and briefs, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and I will notify you 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 503-229-5301 or 800-452-4011 ext. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy
Assistant to the Commission

cc: Bryan Smith



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



December 30, 2001

Stephanie Hallock, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204
FAX 503-229-6762

RE: Ref No.: G60573
Agency Case No. WQ/01-ER-01-065

Dear Ms.Hallock,

We wish to file a "Petition for Review" of the above case, under OAR 340-011-0132(1) and (2)

Thank You
Brian H. & Dorothy J Littleton
DBA: Brian's Sewer & Septic Service
2252 Vine Avenue
Klamath Falls, OR 97601
541-884-9111
541-882-6478
541-882-6351 FAX

Ref No.: G60573
Case No: 01-GAP-00090
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: 11/30/01
Mailed by: DVL

HEARING DECISION

BRIAN H. LITTLETON, DBA
BRIAN'S SEWER & SEPTIC SERVICE
2252 VINE AVE
KLAMATH FALLS OR 97601 3463

DEPT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE

PORTLAND OR 97204 1334

BRYAN SMITH
811 SW 6TH AVE

PORTLAND OR 97204 1334

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

**STATE OF OREGON
BEFORE THE HEARING OFFICER PANEL
FOR THE ENVIRONMENTAL QUALITY COMMISSION**

IN THE MATTER OF:)	
	)	PROPOSED ORDER
)	
Brian Littleton, dba/Brian's	)	Hearing Officer Panel Case No. G60573
	)	Agency Case No. WQ/01-ER-01-065
Sewer & Septic Service,	)	KLAMATH COUNTY
)	
Respondent.)	

HISTORY OF THE CASE

The Department of Environmental Quality (DEQ) issued a Notice of Assessment of Civil Penalty pursuant to Oregon Revised Statutes (ORS), ORS 468.126 through 468.140, ORS Chapter 183, and Oregon Administrative Rules (OAR), OAR Chapter 340, Divisions 11 and 12, to Respondent Brian Littleton, doing business as Brian's Sewer & Septic Service, on June 15, 2001. The notice alleges that between July 1, 2000 through December 19, 2000, respondent violated ORS 454.695(1) and OAR 340-071-0600(2)¹ (*sic*) by performing sewage disposal services and representing himself to be in business to perform such services without first obtaining a valid sewage disposal service license from DEQ. The notice assesses a civil penalty in the amount of \$1,000.

On or about July 12, 2001 respondent filed a written answer and request for hearing.

A hearing was held in Klamath Falls, Oregon on November 6, 2001 before Ken L. Betterton, administrative law judge. Bryan Smith, environmental law specialist, represented DEQ. Brian Littleton appeared *pro se*. Angela Scott, Robert Baggett and Sandra McClure testified as witnesses for DEQ. Brian Littleton and Dorothy Littleton testified for the respondent.

I closed the record at the conclusion of the hearing on November 6, 2001 and took the case under advisement.

¹ The reference to subsection (2) is an obvious typographical error. It should read OAR 340-071-0600(1). Subsection (1) of OAR 340-071-0600 addresses the necessity of a valid license in order to operate. Subsection (2) addresses two types of license endorsements, installer or pumper, that may be issued. OAR 340-071-0600(2) read:

- (2) Two types of license endorsements may be issued:
 - (a) Installer. * * *
 - (b) Pumper. * * *

EVIDENTIARY RULING

Administrative Law Judge Exhibits A through E, DEQ Exhibits 1 through 9, and respondent Exhibit 101 were admitted into the record without objection.

ISSUES

- (1) Did respondent perform sewage disposal services or advertise or represent himself as being in the business of performing such services without first obtaining a license from DEQ, in violation of ORS 454.695 and OAR 340-071-0600(1)?
- (2) If respondent performed such services or advertised or represent himself in business to perform such services without a valid license, what penalty, if any, should be imposed under OAR Chapter 340, Division 11 and 12?

FINDINGS OF FACT

- (1) Brian Littleton (Littleton) has operated Brian's Sewer & Septic Service as a sole proprietorship in the Klamath Falls, Oregon area since the 1980s. He provides septic tank cleaning and pumping services to residences and businesses in the Klamath basin. Dorothy Littleton, Littleton's wife, also works in the business, answering the phone and keeping the firm's books. Littleton had a valid license with DEQ to operate his business through June 30, 1998.
- (2) No person can legally perform sewage disposal services or advertise or represent themselves as being in the business of performing such services without first obtaining a business license from DEQ. In order to obtain a license, a person must, among other requirements, pay the appropriate license fee and show DEQ evidence of a valid bond. DEQ issues licenses for sewage disposal service businesses annually on a fiscal year basis from July 1 through June 30. Insurance companies generally issue bonds to sewage disposal service businesses for a three year period.
- (3) In May 1998 Littleton's insurance agent notified him in writing that his bond would be cancelled shortly due to his failure to pay his bond renewal premium. (Ex. 5 at 3.) Littleton was in the process in 1998 of changing insurance agents to obtain his bond. Littleton did not secure a bond and pay the bond premium for the time period after mid 1998, until early December 2000, when DEQ notified him that he would be cited for operating his business without a license.
- (4) Littleton paid a license renewal fee of \$190 to DEQ in early July 1998 for the July 1998 through June 1999 licensure period. DEQ cashed Littleton's check, but did not issue Littleton a license for that period because Littleton did not provide evidence of a valid insurance bond. Littleton had no valid license from DEQ to operate his business for the July 1998 through June 1999 license period.

(5) Littleton mailed a sewage license renewal packet to DEQ, including a check for \$190 for the license renewal fee, prior to July 1, 1999 for the July 1999 through June 2000 licensure period. (Ex. 101.) DEQ cashed Littleton's \$190 check. On July 27, 1999 DEQ mailed a notice to Littleton informing him that his license renewal application was incomplete, that his license could not be issued, that he needed to mail additional money to apply for a new license, rather than for a license renewal because he had not been issued a license for the previous year, and that DEQ had no record of a valid bond for his business. (Ex. 7.) DEQ mailed the notice to Littleton at his correct business address on file with DEQ. The U.S. Postal Service did not return the notice DEQ mailed to Littleton as not deliverable. Littleton did not secure a bond and did not respond to DEQ's July 27, 1999 notice. Sometime in August or September 1999 DEQ mailed stickers for Littleton to put on his pump truck. DEQ should not have mailed respondent those stickers because he lacked a valid license to operate his business. Littleton had no valid license from DEQ to operate his business for the July 1999 through June 2000 license period.

(6) On October 22, 1999 DEQ mailed a copy of the July 27, 1999 notice to Littleton, with an additional handwritten note for Littleton to call DEQ about his license, or have his bond issued immediately. (Ex. 8.) DEQ mailed the October 22 notice to Littleton's correct business address. The U.S. Postal Service did not return the October 22 notice to DEQ as not deliverable. Littleton did not respond to the October 22 notice, nor did he secure a bond and provide evidence of the bond to DEQ.

(7) Littleton continued to operate his septic tank and sewage disposal business, advertise his business in the local telephone directory, and charge and collect fees from customers for his services after June 30, 1998 and through early December 2000. On November 16, 2000 Littleton pumped the septic tank for the Klamath Humane Society in Klamath Falls, and billed the society \$619 for his work. (Ex. 1.) The Klamath Falls Environmental Health Agency inspected the job and discovered that Littleton did not have a current license from DEQ to operate his business. The agency alerted DEQ, which started an investigation that led to the Notice of Assessment of Civil Penalty it issued to Littleton.

(8) Littleton secured a bond on December 8, 2000 and obtained a valid license from DEQ on December 19, 2000 to operate his sewage disposal business through June 30, 2001. (Ex. 9.)

(9) Dorothy Littleton had back surgery October 23, 2000. She remained in the hospital for a few days, then recuperated at home. Dorothy Littleton experienced health problems for several months leading up to her surgery in October 2000. She took medications both before and after her surgery that made her sleepy and lethargic. Because of her health problems, she did not pay as close attention to the business's correspondence and paperwork as she did when her health was better.

(10) Littleton believed he could operate his business after July 1999 because DEQ cashed his two license renewal checks, and because DEQ issued him stickers for his pump truck.

CONCLUSIONS OF LAW

(1) Respondent Littleton violated ORS 454.695(1) and OAR 340-071-0600(1) by performing sewage disposal services and by advertising his sewage disposal business between July 1, 2000 and December 19, 2000 without a valid license from DEQ.

(2) A \$1,000 civil penalty should be imposed against respondent.

OPINION

Oregon law requires that persons be licensed by DEQ to perform sewage disposal services or to advertise or purport to be in the business of performing such services.

ORS 454.695 provides:

(1) No person shall perform sewage disposal services or advertise or purport to be in the business of performing such services without first obtaining a license from the Department of Environmental Quality.

* * * * *

(3) Application for a license required under subsection (1) of this section must be accompanied by * * * the bond described in ORS 454.705.

* * * * *

ORS 454.705(1) states:

(1) An applicant for a license required by ORS 454.695 shall execute a bond in favor of the State of Oregon. * * *

OAR 340-071-0600(1) provides:

(1) No person shall perform sewage disposal services or advertise or represent himself/herself as being in the business of performing such services without first obtaining a business license from the Department. Unless suspended or revoked at an earlier date, a Sewage Disposal Service business license issued pursuant to this rule expires on July 1 next following the date of issuance. * * *

Respondent did not have a valid license during the period July 1, 2000 through December 19, 2000.²

DEQ issues licenses for persons to operate sewage disposal businesses annually to cover a license period for the fiscal year from July 1 through June 30. Applicants or licensees renewing their license must provide DEQ with evidence that their business is bonded.

² In fact, respondent lacked a valid license after June 30, 1998 until December 19, 2000. DEQ apparently chose not to assess civil penalties against respondent for those earlier two license periods, July 1998 through June 1999, and July 1999 through June 2000.

Respondent got off track in mid 1998 by not providing DEQ with evidence of his bond. Apparently respondent was in the process of changing his insurance company or purchasing a new bond, but failed to follow through with that effort and let his bond lapse. Respondent bears the responsibility, however, of making certain that his bond was in force and evidence of its validity properly submitted to DEQ.

Respondent argues that DEQ bears responsibility for his predicament because the agency cashed his license renewal checks in July 1998 and June 1999 and issued him stickers for his pump truck. However, respondent is responsible for making certain that all the requirements of his application for a license are in order each year. Although DEQ should not have issued the stickers for respondent's truck, DEQ did not issue a license to respondent in 1998 and 1999 because respondent did not comply with ORS 454.695(1) and OAR 340-071-0600(1) by providing evidence of a bond and paying the required license fee. Respondent needed a valid license in order to operate. Moreover, respondent presented no evidence that he mailed DEQ any license renewal fee prior to July 2000 for the license period beginning July 1, 2000, the time period encompassing the cited violation.

If DEQ had issued a license to respondent in 1998 and 1999, the license would have looked like the license the agency finally issued him in December 2000, as shown on Exhibit 9, that allowed him to operate legally after December 19, 2000. Respondent did not have a valid license for 1998 through 1999 and 1999 through 2000. However, DEQ has cited respondent only for operating without a valid license for the period July 2000 through early December 2000.

Respondent operated his business after July 1, 2000 by responding to calls for service, pumping septic tanks with his truck, collecting fees, and advertising his business. On November 16, 2000 he pumped a septic tank for the local humane society, which apparently triggered an inspection that led to the investigation resulting in the assessment of a civil penalty against respondent.

Respondent also argues that his wife's health problems were partly responsible for his failure to obtain a valid license. Respondent's wife had serious health problems during much of 2000, resulting in her back operation in October 2000. Respondent's wife keep the firms books. Her health problems no doubt distracted both respondent and his wife from tending to the firm's paperwork and books. However, respondent's license problem started long before mid 2000. DEQ mailed respondent two letters in 1999, on July 27 and on October 22, alerting respondent to the fact that his license and bond were not in order. Respondent had ample opportunity to correct the problem long before July 2000. Had respondent not allowed his bond and license to lapse before July 2000, he would have found it easier simply to renew his license for the July 2000 through June 2001 license period. Ultimately, respondent bears the responsibility for making certain that he has a valid license to operate his sewage disposal business each licensing period.

Respondent violated ORS 454.695(1) and OAR 340-071-0600(2) by operating his sewage disposal business without a license between July 1, 2000 and December 19, 2000.

CIVIL PENALTY

DEQ calculated the requested penalty of \$1,000 according to the factors set forth in Exhibit 1 to the Notice of Assessment of Civil Penalty. (Ex. B.)

Performing sewage disposal services without first obtaining a sewage disposal service license from DEQ is a Class I violation according to OAR 340-012-0060(1)(b).

The magnitude of the violation is minor pursuant to OAR 340-012-0045(1)(a)(ii)(B). The violation had no potential for, or actual adverse impact on the environment, and did not pose any threat to public health or other environmental receptors.

The formula for determining the amount of penalty of each violation is:

$$BP = [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$

“BP” is the base penalty which is \$1,000 for a Class I minor magnitude violation in the matrix listed in OAR 340-012-0042(1)(c).

“P” is respondent’s prior significant action(s) and receives a value of 0 according to OAR 340-012-0045(1)(c)(A)(i) and OAR 340-012-0030(14) because respondent has no prior significant actions.

“H” is the past history of respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of 0 according to OAR 340-012-0045(1)(c)(B)(ii) because respondent has no prior significant actions.

“O” is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 2 according to OAR 340-012-0045(1)(c)(C)(ii) because the violation existed for more than one day.

“R” is the cause of the violation and receives a value of 0 according to OAR 340-012-0045(1)(c)(D)(i) because of insufficient evidence upon which to make a determination.

“C” is respondent’s cooperativeness in correcting the violation and receives a value of -2 according to OAR 340-012-0045(1)(c)(E)(i) because respondent took reasonable action to correct the violation.

“EB” is the approximate dollar sum of the economic benefit that the respondent gained through noncompliance according to OAR 340-012-0045(1)(c)(F) and receives a value of 0 because of insufficient evidence upon which to make a determination.

Penalty Calculation:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 2 + 0 - 2)] + \$0 \\ &= \$1,000 + (\$100 \times 0) + \$0 \\ &= \$1,000 + \$0 + \$0 \\ &= \$1,000\end{aligned}$$

PROPOSED ORDER

I propose that the Commission enter an order finding that Respondent Brian Littleton, dba/Brian's Sewer & Septic Service, violated ORS 454.695(1) and OAR 340-071-0600(1), and impose a civil penalty in the amount of \$1,000.

Dated this 30th day of November, 2001.



Ken L. Betterton
Administrative Law Judge
Hearing Officer Panel

Appeal Procedures

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:

Stephanie Hallock, Director
Department of Environmental Quality
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.*

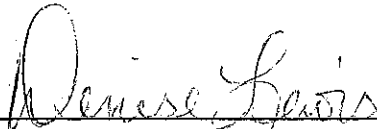
STATE OF OREGON - HEARING OFFICER PANEL - EMPLOYMENT DEPARTMENT

Certificate of Service

County of Marion)

)
State of Oregon)

I certify that on 11/30/01 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.



Denise Lewis
Hearing Officer Panel

CERTIFICATE OF MAILING

I hereby certify that I served ~~XXXX~~ _____

Notice of Assessment of Civil Penalty Case No. 70993220006489667370

BRIAN H LITTLETON
DBA BRIANS SEWER & SEPTIC SERVICE
252 VINE AVE
KLAMATH FALLS OR 97601

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 6/20/01

Amy Swolbert
Department of Environmental Quality

**EXHIBIT LIST
HEARING OFFICER PANEL**

Agency: PKQ Hearing Officer: KB
 Case Name: Brian's Sewer Service Agency Rep: _____
 Agency Case No.: _____ Respondent's Rep: _____
 Panel Case No.: G60573 Date of Hearing: 10-9-01

DEQ

Exhibit #	Description	Offered (✓)	Received (✓)
1	Receipt of Pumping	✓	✓
2	AL	✓	✓
3	1-25-01 Notice	✓	✓
4	Log	✓	✓
5	Faxes	✓	✓
6	FAX	✓	✓
7	letter	✓	✓
8	letter	✓	✓
9		✓	✓

DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS
IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING

EXHIBIT # A

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

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

1. Law that applies. The hearing is a contested case and it will be conducted under ORS Chapter 183 and Oregon Administrative Rules of the Department of Environmental Quality, Chapters 137 and 340.
2. Rights to an attorney. You may represent yourself at the hearing, or be represented by an attorney or an authorized representative, such as a partner, officer, or an employee. If you are a company, corporation, organization or association, you must be represented by an attorney or an authorized representative. Prior to appearing on your behalf, an authorized representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. About half of the parties are not represented by an attorney. DEQ will be represented by an Assistant Attorney General or an Environmental Law Specialist.
3. Hearings officer. The person presiding at the hearing is known as the hearings officer. The hearings officer is an employee of the Central Hearing Officer Panel under contract with the Environmental Quality Commission. The hearings officer is not an employee, officer or representative of the agency.
4. Appearance at hearing. If you withdraw your request for a hearing, notify either DEQ or the hearing officer that you will not appear at the hearing, or fail to appear at the hearing, a final default order will be issued. This order will be issued only upon a prima facie case based on DEQ's file. No hearing will be conducted.
5. Address change or change of representative. It is your responsibility to notify DEQ and the hearings officer of any change in your address or a withdrawal or change of your representative.
6. Interpreters. If you have a disability or do not speak English, the hearings officer will arrange for an interpreter. DEQ will pay for the interpreter if (1) you require the interpreter due to a disability or (2) you file with the hearings officer a written statement under oath that you are unable to speak English and you are unable to obtain an interpreter yourself. You must provide notice of your need for an interpreter at least 14 days before the hearing.
7. Witnesses. All witnesses will be under oath or affirmation to tell the truth. All parties and the hearings officer will have the opportunity to ask questions of all witnesses. DEQ or the hearings officer will issue subpoenas for witnesses on your behalf if you show that their testimony is relevant to the case and is reasonably needed to establish your position. You are not required to

issue subpoenas for appearance of your own witnesses. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage is your responsibility.

8. Order of evidence. A hearing is similar to a court trial but less formal. The purpose of the hearing is to determine the facts and whether DEQ's action is appropriate. In most cases, DEQ will offer its evidence first in support of its action. You will then have an opportunity to present evidence to oppose DEQ's evidence. Finally, DEQ and you will have an opportunity to rebut any evidence.

9. Burden of presenting evidence. The party who proposes a fact or position has the burden of proving that fact or position. You should be prepared to present evidence at the hearing which will support your position. You may present physical, oral or written evidence, as well as your own testimony.

10. Admissible evidence. Only relevant evidence of a type relied upon by reasonably prudent persons in the conduct of their serious affairs will be considered. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much the Commission will rely on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of DEQ and the hearings officer. DEQ or the hearings officer may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ or the hearings officer take "official notice" of any fact and you will be given an opportunity to contest any such facts.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written materials may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence if they are reliable.

11. Objections to evidence. Objections to the consideration of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

12. Continuances. There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. Please make sure you have all your evidence ready for the hearing. However, if you can show that the record should remain open for additional evidence, the hearings officer may grant you additional time to submit such evidence.

13. Record. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the hearings officer. A copy of the tape is available upon payment of a minimal amount, as established by DEQ. A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.

14. Proposed and Final Order. The hearing officer has the authority to issue a proposed order based on the evidence at the hearing. The proposed order will become the final order of the Environmental Quality Commission if you do not petition the Commission for review within 30 days of service of the order. The date of service is the date the order is mailed to you, not the date that you receive it. The Department must receive your petition seeking review within 30 days. See OAR 340-011-0132.

15. Appeal. If you are not satisfied with the decision of the Commission, you have 60 days from the date of service of the order, to appeal this decision to the Court of Appeals. See ORS 183.480 *et seq.*

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

EXHIBIT # B

IN THE MATTER OF:)
BRIAN LITTLETON,) NOTICE OF ASSESSMENT
dba/BRIAN'S SEWER & SEPTICE SERVICE,) OF CIVIL PENALTY
Respondent.) No. WQ/OI-ER-01-065
) KLAMATH COUNTY
)

I. AUTHORITY

This Notice of Assessment of Civil Penalty (Notice) is issued to Respondent, Brian Littleton, doing business as Brian's Sewer & Septic Service, by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

II. VIOLATION

From July 1, 2000, through December 19, 2000, Respondent performed sewage disposal services and purported to be in the business of performing such services without first obtaining a valid sewage disposal service license from the Department, in violation of ORS 454.695(1) and OAR 340-071-0600(2). Specifically, Respondent pumped a septic system on November 16, 2000, and maintained an advertisement for his sewage disposal business in a regional telephone directory. This is a Class I violation, pursuant to OAR 340-012-0060(1)(b).

III. ASSESSMENT OF CIVIL PENALTY

The Director imposes a \$1000 civil penalty for the violation cited 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.

///

///

1 IV. OPPORTUNITY FOR CONTESTED CASE HEARING

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

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

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

19 Send the request for hearing and Answer to: Deborah Nesbit, **Office of**
20 **Compliance and Enforcement, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

21 Following receipt of a request for hearing and an Answer, Respondent will be notified
22 of the date, time and place of the hearing.

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

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

27 ///

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

3 V. OPPORTUNITY FOR INFORMAL DISCUSSION

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

7 VI. PAYMENT OF CIVIL PENALTY

8 The civil penalty is due and payable ten (10) days after an Order imposing the
9 civil penalty becomes final by operation of law or on appeal. Respondent may pay
10 the penalty before that time. Respondent's check or money order in the amount of
11 \$1000 should be made payable to "State Treasurer, State of Oregon" and sent to the
12 **Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue,**
13 **Portland, Oregon 97204.**

14
15 6-15-01
16 Date

15 Stephanie Hallock
16 Stephanie Hallock, Director

EXHIBIT 1

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

VIOLATION: Performing sewage disposal services without first obtaining a current sewage disposal service license from the Department.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0060(1)(b).

MAGNITUDE: The magnitude of the violation is minor, pursuant to OAR 340-012-0045(1)(a)(ii)(B). 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.

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 that is \$1,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0042(1)(c).

"P" is Respondent's prior significant actions and receives a value of 0 as Respondent has no prior significant actions as defined in OAR 340-012-0030(14).

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant actions 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 2 as the violation existed for more than one day.

"R" is the cause of the violation and receives a value of 0 as there is insufficient information to make a finding.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of -2 as Respondent took reasonable affirmative efforts to correct the violation.

"EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of \$0.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB \\ &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 2 + 0 - 2)] + \$0 \\ &= \$1,000 + (\$100 \times 0) + \$0 \\ &= \$1,000 + \$0 + \$0 \\ &= \$1,000 \end{aligned}$$



Oregon

John A. Kitzhaber, M.D., Governor

June 15, 2001

Department of Environmental Quality

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

CERTIFIED MAIL 70993220000489667370

Brian H. Littleton
dba/Brian's Sewer and Septic Service
252 Vine Avenue
Klamath Falls, Oregon 97601

EXHIBIT # *C*

Re: Notice of Assessment of Civil Penalty
No. WQ/OI-ER-01-065
Klamath County

In response to an inquiry from Klamath County Environmental Health Division, the Department discovered that you pumped at least one septic tank (for the Klamath Humane Society) and advertised in a regional phone directory as being in the business of performing sewage disposal services during a period in which you were not licensed. According to the Department's records, you were not licensed or bonded as a sewage disposal service provider from July 1, 2000 until you obtained a license on December 19, 2000. On January 25, 2001, the Department issued you a Notice of Noncompliance.

Performing sewage disposal services, or advertising or purporting to be in the business of performing such services, without first obtaining and maintaining a current license from the Department, is a violation of Oregon Revised Statute (ORS) 454.695(1) and Oregon Administrative Rule (OAR) 340-071-0600(2).

The Department requires persons performing sewage disposal services to be licensed and bonded in order to ensure the protection of the public's health and the environment. Licensed on-site sewage disposal service providers are tested to assure knowledge of correct materials and proper construction practices, as well as proper and environmentally sound sewage management. The Department cannot verify knowledge of unlicensed providers. Also, unlicensed providers may gain an economic advantage over competitors by avoiding the licensing and bonding fees.

The enclosed Notice assesses a civil penalty of \$1,000 for performing sewage disposal services without a valid license. The amount of the penalty is determined by procedures set forth in 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 within twenty (20) days to either pay or appeal the penalty, a Default Order will be entered.



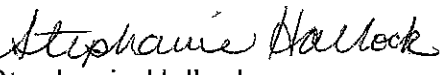
Brian H. Littleton
Case No. WQ/OI-ER-01-065
Page 2

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

Copies of referenced rules are enclosed. If you have any questions about this action, please contact Jane Hickman with the Department's Office of Compliance and Enforcement in Portland at 229-5555 or toll-free at 1-800-452-4011, extension 5555.

I look forward to your cooperation in complying with Oregon's environmental laws in the future.

Sincerely,


Stephanie Hallock
Director

Enclosures

cc: Robert Baggett, Eastern Region, Bend Office, DEQ
Joni Hammond, Eastern Region, Pendleton Office, DEQ
Water Quality Division, DEQ
Klamath County Environmental Health Division
Department of Justice
Environmental Protection Agency
Environmental Quality Commission
Klamath County District Attorney

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

ANSWER

EXHIBIT # D

IN THE MATTER OF:
BRIAN LITTLETON
dba/BRIAN'S SEWER & SEPTIC SERVICE,
Respondent.

NOTICE OF ASSESSMENT
OF CIVIL PENALTY
No. WQ/OI-ER-01-065
KLAMATH COUNTY

I. AUTHORITY

Agree

II. VIOLATION

Disagree

III. ASSESSMENT OF CIVIL PENALTY

Disagree

IV. OPPORTUNITY FOR CONTESTED CASE HEARING

Respondent contests this case in it's entirety and requests a formal hearing.

V. OPPORTUNITY FOR INFORMAL DISCUSSION

In addition, Respondent, also requests an informal discussion with the Department.

Written request is attached

VI. PAYMENT OF CIVIL PENALTY

Disagree

RECEIVED
JUL 13 2001
STATEWIDE ENFORCEMENT SECTION
DEPARTMENT OF ENVIRONMENTAL QUALITY

7-13-01
Date

Brian Littleton
Brian Littleton

Dorothy J. Littleton

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390

ANSWERED BY FAX: 503-229-6762

Re: NOTICE OF ASSESSMENT
OF CIVIL PENALTY
No. WQ/OI-ER-01-065
KLAMATH COUNTY

July 13, 2001

Dear Sir or Madam,

I wish to request an informal discussion or hearing with the
Department in the above titled case.

Thank You.

Brian Littleton Dorothy Littleton
Brian Littleton & Dorothy Littleton
DBA: Brian's Sewer & Septic Service
2252 Vine Avenue
Klamath Falls, OR 97601
541-882-6478
FAX 541-882-6351

RECEIVED
SEP 06 2001

Employment Hearings

Ref No: G60573
Agency Case No: WQQUIER-01065
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: 10/11/01
Mailed By: DVL

NOTICE OF HEARING

BRIAN H. LITTLETON, DBA
BRIAN'S SEWER & SEPTIC SERVICE
2252 VINE AVE
KLAMATH FALLS OR 97601 3463

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

BRYAN SMITH
811 SW 6TH AVE
PORTLAND OR 97204 1334

EXHIBIT # E

HEARING DATE AND TIME

TUESDAY, NOVEMBER 6, 2001
1:30 PM PT

HEARING PLACE

ENVIRONMENTAL HEALTH
305 MAIN ST
KLAMATH FALLS OREGON

ADMINISTRATIVE LAW JUDGE

BETTERTON

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

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

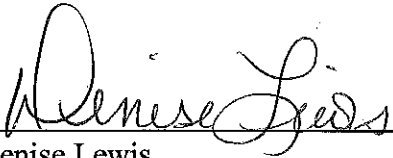
The issue(s) to be considered are:

SHALL THE DEPARTMENT OF ENVIRONMENTAL QUALITY NOTICE OF ASSESSMENT OF CIVIL PENALTY DATED JUNE 15, 2001 BE AFFIRMED, MODIFIED OR VACATED?

Certificate of Service

County of Marion)
)
State of Oregon)

I certify that on 10/11/01 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.



Denise Lewis
Hearing Officer Panel

(f) Ground and surface water conditions and variations therein from time to time.

(g) Climatic conditions.

(h) Present and projected availability of water from unpolluted sources.

(i) Type of and proximity to existing domestic water supply sources.

(j) Type of and proximity to existing surface waters.

(k) Capacity of existing subsurface sewage disposal systems. [1973 c.835 §216; 1975 c.167 §8]

454.695 License required to perform sewage disposal services; application. (1) No person shall perform sewage disposal services or advertise or purport to be in the business of performing such services without first obtaining a license from the Department of Environmental Quality.

(2) Application for a license required by subsection (1) of this section shall be made in writing in a form prescribed by the department and shall include the following information:

(a) The name and address of the applicant and of the person responsible for supervising the services;

(b) The location of the business of the applicant and the name under which the business is conducted; and

(c) Such other information as the department considers necessary to determine the eligibility of the applicant for the license.

(3) Application for a license required under subsection (1) of this section must be accompanied by the license fees prescribed in ORS 454.745 and by the bond described in ORS 454.705.

(4) The Environmental Quality Commission shall establish by rule the term of a license issued under this section and a method for determining the expiration date for a license issued under this section. The commission may provide for staggered expiration dates for licenses issued under this section.

(5) The commission may adopt rules prescribing the qualifications, training and education requirements of sewage disposal service license holders and workers and the registration of sewage disposal service workers. [1973 c.835 §217; 1977 c.828 §2; 1983 c.616 §3; 1991 c.598 §4; 1999 c.551 §10]

454.705 Bond; content; action on bond; notice of bond. (1) An applicant for a license required by ORS 454.695 shall execute a bond in favor of the State of Oregon. The bond shall be in the amount established by rule by the Environmental Quality Commission and shall be executed by the applicant

as principal and by a surety company authorized to transact a surety business within the State of Oregon as surety.

(2) The bond shall be filed with the Department of Environmental Quality and shall provide that:

(a) In performing sewage disposal services, the applicant shall comply with the provisions of ORS 454.605 to 454.755 and with the rules of the Environmental Quality Commission regarding sewage disposal services; and

(b) Any person injured by a failure of the applicant to comply with ORS 454.605 to 454.755 and with the rules of the commission regarding sewage disposal services shall have a right of action on the bond in the name of the person, provided that written claim of such right of action shall be made to the principal or the surety company within two years after the services have been performed.

(3) Every person licensed pursuant to ORS 454.695 shall deliver to each person for whom services requiring such license are performed, prior to the completion of such services, a written notice of the name and address of the surety company which has executed the bond required by this section and of the rights of the recipient of such services as provided by subsection (2) of this section. [1973 c.835 §218; 1975 c.171 §1; 1999 c.551 §11]

454.710 Deposit in lieu of bond. In lieu of the surety bond required by ORS 454.705, an applicant for a license required by ORS 454.695 may deposit, under the same terms and conditions as when a bond is filed, the equivalent value in cash or negotiable securities of a character approved by the State Treasurer. The deposit is to be made in a bank or trust company for the benefit of the Department of Environmental Quality. Interest on deposited funds or securities shall accrue to the depositor. [1981 c.148 §2]

454.715 Suspension or revocation of license. Subject to ORS 183.310 to 183.550, the Department of Environmental Quality at any time may suspend or revoke any license issued pursuant to ORS 454.695 if it finds:

(1) A material misrepresentation or false statement in the application for the license.

(2) Failure to comply with the applicable provisions of this chapter.

(3) Violation of any rule of the Environmental Quality Commission regarding sewage disposal services.

(4) The licensee was registered with the Construction Contractors Board at the time of licensing and such registration was revoked or suspended for a failure to comply with ORS 701.100 or 701.102 and rules adopted thereunder. [1973 c.835 §219; 1999 c.344 §6]

(f) Ground and surface water conditions and variations therein from time to time.

(g) Climatic conditions.

(h) Present and projected availability of water from unpolluted sources.

(i) Type of and proximity to existing domestic water supply sources.

(j) Type of and proximity to existing surface waters.

(k) Capacity of existing subsurface sewage disposal systems. [1973 c.835 §216; 1975 c.167 §8]

454.695 License required to perform sewage disposal services; application. (1) No person shall perform sewage disposal services or advertise or purport to be in the business of performing such services without first obtaining a license from the Department of Environmental Quality.

(2) Application for a license required by subsection (1) of this section shall be made in writing in a form prescribed by the department and shall include the following information:

(a) The name and address of the applicant and of the person responsible for supervising the services;

(b) The location of the business of the applicant and the name under which the business is conducted; and

(c) Such other information as the department considers necessary to determine the eligibility of the applicant for the license.

(3) Application for a license required under subsection (1) of this section must be accompanied by the license fees prescribed in ORS 454.745 and by the bond described in ORS 454.705.

(4) The Environmental Quality Commission shall establish by rule the term of a license issued under this section and a method for determining the expiration date for a license issued under this section. The commission may provide for staggered expiration dates for licenses issued under this section.

(5) The commission may adopt rules prescribing the qualifications, training and education requirements of sewage disposal service license holders and workers and the registration of sewage disposal service workers. [1973 c.835 §217; 1977 c.828 §2; 1983 c.616 §3; 1991 c.598 §4; 1999 c.551 §10]

454.705 Bond; content; action on bond; notice of bond. (1) An applicant for a license required by ORS 454.695 shall execute a bond in favor of the State of Oregon. The bond shall be in the amount established by rule by the Environmental Quality Commission and shall be executed by the applicant

as principal and by a surety company authorized to transact a surety business within the State of Oregon as surety.

(2) The bond shall be filed with the Department of Environmental Quality and shall provide that:

(a) In performing sewage disposal services, the applicant shall comply with the provisions of ORS 454.605 to 454.755 and with the rules of the Environmental Quality Commission regarding sewage disposal services; and

(b) Any person injured by a failure of the applicant to comply with ORS 454.605 to 454.755 and with the rules of the commission regarding sewage disposal services shall have a right of action on the bond in the name of the person, provided that written claim of such right of action shall be made to the principal or the surety company within two years after the services have been performed.

(3) Every person licensed pursuant to ORS 454.695 shall deliver to each person for whom services requiring such license are performed, prior to the completion of such services, a written notice of the name and address of the surety company which has executed the bond required by this section and of the rights of the recipient of such services as provided by subsection (2) of this section. [1973 c.835 §218; 1975 c.171 §1; 1999 c.551 §11]

454.710 Deposit in lieu of bond. In lieu of the surety bond required by ORS 454.705, an applicant for a license required by ORS 454.695 may deposit, under the same terms and conditions as when a bond is filed, the equivalent value in cash or negotiable securities of a character approved by the State Treasurer. The deposit is to be made in a bank or trust company for the benefit of the Department of Environmental Quality. Interest on deposited funds or securities shall accrue to the depositor. [1981 c.148 §2]

454.715 Suspension or revocation of license. Subject to ORS 183.310 to 183.550, the Department of Environmental Quality at any time may suspend or revoke any license issued pursuant to ORS 454.695 if it finds:

(1) A material misrepresentation or false statement in the application for the license.

(2) Failure to comply with the applicable provisions of this chapter.

(3) Violation of any rule of the Environmental Quality Commission regarding sewage disposal services.

(4) The licensee was registered with the Construction Contractors Board at the time of licensing and such registration was revoked or suspended for a failure to comply with ORS 701.100 or 701.102 and rules adopted thereunder. [1973 c.835 §219; 1999 c.344 §6]

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Received by (Please Print Clearly)	B. Date of Delivery 10-12-01
	C. Signature <i>Brian Littleton</i>		☐ Agent ☐ Addressee
1. Article Addressed to: BRIAN LITTLETON, DBA BRIAN'S SEWER & SEPTIC SERVICE 2252 VINE AVE KLAMATH FALLS OR 97601 3463	D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Article Number (Copy from service label) 39861115	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
Notice 660573	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, July 1999	Domestic Return Receipt	102595-00-M-0952

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Received by (Please Print Clearly) K-BOOK	B. Date of Delivery 10/12/01
	C. Signature <i>[Signature]</i>		☐ Agent ☐ Addressee
1. Article Addressed to: DEPT OF ENVIRONMENTAL QUALITY 811 SW 6 TH AVE PORTLAND OR 97204-1334	D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Article Number (Copy from service label) 39861122	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
Notice 660573	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, July 1999	Domestic Return Receipt	102595-00-M-0952

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Received by (Please Print Clearly) K-BOOK	B. Date of Delivery 10/12/01
	C. Signature <i>[Signature]</i>		☐ Agent ☐ Addressee
1. Article Addressed to: BRYAN SMITH DEPT OF ENVIRONMENTAL QUALITY 811 SW 6 TH AVE PORTLAND OR 97204-1334	D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Article Number (Copy from service label) 39861108	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
Notice 660573	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, July 1999	Domestic Return Receipt	102595-00-M-0952



Brian's

Sewer & Septic Service
 2252 Vine Avenue Klamath Falls, OR 97601
 800-726-6478 FAX 541-882-6351
 Billing 541-8849111
541-882-6478

Brian Littleton
 Owner/Operator
 DEQ Permit# 36585
 CCB# 39964

Invoice # 009258
 Date 11/16/2000

Bill To (Name) Klamath Homecare Society Job Site (Name) Lynn/Crystal
 Address 500 Miller Island Rd Address _____
 City Klamath Falls State OR 97603 City _____ State _____ Zip _____
 Phone(home) 273-4942 (work) 534-0117 Phone(home) _____ (work) _____

Job Description Clean out sewer line/s Pump septic tank/system and wash down septic tank (if needed)
 Labor or repair (as listed)

Comments pump stuck solids using as little water pressure as possible to break up solids to be pumped

Labor/Material Charges
 (opening/closing/repair or pipe thawing)
 Time: Start _____ m Finish _____ m
 Hr _____ Min. @ \$ _____ per hour = \$ _____
 Materials = \$ _____
TOTAL Labor Charges ----- \$ _____

Sewer Clean Out
 Time: Start _____ m Finish _____ m
 Time Charge (on ground level)
 Hr _____ Min. @ \$85 per hour = \$ _____
 Time Charge (after hours or on roof)
 Hr _____ Min. @ \$110 per hour = \$ _____
 Mileage Charge (Van)
 _____ miles @ \$2.00 per mile = \$ _____

Septic Tank Pumping
 Septage 1900 gal's. @ 25¢ per gal. = \$ 475.00
 Water/Mud _____ gal's. @ 30¢ per gal. = \$ _____
 ** Dumping 1600 gal's @ 6¢ per gal. = \$ 114.00
 ** (Minimum Dumping Charge for any amount under 917 gal's. = \$ 55.00)
 Handling/Transport Charge (Dumper)
6.2 = 12 miles @ \$2.50 per mile = \$ 30.00
TOTAL Pumping Charge ----- \$ 619.00

Time Charge (with Electric EEL)
 Hr _____ Min. @ \$135 per hour = \$ _____
 Mileage Charge (Van & Electric EEL)
 _____ miles @ \$2.25 per mile = \$ _____
TOTAL Clean Out Charge ----- \$ _____
TOTAL Labor Charges ----- \$ _____
TOTAL Pumping Charge ----- \$ 619.00
Sub Total ----- \$ 619.00

Pay From This Invoice

Date Paid _____ Cash _____
 Paid By: Ck# 9192 SOTA Ck# _____
 * Fill Out Installment Note if Any Balance Due

TOTAL DUE ----- \$ 619.00
AMOUNT PAID ----- \$ 619.00
*** BALANCE DUE** ----- \$ _____

Service Agreement

I authorize the described service and agree charges are due and payable on completion and I have received a copy of the Consumer Notification (on reverse side of this invoice). With the understanding and knowledge that when pumping a septic tank the **total gallonage pumped can exceed the septic tank capacity** from the draining of sewer lines and/or run back of fluid from the drainfield of excess ground water from whatever source and if the sludge is thick or hard, water may have to be added to facilitate pumping. **Credit is subject to these terms:**
 1. Any remaining balance is due and payable 30 days after completion or as agreed in installment note. 2. A finance charge of 2% per month will be added to any balance. 3. A \$25 charge will be added for any check returned for any reason. 4. If proceedings are instituted by an attorney or collection agency to collect any sum due, I shall pay any and all collection fees and such sum as shall be fixed by the Court of Jurisdiction for reasonable attorney's fees, including fees on appeal.

Signed Crystal Macdon Date 11-16-00 Signed _____ Date _____

DL# _____ SS# _____ DL# _____ SS# _____

SERVING KLAMATH & SURROUNDING AREAS SINCE 1979

Hukill's Ready Rooter & Repair Inc.



COMMERCIAL - RESIDENTIAL *We're the Specialists*

SEWER & DRAIN CLEANING

COMMERCIAL • RESIDENTIAL • MOBILE & MANUFACTURED HOMES

Locally Owned

WATER HEATERS
SEWER LINES • BATHTUBS
GREASE TRAPS • SINK DRAINS
TOILETS & LAUNDRY • DISPOSALS
SEPTIC SYSTEMS • ROOT PROBLEMS
STORM DRAINS • GAS LINES
WATER LEAKS
SPRINKLER SYSTEMS, ETC.

★ ★ ★ **EMERGENCY** ★ ★ ★
SEWER & DRAIN CLEANING

**HIGH PRESSURE
JETTER SERVICE
AVAILABLE**

CUSTOMERS
OF ALL FAITHS
WELCOME



**EXCAVATION SERVICES FOR
NEW INSTALLATION & REPAIR
OF SEWER LINES, SEPTIC
SYSTEMS, WATER LINES, ETC.**

DEQ # 36334 / STATE LIC. # 49225 / LIC. # 18-38PB

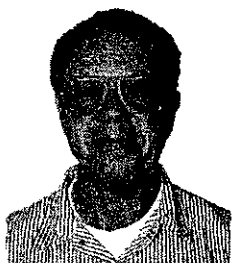
882-7813

Brian's

**SEWER & DRAIN
CLEANING**

**SEPTIC TANK PUMPING
& CLEANING**

SEWER & SEPTIC SERVICE



**BRIAN LITTLETON
OWNER - OPERATOR**
2252 VINE AVE

882-6478

OUTSIDE AREA
1-800-726-6478

- ★ **CLEANS ALL SEWERS & DRAINS** ★
ANY SIZE • ANY LENGTH
- ★ **COMMERCIAL • INDUSTRIAL • MUNICIPAL** ★
RENTALS • RESIDENTIAL
- ★ **SEPTIC LINES • PIPE THAWING** ★

**PROMPT ★ RELIABLE
EMERGENCY SERVICE**

*One Man
With One Goal,
To Get The
Problem Solved
As Quickly
As Possible*

EXHIBIT # _____

CELEBRATING
24 YEARS IN
THE KLAMATH BASIN

DEQ PERMIT # 36585
OR ST B.B. # 39964



2300 GALLON
VACUUM PUMPER



Plumbing, Drains & Sewer Cleaning

BIG ROOTER SEWER & DRAIN CLEANING 883-6111

Please See Ad on Opposite Page

BRIAN'S SEWER & SEPTIC SERVICE 882-6478
2252 Vine Ave

*Please See Advertisement This Page
(Continued Next Page)*

Don't march around all day looking for something you want to buy. A glance at the U S WEST Yellow Pages will nearly always show you who sells it.

*It's easier to
find what you're
looking for with
our new
section tabs!*

USWEST Dex





Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

2146 NE 4th Street, Suite 104

Bend, OR 97701

(541) 388-6146

January 25, 2001

CERTIFIED MAIL # Z 700 336 337

Eastern Region

Bend Office

Brian H. Littleton, dba
Brian's Sewer and Septic Service
252 Vine Ave.
Klamath Falls, OR 97601

EXHIBIT # 3

RE: **NOTICE OF NONCOMPLIANCE**
ERB-01-6333
Sewage Disposal Service License No. 36585

Dear Mr. Littleton:

Documents provided to us by the Klamath County Environmental Health Division have brought to our attention that you have been pumping septic tanks and advertising to provide such services during a period when you were not licensed. The specifics are as follows:

- The pumping out of a septic tank on November 16, 2000 for the Klamath Humane Society at 500 Miller Island Road south of Klamath Falls. Property is identified as T39S, R9E, S29, TL 500, Klamath County, Oregon. Documentation supporting this claim is an invoice for services, specifically Invoice # 009258 dated November 16, 2000.
- Advertisement on page 236 of the yellow pages under the category of "Septic Tanks & System Cleaning" in the Qwest/Dex phone Directory" for Klamath Falls and Surrounding Areas, Use Through August 2001.

Licensing records maintained at our Headquarters office in Portland indicate that you were not issued a license until December 19, 2000 and therefore operated without a license from July 1, 2000 until that time.

Performing sewage disposal services, or advertising or purporting to be in the business of performing such services, without first obtaining and maintaining a current license from the Department is a violation of Oregon Revised Statute (ORS) 454.695(1) and Oregon Administrative Rules 340-071-0600(1).

The statutes and rules for On-Site Sewage Disposal prescribe the requirements for the construction, alteration, repair, operation, and maintenance of on-site sewage disposal systems. They also require licensing for businesses performing sewage disposal services. The rules and licensing requirements provide guidance and knowledge of proper and environmentally safe sewage management. Their primary purpose is to restore and maintain the quality of public waters and to protect the public health and general welfare of people in the State of Oregon.

This is a **Class I Violation** and is considered to be a serious and significant 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 for each day of violation or for each infraction.

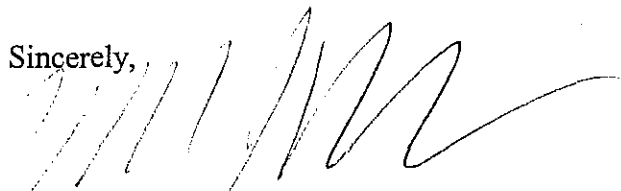


Brian H. Littleton, dba
Brian's Sewer & Septic Service
January 25, 2001
Page 2

Applications and questions about license requirements can be directed to the Department's licensing specialist, Sandra McClure, by calling 1-800-452-4011 or direct at 503-229-6402.

If you have any additional questions about this notice or other questions regarding the On-Site Sewage Disposal program please feel free to contact Robert Baggett in this office at 541-388-6146, ext. 230.

Sincerely,



Richard J. Nichols, Manager
Bend Water Quality Section
Eastern Region

RJN/RB/ns

Cc: DEQ Enforcement Section, NWR Portland
Sandra McClure – DEQ:WQ:
Robert Baggett - DEQ Bend
Klamath County Environmental Health Division

PHONE LOG FOR MONTH OF December, 2000

1 - Friday

EXHIBIT # 4

4 - Monday

Received a call from Bob Baggett, regarding Mountain Pacific Const. and Brian's Septic, license. I reviewed the files and noted that neither were currently licensed. I called and spoke with Dorothy Littleton of Brian's, explained the situation. Dorothy was sure they had obtained their license. I explained they did not have an active license because their bond had been cancelled and never reinstated or a new bond sent to us. She was sure they did get a new bond. At first, I asked her to look at her paperwork, to see if she could find the bond. Also if the trucks were inspected for this license year, where were the inspection forms. I did not send out the 00-01 application because they were not licensed. I called both Midland Empire Ins. regarding the cancelled bond (541) 882-3471, and the new agent Web Wilson Insurance Agency (541) 884-4147. Dorothy at Web Wilson, could not verify issuing any bonds through their agency. I called back and explained this to Dorothy Littleton, she was shocked.

Dorothy explained that she had a spinal fusion a few months ago, and has been pretty spacy due to taking pain medication for a couple of years.

I sent out an application packet, and asked them to get it back as soon as possible.

5 -Tuesday

6 -Wednesday

7 - Thursday

8 - Friday

Another conversation with Dorothy Littleton. She states they paid Midland Empire for a full year on the bond and received 6 months of coverage. Midland did not send a renewal notice for bond according to Dorothy.

Later in day, message from Brian...no answer when call returned.

11---Monday

12---Tuesday

Violence in the workplace presentation, 8 to noon, room 3-A

13---Wednesday

14---Thursday

Spoke with Brian Littleton, explained situation to him regarding the license, and why the fee was SO HIGH. The fee seemed to be a big issue. He was very polite, said he just wanted to get the facts straight...said he and Dorothy had had a big fight. Mentioned that Bob Baggett was hard to deal with...a very cold person. Mentioned he had spoken with the Garee's, from American Sanitation. Brian swears that they had the bond issued, that they had paid their fees, that Midland was always messing up so they changed to Webb Wilson. I did ask them to search their records, and to also contact each insurance agency and ask if any oversights had been made on the companies part. Brian also mentioned back when Darlene Hoge was processing licenses, that he remembers times when he didn't get an application in , but that she told him it was OK to pump until he did. For some reason this mindset has remained with the older guys

Call from Lydia Taylor...it appears Dorothy Littleton has been raising cane.

15---Friday

18---Monday

19---Tuesday

20---Wednesday

21---Thursday

22---Friday

25---Monday

26---Tuesday

FACSIMILE

Midland Empire Insurance Agency
527 Main Street
Klamath Falls, OR 97601
Phone: 541-882-3471
Fax: 541-883-8195

EXHIBIT # 5

TO:	Sandra McClure	FROM:	Annette Brieske
COMPANY:	Oregon DEQ		
INSURED:	Brian's Sewer & Septic Service		
Bond #:	09947621	PAGES SENT:	5
FAX #:	503-229-6037	DATE/TIME	12/18/00 7:59 AM
SUBJECT:	Brian's Sewer & Septic Service		

Dear Sandra,

Attached is a copy of the correspondence regarding this bond, as requested. As discussed, this bond cancelled for non-payment of premium on May 15, 1998.

Please let us know if you need anything else or have any questions.

Sincerely,

Annette Brieske for Liz Whisler



MIDLAND EMPIRE

Insurance Agency



527 Main Street
Klamath Falls, OR 97601-6088
Phone: (541) 882-3471
Fax: (541) 883-8195

220 N. G Street
Lakeview, OR 97630
Phone: (541) 947-2300

December 15, 1997

Brian's Sewer & Septic Service
Dorothy & Brian Littleton dba:
2252 Vine Street
Klamath Falls, OR 97601

RE: Company: Fidelity & Deposit Insurance
Policy#: 09947621
Effective 01/04/98 - 01/04/2001

Dear Brian & Dorothy,

Enclosed is the billing for renewal of the above Sewage Disposal Service Bond.

This Bond is continuous until cancelled; please let us know as soon as possible if renewal is not required or if you need to change the bond limit.

Sincerely,

Patricia E. Long, CPIW AAI



MIDLAND EMPIRE

Insurance Agency



527 Main Street
Klamath Falls, OR 97601-6089
Phone: (541) 882-3471
Fax: (541) 883-8195

220 N. G Street
Lakeview, OR 97630
Phone: (541) 947-2300

May 11, 1998

Brian's Sewer & Septic Service
Dorothy & Brian Littleton dba:
2252 Vine Street
Klamath Falls, OR 97601

RE: Sewage Disposal Bond #: 09947621
Company : Fidelity & Deposit Insurance
Effective Date Of Cancellation: Friday, May 15, 1998
Amount Needed To Prevent Cancellation: \$ 150.00

WARNING

YOU ARE ABOUT TO LOSE YOUR VALUABLE INSURANCE COVERAGE!

Dear Brian & Dorothy:

No doubt you have overlooked payment of the premium shown above. It is our sincere wish to extend you every courtesy, but at the same time our Insurance Companies insist that payments be made promptly.

TO AVOID CANCELLATION by the Insurance Company, please make your payment on or before the date indicated above. If you have already made payment, thank you and please disregard this notice.

If you have any questions, please call us as soon as possible.

Sincerely,

Lance Lesueur

May 18, 1998

Dorothy & Brian Littleton dba:
2252 Vine Street
Klamath Falls, OR 97601

RE: Bond Policy
Company : Fidelity & Deposit Insurance
Policy #: 09947621

Dear Brian & Dorothy:

Per our previous correspondence, we are proceeding with the cancellation of the above captioned Sewage Disposal Bond effective May 15, 1998. If you have any questions, please feel free to call our office.

Sincerely,

Lance Lesueur

June 4, 1998

Brian's Sewer & Septic Service
Dorothy & Brian Littleton dba:
2252 Vine Street
Klamath Falls, OR 97601

RE: Bond Policy
Policy #: 09947621
Company : Fidelity & Deposit Insurance
Effective Date Of Cancellation: 5/15/98
Reason For Cancellation: Non Payment of Premium

W A R N I N G

N O T I C E O F C A N C E L L A T I O N

Please note that the above captioned policy is hereby cancelled pursuant to the terms and provisions contained in said policy, such cancellation to take effect as stated above at 12:01 a.m. standard time at the place where said policy was countersigned.

If the premium has been paid, the premium for the unexpired term will be refunded. If the premium has not been paid, you will be billed for that portion earned to the time of cancellation.

Copy of Company Notice to State of Oregon DEQ is attached.

12/20/00 15:58

WEBB WILSON

FAX

EXHIBIT # 6

Date: 12/20/00
Number of pages including cover sheet: 1

To:

DEQ

Phone:

Fax phone:

cc: BRIAN LITTLETON

From:

MIKE

Phone: (541) 884-4147

Fax phone: (541) 884-2649

REMARKS: Urgent For your review Reply ASAP Please comment

ATT: SANDY

OUR FIRST NOTICE OF NEEDING A
DEQ BOND WAS 12/7/00

note - spoke with
12-5-01 Anna-Jill Wilson
has no bonds at all on file for
The Littletons SM

THANK YOU WEBB

Copy ✓

State of Oregon
Department of Environmental Quality
Sewage Disposal Service

Date: 7/27/99

- Brian & Dorothy Littleton
- 2252 Vine Ave
- Klamath Falls, OR 97601
-
-

EXHIBIT # 7

We have received an incomplete Sewage Disposal Licensing packet from you. Your license cannot be issued until we receive corrected or additional documents listed below:

Hello Folks! We have received a renewal application from you, along with a renewal fee, truck inspection forms, and SMP Inventory. Please note that this renewal application was to be completed only if the previous license was issued. You now need to submit an additional \$70.00 to apply for a new license.

WE STILL DO NOT HAVE A VALID BOND ON FILE FOR YOUR BUSINESS. PLEASE HAVE THE CANCELLED BOND REINSTATED, OR FILE A NEW BOND WITH US. YOU WILL NOT HAVE A LICENSE ISSUED UNTIL WE RECEIVE A VALID BOND.

Please take care of this immediately, if you intend to license. Your license could not be issued for last year, because we had no bond.

PLEASE RETURN REQUESTED ITEMS TO:

Sandra McClure
 Department of Environmental Quality
 Water Quality Division
 811 S.W. Sixth Avenue
 Portland OR 97204
 Phone: (503) 229-6402
 Or
 Toll Free 1-800-452-4011 x 6402

(Please leave your name and phone number; your call will be returned)

State of Oregon
Department of Environmental Quality
Sewage Disposal Service

Date: 7/27/99

- Brian & Dorothy Littleton
- 2252 Vine Ave
- Klamath Falls, OR 97601
-

Copy
Final Notification 10-22-99
Please call me regarding
this letter, or have your
Bond issued immediately.

We have received an incomplete Sewage Disposal Licensing packet from you. Your license cannot be issued until we receive corrected or additional documents listed below:

Hello Folks! We have received a renewal application from you, along with a renewal fee, truck inspection forms, and SMP Inventory. Please note that this renewal application was to be completed only if the previous license was issued. You now need to submit an additional \$70.00 to apply for a new license.

WE STILL DO NOT HAVE A VALID BOND ON FILE FOR YOUR BUSINESS. PLEASE HAVE THE CANCELLED BOND REINSTATED, OR FILE A NEW BOND WITH US. YOU WILL NOT HAVE A LICENSE ISSUED UNTIL WE RECEIVE A VALID BOND.

Please take care of this immediately, if you intend to license. Your license could not be issued for last year, because we had no bond *on file.*

EXHIBIT # 8

PLEASE RETURN REQUESTED ITEMS TO:

Sandra McClure
Department of Environmental Quality
Water Quality Division
811 S.W. Sixth Avenue
Portland OR 97204
Phone: (503) 229-6402
Or
Toll Free 1-800-452-4011 x 6402

(Please leave your name and phone number; your call will be returned)

Control Number
28908

DEPARTMENT OF ENVIRONMENTAL QUALITY
LICENSE FOR SEWAGE DISPOSAL SERVICE
LICENSE PERIOD: JULY 1, 2000 THROUGH JUNE 30, 2001

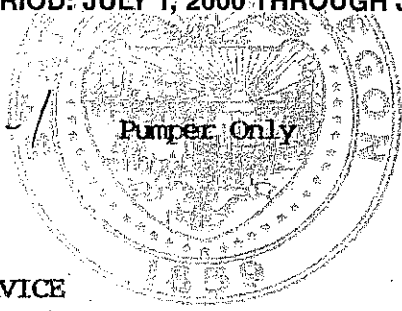
License Number

Individual

36585

P-1

Pumper Only



Brian H. Littleton, dba
BRIAN'S SEWER & SEPTIC SERVICE
2252 Vine Avenue
Klamath Falls, OR 97601

Payment Received:

12-19-00


License Issued:

12-19-00

License Expires:

JUNE 30, 2001

DIVISION COPY


MICHAEL T. LEWELYN, Administrator, Water Quality Division

DEQWQ-102 (10/00)

EXHIBIT # 9

PLN 36585

SUBMIT APPLICATION TO:

DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION
ON-SITE SEWAGE DISPOSAL PROGRAM
811 S.W. Sixth Avenue
Portland, OR 97204
(503) 229-6402 • 1-800-452-4011

APPLICATION FOR SEWAGE DISPOSAL SERVICE LICENSE
STATE OF OREGON

VADA332
#316

OFFICIAL DEQ USE ONLY	
VEHICLE INSP. FORM: <input checked="" type="checkbox"/>	
SEPTAGE MGMT. PLAN: <input checked="" type="checkbox"/>	
DATE PAID: DEC 19 2000	
AMT.: 800	CHK NO.: 1222
12-19-00	28908
DATE ISSUED:	CONTROL NUMBER
LICENSE NO.: 36585	

10-00

Use the attached instruction sheet as a guide in completing this form. Please print or type.

PLEASE READ CAREFULLY:

I HEREBY APPLY FOR A SEWAGE DISPOSAL SERVICE LICENSE. The license period is based upon the State's fiscal year, July 1 through June 30. Authority: Oregon Revised Statutes 454.695. (PLEASE NOTE: Your license may be valid for a short period of time, if you license just prior to June 30th. Licenses issued July 1st or after will be valid through next June 30th unless suspended or revoked.)

- NEW LICENSE FEE: \$800
- REINSTATEMENT OF SUSPENDED/REVOKED LICENSE FEE: \$250
- TRANSFER OR AMENDMENT OF EXISTING LICENSE FEE: \$200 (Former Business name was: _____)

PAYMENT UNDER PROTEST

Classification of Business: Individual Partnership Corporation L.L.C.

1. Exact Business or Corporate Name: _____ 2. Corp. No.: _____

3. Assumed Business Name: BRIAN'S SEWER & SEPTIC SERVICE

4. Mailing Address: 2252 VINE AVE KLAMATH FALLS, OR 97601

5. Business Location: _____

6. Telephone Number where you can be reached between 9:00 a.m. and 5:00 p.m.: Area Code: (504) 882-6478 OR 884-9111

7. BRIAN H LITTLETON
 First Name Middle Initial Last Name
2252 VINE AVE KLAMATH FALLS OR 97601 OWNER
 Address City State/Zip Title
DOROTHY J. LITTLETON
 First Name Middle Initial Last Name
2252 VINE AVE KLAMATH FALLS OR 97601 OWNER
 Address City State/Zip Title

8. Name of Authorized Representative for Partnership or Corporation:

First Name	Middle Initial	Last Name	Title	Phone Number
------------	----------------	-----------	-------	--------------

Please answer ALL of the following questions:

- A. Yes No Do you CONSTRUCT ON-SITE SEWAGE DISPOSAL SYSTEMS or any part thereof (including grading, excavating and earth moving activities associated with the construction of on-site sewage disposal systems)?
- B. Yes No Do you pump out or clean portable toilets? If yes, attach to this application a completed Sewage Pumping Equipment Description/Vehicle Inspection form for each vehicle.
- C. Yes No Do you pump septage (human waste) from septic tanks other treatment facilities, holding tanks, vault toilets, privies or cesspools? If yes, attach to this application a completed Sewage Pumping Equipment Description/Vehicle Inspection form for each vehicle.
- D. Yes No Do you clean septic tanks or other treatment facilities, holding tanks, vault privies or cesspools by means other than pumping? If yes, describe in detail: _____
- E. Yes No Do you use sewage pumping equipment to pump liquid and solid waste other than septage from industrial or commercial tanks, vaults, sumps or other facilities? If yes, attach a copy of the letter from the DEQ regional office that authorizes use of your pumping equipment for this activity.
- F. Yes No Do you use biological additives or chemicals to clean septic tanks? If yes, describe in detail: _____
- G. Yes No Do you clean effluent sewer or trench piping? If yes, describe method: SEWER SNAKES
- H. Yes No Do you advertise or purport to be in the business of providing any of the services described in A,B,C,D,E, or G? If yes, What method of advertising? BUSINESS CARDS / TELEPHONE BOOK Do you subcontract any of these services? _____
- I. Yes No Have you previously engaged in Sewage Disposal Service Business in Oregon? If yes, describe in detail: _____
- J. Yes No Is your \$2500 Service Disposal Service Bond or approved Equivalent Security valid through June 30th of the license year? _____

10. BY MY SIGNATURE, I CERTIFY THAT ALL INFORMATION PROVIDED WITH THIS APPLICATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.
Dorothy J. Littleton Signature OWNER Title 12-11-00 Date

Be sure you have completed this application and enclosed all required attachments before mailing it to the Department of Environmental Quality at address found in the upper left corner of this form. The non-refundable/non-proratable application fee must accompany this application. In addition, if you answered yes to questions B or C, you must also enclose a Sewage Pumping Equipment Description/Vehicle Inspection form (DEQ-WQ-WH823) for each of your pumping vehicles and a completed Septage Management Plan Worksheet form (DEQ-WQ-WH819).

NOTE: YOUR COMPLETED APPLICATION MUST BE RETURNED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

BINC

CORPORATION DIVISION
GENERAL INQUIRY

PAGE 1
12/20/00 15:30

727115-84 (ABN) BRIAN'S SEWER & SEPTIC SERVICE

SIC 4950 SANITARY SERVICES
STATUS: ACTIVE
LAST ACTION: 12/23/1999 NEW FILING

DOR 12/23/1999
FEE \$16.00

TRACE 12/23/1999

AUTHORIZED REP (12/23/1999)
DOROTHY J LITTLETON
2252 VINE AVE
KLAMATH FALLS OR 97601

PRINCIPAL OFFICE
2252 VINE AVE
*
KLAMATH FALLS OR 97601

REGISTRANT
DOROTHY J LITTLETON
2252 VINE AVE
KLAMATH FALLS OR 97601

REGISTRANT
BRIAN H LITTLETON
2252 VINE AVE
KLAMATH FALLS OR 97601

READY FOR NEXT TRANSACTION.

RETURN APPLICATION TO:

DEPARTMENT
OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION
ON-SITE SEWAGE
DISPOSAL PROGRAM
811 S.W. Sixth Avenue
Portland, OR 97204
(503) 229-6402 * 1-800-452-4011

SEWAGE PUMPING
EQUIPMENT DESCRIPTION/VEHICLE
INSPECTION FORM

STATE OF OREGON

DEQ USE ONLY

LICENSE NO.: 36585
TAG NO.: 316
NOTES:

APPLICANT - Please print legibly:

Complete this side of the form and have a representative from the Department of Environmental Quality or County Contract Agent inspect the vehicle and complete the back side. A separate form is required for each of your vehicles.

BRIAN'S SEWER & SEPTIC SERVICE BRIAN H. & DOROTHY J. LITTLETON
Exact Business Name Registered Owner of Pumping Equipment / Vehicle

<u>N/A</u> Name of Corporation or LLC, if Applicable	<u>YAPA 332 AUTH # 32927</u> Pumper Truck # Vehicle License Plate No.	Trailer License Plate No.
<u>5880 WASHBURN WAY / BUSINESS ADDRESS</u> Street Address Vehicle Normally Parked at Overnight	<u>OREGON</u> State	State
<u>KLAMATH FALLS</u> City	<u>OR 97601</u> State	Color
<u>(541) 882-6478 OR 541-884-9111</u> Business Phone	<u>GMC</u> Motor Vehicle Make	<u>RED/WHITE/BLUE</u> Color
	<u>2300 GAL</u> Tank's Septage Capacity - Gallons	Tank Trailer Septage Capacity - Gallons

CHECK APPROPRIATE BOX:

- Yes No
- 1. Is equipment used to clean chemical toilets? (Minimum pumping equipment tank capacity of 150 gallons)
 - 2. Is equipment used to pump septage (human waste) from septic tanks, holding tanks, vault toilets, privies, or other domestic sewage treatment facilities? (Minimum pumping equipment tank capacity of 550 gallons)
 - 3. Is equipment used to pump industrial or commercial tanks, vaults, sumps or other facilities containing liquid waste other than septage? If Yes, please provide current letter from the DEQ regional office that authorizes the use of your sewage pumping equipment in this manner, for the license period beginning on July 1. Please identify the non-septage liquid waste you plan to pump, transport, and dispose of: _____
 - 4. The sewage pumping equipment complies with the equipment specifications described in OAR 340-71-600?
 - 5. Is the exact business name on this form the same as on your license application?
 - 6. The exact name the business is conducted under is displayed on each side of the vehicle cab in letters three (3) or more inches high and in a contrasting color? If the septage tank is mounted on a trailer, the exact business name is displayed on each side of the tractor cab and each side of the trailer-mounted tank?
 - 7. The septage capacity of the tank is displayed on each side of the tank in letters three (3) or more inches high and in a contrasting color?
 - 8. Is this vehicle identified in your Septage Management Plan?
 - 9. Have you enclosed a letter from each Disposal Site/Facility listed in item No.10 documenting that septage will be received at that location from your business through the current license year?

10.	Disposal Site / Facility Name	Disposal Site / Facility Location
A.	<u>CITY OF DORRIS, CA 96023</u>	<u>DORRIS, CA / LAGOONS</u>
B.	_____	_____
C.	_____	_____
D.	_____	_____

BY MY SIGNATURE, I CERTIFY THE INFORMATION PROVIDED IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

Brian H. Littleton OWNER/OPERATOR 12-11-00
Signature Title Date

PRINT NAME: → → → → BRIAN H. LITTLETON

Attach this form to your license application or mail to the above address.

FOR DEPARTMENT OR CONTRACT AGENT USE ONLY

CE# 12214

CHECK APPROPRIATE BOX:

- | | | |
|--|-----------------------------|---|
| Yes, <input checked="" type="checkbox"/> | No <input type="checkbox"/> | 1. Vehicle description(s), license plate number(s), and business name listed on reverse side of this form correspond exactly with those on the vehicle(s) examined? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 2. The exact business name, as indicated on the front side of this form , is displayed on each side of the cab and each side of trailer mounted tank in letters three (3) inches in height and in a contrasting color ? |

IMPORTANT → a. Please **print** the business name you see on the vehicle(s), and the license plate number(s):

Brian's Sewer & Septic Service YAPA 332
Exact Business Name as Printed on Vehicle *Truck License No.* *Trailer License No.*

- | | | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 3. The tank capacity is printed on both sides of the tank in letters three inches in height and in a contrasting color? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 4. Tank — metal, watertight construction? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 5. Tank — provided with suitable covers to prevent spillage? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 6. Pump — self priming, <u>vacuum</u> ? If not vacuum — specify: _____ |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 7. Service hoses and caps for hoses provided? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 8. Adequate storage area for hoses provided? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 9. Vehicle hoses have been drained and are in good condition (not worn, leaking, or patched)? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 10. Discharge nozzle — located to prevent flow or drip onto pumping vehicle? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 11. Discharge nozzle — outlet orifice provided with threaded cap or camlock coupling? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 12. Discharge nozzle — protected from accidental damage or breakage? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 13. Spreader gates absent? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 14. Pumping vehicle equipped with pressurized washdown tank, disinfectant and cleanup implements? |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 15. Overall vehicle — clean sanitary appearance? |

COMMENTS:

I have completed an inspection of the vehicle described and have determined its markings, pumps, tanks, container, allied equipment and washdown furnishings comply with Section 340-71-600(10) and (12) and therefore recommend permission be granted to operate said equipment.

A. R. Burch
Signature of Authorized Agent

Registered Sanitarian
Title

KCEHD
Office

883-1122
Phone No.

12-12-00
Date

REMEMBER, ONLY SIGN IF VEHICLE COMPLIES WITH ALL OF THE ABOVE.

ATTACHMENT A
SEPTAGE MANAGEMENT ACTIVITIES INVENTORY
June 1, 1999 through May 31, 2000

Please Type or Print

1. _____ 2. 36585
Exact Business or Corporate Name DEQ License No.

3. BRIAN'S SEWER & SEPTIC SERVICE 4. 541-882-6478
Assumed Business Name Business Telephone No.

5. 2252 VINE AVE KLAMATH FALLS, OR 97601
Business Mailing Address

6. Authorized Business Representative: BRIAN H AND/OR DOROTHY J LITTLETON
First Name, Middle Initial, Last Name

OWNERS
Title

7. Number of months business operated during the 12-month period extending from June 1, 1999 through May 31, 2000. (Circle as appropriate)
12 mos. 10 - 11 mos. 8 - 9 mos. 6 - 7 mos. _____ mos.
Other

8. Number of pumping vehicles operated: ONE (1) vehicles.

9. Are interim storage/transfer facilities used for holding septage or other wastes pending disposal or application? Yes No If "yes", describe in detail:

- ◆ Location of facilities: _____
- ◆ Description of facilities: _____

10. If your business removes septage from septage storage/transfer facilities, and transports this septage to another location, please report the following:

- ◆ Describe the type of septage transported: _____
- ◆ Estimated volume transported from these facilities: _____ gallons.
- ◆ Location where septage was transported: _____

11. If land application sites are used, list the DEQ permit number for each site:
Site #1: DEQ Permit No. _____ Site: #2: DEQ Permit No. _____

12. Type and quantity of septage pumped (gal) in report period, and type of disposal or land application site where septages were deposited.

June 1, 1999 through May 31, 2000

Type of Septage	Total Volume Pumped*	Disposal Site/Facility			Land Application Site		
		Sewage Treatment Plant	Septage Lagoon	Other (Specify)	Pasture	Forest Land	Other (Specify)
Septic Tanks	159,274		CITY OF DORRIS, CA				
Holding Tanks							
Chemical Toilets							
Vault Toilets							
Other Liquid & Solid Waste	Restaurant Grease Traps						
	Car Wash Sumps						
	Community Pump/Lift Stations						
	Other (Specify) Commercial Process Water						
	Other (Specify)						

* This data is derived from the origin-destination records for the business.

Transaction Detail Report
 1/1/85 through 11/6/01

Date	Account	Num	Payee	Memo	Category	Amount
6/30/95	Brian's-Bill...	10...	Department of Environmental Quality	# 36585P-1	B-Cost of Se...	-190.00
7/5/95	Brian's-Bill...	6468	Klamath County Environmental Hea...	truck	B-Cost of Se...	-50.00
6/7/96	Brian's-Bill...	6653	Klamath County Environmental Hea...		B-Cost of Se...	-50.00
6/7/96	Brian's-Bill...	10...	Department of Environmental Quality	Permit # 36585P-1	B-Cost of Se...	-190.00
6/24/97	Brian's-Bill...	11...	Klamath County Environmental Hea...	Septic Truck Inspection	B-Cost of Se...	-80.00
6/29/97	Brian's-Bill...	11...	Department of Environmental Quality	Permit # 36585P-1	B-Cost of Se...	-190.00
7/8/98	Brian's-Bill...	7015	Klamath County Environmental Hea...		B-Cost of Se...	-80.00
7/9/98	Brian's-Bill...	11...	Department of Environmental Quality	Permit # 36585P-1	B-Cost of Se...	-190.00
6/30/99	Brian's-Bill...	11...	Klamath County Environmental Hea...	Septic Truck inspection	B-Cost of Se...	-80.00
6/30/99	Brian's-Bill...	11...	Department of Environmental Quality	Permit # 36585P-1	B-Cost of Se...	-190.00
12/11/00	Brian's-Bill...	12...	Klamath County Environmental Hea...	Septic tank pumper l...	B-Cost of Se...	-80.00
12/15/00	Brian's-Bill...	12...	Department of Environmental Quality	PAYMENT UNDERP...	B-Cost of Se...	-800.00
5/30/01	Brian's-Bill...	12...	Klamath County Environmental Hea...		B-Cost of Se...	-80.00
6/29/01	Brian's-Bill...	12...	Department of Environmental Quality		B-Cost of Se...	-400.00
Total 1/1/85 - 11/6/01						-2,650.00
Total Inflows						0.00
Total Outflows						-2,650.00
Net Total						-2,650.00

EXHIBIT # 101

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 8, 2002
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item C, Rule Adoption: Permanent Rules to Add Methane, Under Certain Conditions, to the List of Environmental Cleanup Hazardous Substances
July 25, 2002 EQC Meeting

Department Recommendation The Department recommends the Commission adopt the proposed permanent rule amendments as presented in Attachment A, and repeal the temporary rules these proposed amendments will replace.

Need for Rulemaking Methane gas, under certain conditions, has the potential to build up in confined spaces and create explosive risks. In the absence of rules, DEQ lacks regulatory authority to review and approve, order, or conduct methane investigations and control measures at historic solid waste landfills. The Commission passed temporary rules for these purposes in January 2002. These temporary rules will expire on August 21, 2002. This rulemaking will give DEQ permanent, clear authority to protect the public and the environment from potential methane problems at historic landfill sites.

Effect of Rule The rule amendments will declare methane a hazardous substance, under certain conditions, and give the Department authority to:

- oversee site investigation and cleanup activities for parties requesting DEQ Voluntary Cleanup Program review;
- order responsible parties to take necessary actions for the protection of public safety;
- issue No Further Action letters that can allow proposed development/redevelopment activities at historic landfill sites to move ahead, when the agency deems there is no threat of explosion; and
- perform necessary work at sites where the permittee is financially unable to carry out methane site investigation and remediation measures.

Commission Authority The Commission has authority to take this action under ORS 465.400.

Stakeholder Involvement In developing these rules, Department staff worked closely with interested parties and stakeholders including representatives of CLEAN, a citizen's group that initially petitioned for temporary and permanent rules pertaining to methane at historic solid waste landfills. Methane Stakeholder Work Group meetings were held in November 2001, January 2002, and April 2002. The proposed permanent rule amendments were also discussed at meetings of the Department's Environmental Cleanup Advisory Committee (ECAC), on April 16, and May 21, 2002, and a meeting of the Department's Solid Waste Advisory Committee (SWAC), on April 17, 2002. Each of these groups expressed support for the proposed rule amendments. An advisory committee membership roster and report are provided in Attachment B.

Public Comment A public comment period extended from May 1 to May 31, 2002 and included a public hearing in Portland on May 23, 2002. Written comments were received from three persons and one person presented oral testimony at the public hearing. Results of the public input are provided in Attachment C.

Key Issues The two key issues raised during the rulemaking process were:

- Whether the rules should specify portions of the remedial investigation and risk assessment rules that are specifically applicable for investigations of sites with potential methane problems. The original Methane Stakeholders Work Group expressed support for this approach, so various "applicable" references were included in the draft rules developed for public comment.

ECAC members, however, suggested that references to applicable and not applicable requirements for investigating sites were not necessary because the rules provide flexibility for the Department to exclude provisions of the rules for site investigations that are not relevant or appropriate for a given cleanup site. ECAC noted that the existing rules do not specifically define the applicable and not applicable rules for other hazardous substances. ECAC recommended development of guidance and Department of Justice (DOJ) representatives attending the ECAC meeting concurred that guidance for this purpose was preferable to rulemaking.

DEQ specifically requested comments on this issue during the public comment period. Two of the four commenters addressed this issue and both recommended that information about the specific site

investigation requirements applicable to methane be provided in guidance, not in the rules. Therefore, DEQ has removed these references from the proposed rule amendments.

- Whether the proposed rule amendments create potential cleanup liability for any person who ever generated or transported organic matter that was deposited in a historic solid waste landfill. This issue was raised by persons representing Waste Management, Inc., a waste disposal and recycling company, and the Oregon Refuse and Recycling Association.

DEQ conferred with the Department of Justice (DOJ) concerning this issue. DOJ advises that, while the state's environmental cleanup law creates the potential for causation-based liability, it does not establish generator or transporter liability per se and that the legislative history is clear on this point. Moreover, DOJ noted that the proposed rules designate *methane* a hazardous substance, not *organic matter*. Accordingly, DEQ and DOJ believe that the threat of litigation under the proposed amendments is minimal.

Next Steps

DEQ proposes that the rule amendments become effective upon filing. The rule amendments will be incorporated into the existing Environmental Cleanup Program and will require no additional staff to implement. DEQ intends to develop and distribute guidance and a fact sheet, and post information on its web site for interested persons. A Rule Implementation Plan is available upon request for more information.

Attachments

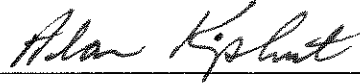
- A. Proposed Rule Revisions
- B. Advisory Committee Membership and Report
- C. Public Input and Department's Response
- D. Presiding Officer's Report on Public Hearings
- E. Relationship to Federal Requirements
- F. Fiscal and Economic Impact Statement
- G. Land Use Evaluation Statement

Available Upon Request

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Written Comments Received
- 4. Rule Implementation Plan

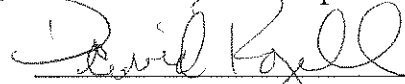
Approved:

Section:



Alan Kiphut, Manager
Environmental Cleanup & Tanks Section

Division:



David Rozell, Acting Administrator
Land Quality Division

Report Prepared By: Bill Dana
Phone: (503) 229-6530

DRAFT PERMANENT RULES

(Showing Changes Proposed From Existing Permanent Rules)

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 from a historic solid waste landfill, removal or remedial actions shall be implemented to prevent concentrations of methane exceeding or likely to exceed 1.25% by volume in confined spaces and structures, other than in equipment, piping, wells, or other structures designed for the collection and management of methane and approved by the Department.

~~(4)~~(3) 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.

~~(5)~~(4) 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).

~~(6)~~(5) 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.

Stat. Auth.: ORS 465.400(1), ORS 466 & ORS 468.020

Stats. Implemented: ORS 465.200 - ORS 465.455 & ORS 465.900

Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 12-1992, f. & cert. ef. 6-9-92; DEQ 2-1997, f. & cert. ef. 2-7-97

340-122-0080

Remedial Investigation

(1) If, based upon the Preliminary Assessment, the results of a removal, or other information, the Director determines that remedial action might be necessary to protect public health, safety or welfare, or the environment, the Director may perform or require to be performed a remedial investigation to develop information to determine the need for remedial action.

(2) Remedial investigation may include, but is not limited to, characterization of hazardous substances, characterization of the facility, performance of baseline human health and ecological risk assessments, and collection and evaluation of information relevant to the identification of hot spots of contamination.

(3) In the remedial investigation, characterization of the facility may include, but is not limited to, information regarding:

(a) Waste management history and other past practices that could have led to a release of hazardous substances;

(b) Geological and hydrogeologic factors, including, but not limited to, information regarding topography, soils, sediments, drainage controls, and water resources;

(c) Climatologic and meteorologic factors;

(d) Ambient air quality;

(e) Current and reasonably anticipated future land use in the locality of the facility, considering:

(A) Current land use zoning and other land use designations;

(B) Land use plans as established in local comprehensive plans and land use implementing regulations of any governmental body having land use jurisdiction;

(C) Concerns of the facility owner, neighboring owners, and the community; and

(D) Any other relevant information such as development patterns and population projections.

(f) Current and reasonably likely future beneficial uses of groundwater and surface water in the locality of the facility, considering:

(A) Federal, state, and local regulations governing the appropriation and/or use of water;

(B) Nature and extent of current groundwater and surface water uses;

(C) Suitability of groundwater and surface water for beneficial uses;

(D) The contribution of water to the maintenance of aquatic or terrestrial habitat;

(E) Any beneficial uses of water which the Water Resources Department or other federal state or local programs is managing in the locality of the facility; and

(F) Reasonably likely future uses of groundwater and surface water based on:

(i) Historical land and water uses;

(ii) Anticipated future land and water uses;

(iii) Community and nearby property owners' concerns regarding future water use;

(iv) Regional and local development patterns;

(v) Regional and local population projections; and

(vi) Availability of alternate water sources including, but not limited to, public water supplies, groundwater sources, and surface water sources.

(g) Identification of ecological receptors, terrestrial habitats, and aquatic habitats in the locality of the facility; and

(h) Other relevant information, as appropriate.

(4) In the remedial investigation, characterization of hazardous substances may include, but is not limited to, information regarding:

(a) Identification and characterization of the source of the release or the threatened release of a hazardous substance;

(b) The nature, extent, and concentration of hazardous substances;

(c) The propensity for the hazardous substance to bioaccumulate;

(d) The propensity for the hazardous substance to persist or degrade;

(e) The toxicity of the hazardous substances;

- (f) The transport and fate of the hazardous substances;
 - (g) The proximity of contamination to surface water, groundwater, wetlands, and sensitive environments; and
 - (h) Other relevant information, as appropriate.
- (5) In the remedial investigation, characterization of current and reasonably likely future risks posed by hazardous substances shall be based on baseline human health and ecological risk assessments conducted in accordance with OAR 340-122-0084, unless the Department determines through screening of available information that no exceedance of acceptable risk levels could occur taking into consideration the nature, extent and toxicity of contamination, the types of human and ecological receptors potentially at risk, and pathways and routes of exposure present or potentially present.
- (6) The remedial investigation shall identify hazardous substances having a significant adverse effect on beneficial uses of water or waters to which the hazardous substances would be reasonably likely to migrate.
- (7) The remedial investigation shall identify hot spots of contamination for media other than water.

Stat. Auth.: ORS 465.400(1) & ORS 468.020

Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895

Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 12-1992, f. & cert. ef. 6-9-92; DEQ 2-1997, f. & cert. ef. 2-7-97

340-122-0085

Feasibility Study

(1) If, based upon the remedial investigation, the results of a removal, or other information, the Director determines that remedial action might be necessary to protect public health, safety or welfare or the environment, the Director may perform or require to be performed a feasibility study to develop information for selection or approval of a remedial action.

(2) A feasibility study shall develop and evaluate a range of remedial action alternatives acceptable to the Department, including any or all of the following:

- (a) No action;
- (b) Remedial action utilizing engineering and/or institutional controls;
- (c) Remedial action utilizing treatment;
- (d) Remedial action utilizing excavation and transportation to an offsite disposal facility; and
- (e) Any combination of the above, as appropriate.

(3) Remedial action alternatives may be eliminated from development or evaluation in the feasibility study if, based on the remedial investigation and consideration of factors specified in OAR 340-122-0090, the Department determines one or more remedial action alternatives are not protective, feasible or appropriate for the facility.

(4) For each remedial action option developed under section (2) of this rule, the feasibility study shall evaluate:

- (a) The protectiveness of the alternative based upon the standards set forth in OAR 340-122-0040;
- (b) The feasibility of the alternative based upon a balancing of the remedy selection factors set forth in OAR 340-122-0090(3) and (4); and

(c) The extent to which the remedial action alternative remediates hot spots of contamination based upon the criteria set forth in sections (5) and (7) of this rule and OAR 340-122-0090(4).

(5) For groundwater or surface water in which a significant adverse effect on existing or reasonably likely future beneficial uses has been identified under OAR 340-122-0080(6):

(a) The feasibility study shall evaluate treatment to concentrations that ensure such significant adverse effects will not occur. Specifically, the following shall be evaluated:

(A) Whether treatment is reasonably likely to restore or protect a beneficial use within a reasonable time; and

(B) The extent to which treatment is feasible, considering the remedy selection factors set forth in OAR 340-122-0090, including application of the higher threshold for evaluating the reasonableness of the cost of treating hot spots of contamination.

(b) Where a concentration identified in subsection (5)(a) of this rule is not equivalent to an acceptable risk level:

(A) The feasibility study shall evaluate the feasibility of treatment to the concentration identified in subsection (5)(a), regardless of whether that level is more or less stringent than the acceptable risk level, applying the higher threshold for reasonableness of the cost of treatment; and

(B) Where the acceptable risk level is more stringent than the concentration identified in subsection (5)(a), the feasibility study shall also evaluate the feasibility of treatment to the acceptable risk level, without application of the higher threshold for reasonableness of the cost of treatment. If treatment to a more stringent acceptable risk level is not feasible, the feasibility study shall evaluate other remedial measures providing protection while allowing beneficial use of the water.

(6) For contamination of media other than groundwater or surface water, the feasibility study shall evaluate the extent to which the hazardous substances cannot be reliably contained.

(7) For hot spots of contamination in media other than groundwater or surface water that have been identified under OAR 340-122-0080(7) or section (6) of this rule, the feasibility study shall evaluate the feasibility of treatment, and the feasibility of excavation and offsite disposal at an authorized disposal facility, to a point where the concentration or condition making the hazardous substance a hot spot would no longer occur at the facility, based upon a balancing of the remedy selection factors set forth in OAR 340-122-0090 and an application of the higher threshold for evaluating the reasonableness of the cost of treatment and of the cost of excavation and offsite disposal of hot spots of contamination.

(8) For contaminant concentrations in media other than water that would remain after treatment or excavation and off-site disposal pursuant to section (7) of this rule, the feasibility study shall evaluate the feasibility of a range of remedial action alternatives to achieve the acceptable risk level. The evaluation shall be based upon a balancing of the remedy selection factors in OAR 340-122-090 without application of the higher thresholds, under section (7), for reasonableness of the cost of the treatment and excavation and offsite disposal of hot spots of contamination.

(9) The feasibility study should recommend a protective and feasible remedial action from the remedial action alternatives developed and evaluated in the feasibility study. For any recommended remedial action, the feasibility study shall:

(a) Identify the extent to which the remedial action alternative would be conducted onsite;

(b) Identify all state or local permits, licenses, or other authorizations or procedural requirements that would be exempted pursuant to ORS 465.315(3);

- (c) Describe any consultation with affected state or local government bodies; and
- (d) Identify applicable substantive requirements of the affected state or local laws and how they would be addressed.

Stat. Auth.: ORS 465.315 & ORS 465.400

Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895

Hist.: DEQ 2-1997, f. & cert. ef. 2-7-97; DEQ 12-2000, f. & cert. ef. 7-27-00

340-122-0090

Selection or Approval of the Remedial Action

(1) Based on the administrative record, the Director shall select or approve a remedial action that:

- (a) Is protective of present and future public health, safety and welfare and of the environment, as specified in OAR 340-122-0040;
- (b) Is based on balancing of remedy selection factors, as specified in section (3) of this rule; and
- (c) Satisfies the requirements for hot spots of contamination, as specified in section (4) of this rule.

(2) A remedial action may achieve protection through:

- (a) Treatment;
- (b) Excavation and offsite disposal;
- (c) Engineering controls;
- (d) Institutional controls;
- (e) Any other method of protection; or
- (f) A combination of the above.

(3) In determining the appropriate method of remediation for a specific facility, the Director shall select or approve a protective remedial action that balances the following factors:

(a) **Effectiveness.** Each remedial action alternative shall be assessed for its effectiveness in achieving protection, by considering the following, as appropriate:

(A) Magnitude of risk from untreated waste or treatment residuals remaining at the facility absent any risk reduction achieved through onsite management of exposure pathways, as determined in OAR 340-122-0084(4)(a). The characteristics of the residuals shall be considered to the degree that they remain hazardous, taking into account their volume, toxicity, mobility, propensity to bioaccumulate, and propensity to degrade;

(B) Adequacy of any engineering and institutional controls necessary to manage the risk from treatment residuals and untreated hazardous substances remaining at the facility, as determined in OAR 340-122-0084(4)(b);

(C) With respect to hot spots of contamination in water, the extent to which the remedial action restores or protects existing and reasonably likely future beneficial uses of water;

- (D) Adequacy of treatment technologies in meeting treatment objectives;
- (E) Time until the remedial action objectives would be achieved; and
- (F) Any other information relevant to effectiveness.

(b) **Long-term reliability.** Each remedial action alternative shall be assessed for its long-term reliability, by considering the following, as appropriate:

- (A) Reliability of treatment technologies in meeting treatment objectives;

(B) Reliability of engineering and institutional controls necessary to manage the risk from treatment residuals and untreated hazardous substances, taking into consideration the characteristics of the hazardous substances to be managed and the effectiveness and enforceability over time of engineering and institutional controls in preventing migration of contaminants and in managing risks associated with potential exposure;

(C) Nature, degree, and certainties or uncertainties of any necessary long-term management (e.g., operation, maintenance, and monitoring); and

(D) Any other information relevant to long-term reliability.

(c) **Implementability.** Each remedial action alternative shall be assessed for the ease or difficulty of implementing the remedial action, by considering the following, as appropriate:

(A) Practical, technical, and legal difficulties and unknowns associated with the construction and implementation of a technology, engineering control, or institutional control, including potential scheduling delays;

(B) The ability to monitor the effectiveness of the remedy;

(C) Consistency with federal, state and local requirements; activities needed to coordinate with other agencies; and the ability and time required to obtain any necessary authorization from other governmental bodies;

(D) Availability of necessary services, materials, equipment, and specialists, including the availability of adequate offsite treatment, storage, and disposal capacity and services, and availability of prospective technologies; and

(E) Any other information relevant to implementability.

(d) **Implementation Risk.** Each remedial action alternative shall be assessed for the risk from implementing the remedial action, by considering the following, as appropriate:

(A) Potential impacts on the community during implementation of the remedial action and the effectiveness and reliability of protective or mitigative measures;

(B) Potential impacts on workers during implementation of the remedial action and the effectiveness and reliability of protective or mitigative measures;

(C) Potential impacts on the environment during implementation of the remedial action and the effectiveness and reliability of protective or mitigative measures;

(D) Time until the remedial action is complete; and

(E) Any other information related to implementation risk.

(e) **Reasonableness of Cost.** Each remedial action alternative shall be assessed for the reasonableness of the cost of the remedial action, by considering the following, as appropriate:

(A) Cost of the remedial action including:

(i) Capital costs, including both direct and indirect costs;

(ii) Annual operation and maintenance costs;

(iii) Costs of any periodic review requirements; and

(iv) Net present value of all of the above;

(B) Degree to which the costs of the remedial action are proportionate to the benefits to human health and the environment created through risk reduction or risk management;

(C) With respect to hot spots of contamination in water, the degree to which the costs of the remedial action are proportionate to the benefits created through restoration or protection of existing and reasonably likely future beneficial uses of water;

(D) The degree of sensitivity and uncertainty of the costs; and

(E) Any other information relevant to cost-reasonableness.

(4) The Director shall select or approve a protective remedial action in accordance with the following:

(a) For hot spots of contamination in water, the Director shall select or approve treatment to the extent treatment is feasible considering the treatment criteria in OAR 340-122-0085(5) and the factors set forth in OAR 340-122-0090(3);

(b) For hot spots of contamination in media other than water, the Director shall select or approve treatment or excavation and offsite disposal at an authorized disposal facility or the combination of treatment or excavation, to the extent such measures are feasible considering the criteria in OAR 340-122-0085(7) and the factors set forth in OAR 340-122-0090(3).

(c) The cost of a remedial action shall not be considered reasonable if the costs are disproportionate to the benefits created through risk reduction or risk management;

(d) A higher threshold shall be applied in evaluating the reasonableness of costs for treating hot spots of contamination, whether such treatment occurs onsite or in conjunction with excavation and offsite disposal, when compared to other remedial action alternatives; and

(e) Subject to the preference for treatment of hot spots of contamination and subject to the preferences for treatment and excavation of hot spots of contamination in media other than water, where two or more remedial action alternatives are protective, the least expensive alternative shall be preferred, unless the additional cost of a more expensive remedial action alternative is justified by proportionately greater benefits within one or more of the factors set forth in OAR 340-122-0090(3).

(f) If contamination (A) is a hot spot in media other than water; (B) will be excavated and disposed of at an offsite location; and (C) meets the definition of a hazardous waste pursuant to ORS 466.005, the Director shall consider the method, route, and distance for transportation of the contaminants to available disposal facilities in selecting or approving the remedial action.

(5) Any person responsible for undertaking the remedial action who proposes one remedial action alternative over another shall have the burden of demonstrating to the Director through the remedial investigation and feasibility study that such remedial action alternative fulfills the requirements of OAR 340-122-0090.

(6) Subject to the remedy selection factors specified in section (3) of this rule, in selecting or approving a protective remedial action alternative, the Director shall consider current and reasonably anticipated future land uses at the facility and surrounding properties, taking into account:

(a) Current land use zoning;

(b) Other land use designations;

(c) Land use plans as established in local comprehensive plans and land use implementing regulations of any governmental body having land use jurisdiction; and

(d) Concerns of the facility owner, neighboring owners, and the community.

(7) The Director may incorporate into the selection or approval of a remedial action:

(a) Such periodic review or inspections as are necessary to ensure protection of present and future public health, safety and welfare and of the environment;

(b) A delineation of the extent to which the remedial action occurs onsite, for purposes of ORS 465.315(3); and

(c) Designation of points of compliance for measuring attainment of any remedial action objective. Designation of points of compliance shall consider proximity to the source of the release and exposure pathways evaluated in the baseline risk assessment. Points of compliance

shall be established as close as possible to the source of the release, and may also be established at other points relevant to exposure pathways and receptors.

Stat. Auth.: ORS 465.400(1), ORS 466 & ORS 468.020

Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895

Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 12-1992, f. & cert. ef. 6-9-92; DEQ 2-1997, f. & cert. ef. 2-7-97; DEQ 12-2000, f. & cert. ef. 7-27-00

340-122-0115

Definitions

Terms not defined in this rule have the meanings set forth in ORS 465.200. Additional terms are defined as follows unless the context requires otherwise:

(1) "Acceptable risk level" with respect to the toxicity of hazardous substances has the meaning set forth in ORS 465.315 (1)(b)(A) and (B) and is comprised of the acceptable risk level definitions provided for carcinogenic exposures, noncarcinogenic exposures, and ecological receptors in sections (2) through (6) of this rule.

(2) "Acceptable risk level for human exposure to individual carcinogens" means:

(a) For deterministic risk assessments, a lifetime excess cancer risk of less than or equal to one per one million for an individual at an upper-bound exposure; or

(b) For probabilistic risk assessments, a lifetime excess cancer risk for each carcinogen of less than or equal to one per one million at the 90th percentile, and less than or equal to one per one hundred thousand at the 95th percentile, each based upon the same distribution of lifetime excess cancer risks for an exposed individual.

(3) "Acceptable risk level for human exposure to multiple carcinogens" means the acceptable risk level for human exposure to individual carcinogens and:

(a) For deterministic risk assessments, a cumulative lifetime excess cancer risk for multiple carcinogens and multiple exposure pathways of less than or equal to one per one hundred thousand at an upper-bound exposure; or

(b) For probabilistic risk assessments, a cumulative lifetime excess cancer risk for multiple carcinogens and multiple exposure pathways of less than or equal to one per one hundred thousand at the 90th percentile and less than or equal to one per ten thousand at the 95th percentile, each based upon the same distribution of cumulative lifetime excess cancer risks for an exposed individual.

(4) "Acceptable risk level for human exposure to noncarcinogens" means:

(a) For deterministic risk assessments, a hazard index less than or equal to one for an individual at an upper-bound exposure; or

(b) For probabilistic risk assessments, a hazard index less than or equal to one at the 90th percentile, and less than or equal to ten at the 95th percentile, each based upon the same distribution of hazard index numbers for an exposed individual.

(5) "Acceptable risk level for individual ecological receptors" applies only to species listed as threatened or endangered pursuant to 16 USC 1531 et seq. or ORS 465.172, and means:

(a) For deterministic risk assessments, a toxicity index less than or equal to one for an individual ecological receptor at an upper-bound exposure, where the toxicity index is the sum of the toxicity quotients attributable to systemic toxicants with similar endpoints for similarly-responding species and the toxicity quotient is the ratio of the exposure point value to the ecological benchmark value; or

(b) For probabilistic risk assessments, a toxicity index less than or equal to one at the 90th percentile and less than or equal to 10 at the 95th percentile, each based on the same distribution of toxicity index numbers for an exposed individual ecological receptor; or

(c) The probability of important changes in such factors as growth, survival, fecundity, or reproduction related to the health and viability of an individual ecological receptor that are reasonably likely to occur as a consequence of exposure to hazardous substances is de minimis.

(6) "Acceptable risk level for populations of ecological receptors" means a 10 percent chance, or less, that no more than 20 percent of the total local population will be exposed to an exposure point value greater than the ecological benchmark value for each contaminant of concern and no other observed significant adverse effects on the health or viability of the local population.

(7) "Assessment endpoint" means an explicit expression of a specific ecological receptor and an associated function or quality that is to be maintained or protected. Assessment endpoints represent ecological receptors directly or as their surrogates for the purposes of an ecological risk assessment.

(8) "Background level" means the concentration of hazardous substance, if any, existing in the environment in the location of the facility before the occurrence of any past or present release or releases.

(9) "Beneficial uses of water" means any current or reasonably likely future beneficial uses of groundwater or surface water by humans or ecological receptors.

(10) "Carcinogen" means any substance or agent that produces or tends to produce cancer in humans.

(11) "Cleanup level" for purposes of OAR 340-122-0045, means the residual concentration of a hazardous substance in a medium that is determined to be protective of public health, safety and welfare, and the environment under specified exposure conditions.

(12) "Commission" means the Environmental Quality Commission.

(13) "Confirmed release" means a release of a hazardous substance into the environment that has been confirmed by the Department in accordance with OAR 340-122-0073.

(14) "Confirmed release list" means a list of facilities for which the Director has confirmed a release of a hazardous substance.

(15) "Contaminant of concern" means a hazardous substance that is present in such concentrations that the contaminant poses a threat or a potentially unacceptable risk to public health, safety or welfare, or the environment considering:

(a) The toxicological characteristics of the hazardous substance that influence its ability to affect adversely human health, ecological receptors or the environment relative to the concentration of the hazardous substance at the facility;

(b) The chemical and physical characteristics of the hazardous substance that govern its tendency to persist in the environment, move through environmental media, or accumulate through food webs;

(c) The background level of the hazardous substances;

(d) The thoroughness of the testing for the hazardous substance at the facility;

(e) The frequency that the hazardous substance has been detected at the facility; and

(f) Degradation by-products of the hazardous substances.

(16) "Critical endpoint" or "Critical effect" means the adverse health effect used as the basis for the derivation of the reference dose (RfD). Exposure to a given chemical may result in a variety of toxic effects (e.g., liver defects, kidney defects, or blood defects). The critical endpoint

is selected from the different adverse health effects produced by a given chemical, and is the adverse health effect with the lowest dose level that produced toxicity.

(17) "Department" means the Oregon Department of Environmental Quality.

(18) "Deterministic risk assessment" means a risk assessment that produces a point value estimate of risk for a specific set of exposure assumptions.

(19) "De minimis release" means a release of a hazardous substance that, because of the quantity or characteristics of the hazardous substance released and the potential for migration and exposure of human or environmental receptors, can reasonably be considered to pose no significant threat to public health, safety or welfare, or the environment.

(20) "Director" means the Director of the Department of Environmental Quality or the Director's authorized representative.

(21) "Ecological benchmark value" means the highest no-observed-adverse-effect-level (NOAEL) for individual ecological receptors considering effects on reproductive success or the median lethal dose or concentration (LD50 or LC50) for populations of ecological receptors. If a NOAEL, LD50 or LC50, as applicable, is not available for ecological receptors considered in the risk assessment, the ecological benchmark value may be derived from other toxicological endpoints for those receptors or appropriate surrogates for those receptors, adjusted with uncertainty factors to equate to a NOAEL, LD50 or LC50. The ecological benchmark value shall be based, to the extent practicable, on studies whose routes of exposure and duration of exposure were commensurate with the expected routes and duration of exposure for ecological receptors considered in the risk assessment, or appropriate surrogates for those receptors.

(22) "Ecological receptor" means a population of plants or animals (excluding domestic animals and cultivated plants) or an individual member of any species listed as threatened or endangered pursuant to 16 U.S.C. 1532 et seq. or ORS 496.172.

(23) "Engineering control" means a remedial method used to prevent or minimize exposure to hazardous substances, including technologies that reduce the mobility or migration of hazardous substances. Engineering controls may include, but are not limited to, capping, horizontal or vertical barriers, hydraulic controls, and alternative water supplies.

(24) "Environment" includes ecological receptors, the waters of the state, any drinking water supply, any land surface and subsurface strata, sediments, saturated soils, subsurface gas, or ambient air or atmosphere.

(25) "Exposure point value" means the concentration or dose of a hazardous substance occurring at a location of potential contact between a human receptor and the hazardous substance, or between an ecological receptor and the hazardous substance.

(26) "Facility" or "Site" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(27) "Groundwater" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(28) "Hazard index" means a number equal to the sum of the hazard quotients attributable to systemic toxicants with similar toxic endpoints.

(29) "Hazard quotient" means the ratio of the exposure point value to the reference dose, where the reference dose is typically the highest dose causing no adverse effects on survival, growth or reproduction in human populations.

(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 a historic solid waste landfill; and

~~(e)~~(e) Any substance designated by the commission under ORS 465.400.

(31) "Historic solid waste landfill" means:

(a) a solid waste landfill that was never permitted for disposal of solid waste, including landfills that received solid waste prior to adoption of permit requirements under ORS 459.205;

(b) a solid waste landfill that was previously permitted for disposal of solid waste pursuant to ORS 459.205, if operational and post-closure permits for management of the facility have expired, or have been terminated or revoked by the Department; and

(c) a permitted solid waste landfill, if the Department determines that permit requirements for management of methane will not be implemented by the permittee including determinations by the Department that the permittee is financially unable to implement applicable permit requirements.

~~(32)~~(31) "Hot spots of contamination" means:

(a) For groundwater or surface water, hazardous substances having a significant adverse effect on beneficial uses of water or waters to which the hazardous substances would be reasonably likely to migrate and for which treatment is reasonably likely to restore or protect such beneficial uses within a reasonable time, as determined in the feasibility study; and

(b) For media other than groundwater or surface water, (e.g., contaminated soil, debris, sediments, and sludges; drummed wastes; "pools" of dense, non-aqueous phase liquids submerged beneath groundwater or in fractured bedrock; and non-aqueous phase liquids floating on groundwater), if hazardous substances present a risk to human health or the environment exceeding the acceptable risk level, the extent to which the hazardous substances:

(A) Are present in concentrations exceeding risk-based concentrations corresponding to:

(i) 100 times the acceptable risk level for human exposure to each individual carcinogen;

(ii) 10 times the acceptable risk level for human exposure to each individual noncarcinogen;

or

(iii) 10 times the acceptable risk level for exposure of individual ecological receptors or populations of ecological receptors to each individual hazardous substance.

(B) Are reasonably likely to migrate to such an extent that the conditions specified in subsection (a) or paragraphs (b)(A) or (b)(C) would be created; or

(C) Are not reliably containable, as determined in the feasibility study.

~~(33)~~(32) "Institutional control" means a legal or administrative tool or action taken to reduce the potential for exposure to hazardous substances. Institutional controls may include, but are not limited to, use restrictions, environmental monitoring requirements, and site access and security measures.

~~(34)~~~~(33)~~ "Inventory" means a list of facilities for which the Director has confirmed a release of a hazardous substance and, based on a preliminary assessment or equivalent information, has determined that additional investigation, removal, remedial action, or long term engineering or institutional controls related to removal or remedial action are required to assure protection of the present and future public health, safety and welfare, and the environment.

~~(35)~~~~(34)~~ "Locality of the facility" means any point where a human or an ecological receptor contacts, or is reasonably likely to come into contact with, facility-related hazardous substances, considering:

(a) The chemical and physical characteristics of the hazardous substances;

(b) Physical, meteorological, hydrogeological, and ecological characteristics that govern the tendency for hazardous substances to migrate through environmental media or to move and accumulate through food webs;

(c) Any human activities and biological processes that govern the tendency for hazardous substances to move into and through environmental media or to move and accumulate through food webs; and

(d) The time required for contaminant migration to occur based on the factors described in subsections ~~(35)~~~~(34)~~(a) through (c) of this rule.

~~(36)~~~~(35)~~ "Measurement endpoints for ecological receptors" are quantitative expressions of an observed or measured response in ecological receptors exposed to hazardous substances.

~~(37)~~~~(36)~~ "Noncarcinogen" means hazardous substances with adverse health effects on humans other than cancer.

~~(38)~~~~(37)~~ "Onsite", for purposes of ORS 465.315(3), means the areal extent of contamination and all suitable areas in close proximity to the contamination necessary for implementation of a removal or remedial action.

~~(39)~~~~(38)~~ "Permitted or authorized release" means a release that is from an active facility and that is subject to and in substantial compliance with a current and legally enforceable permit issued by an authorized public agency.

~~(40)~~~~(39)~~ "Population" and "Local population", for purposes of evaluating ecological receptors, means a group of individual plants, animals, or other organisms of the same species that live together and interbreed within a given habitat, including any portion of a population of a transient or migratory species that uses habitat in the locality of the facility for only a portion of the year or for a portion of their lifecycle.

~~(41)~~~~(40)~~ "Practical quantification limit" or "PQL" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability when testing field samples under routine laboratory operating conditions using Department-approved methods.

~~(42)~~~~(41)~~ "Preliminary assessment" means an investigation conducted in accordance with OAR 340-122-0072 for the purpose of determining whether additional investigation, removal, remedial action, or related engineering or institutional controls are needed to assure protection of public health, safety and welfare, and the environment.

~~(43)~~~~(42)~~ "Probabilistic risk assessment" means a risk assessment that produces a credible range or distribution of possible risk estimates by taking into consideration the variability and uncertainty in the exposure and toxicity data used to make the assessment.

~~(44)~~~~(43)~~ "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including

the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, or any threat thereof, but excludes:

(a) Any release which results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person's employer under ORS Chapter 656;

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(c) Any release of source, by product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to the requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 465.260 or any other removal or remedial action, any release of source by product special nuclear material from any processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

~~(45)~~(44) "Remedial action" and "Removal" have the meanings set forth in ORS 465.200 (22) and (24), respectively, and, for purposes of these rules, may include investigations, treatment, excavation and offsite disposal, engineering controls, institutional controls, any combination thereof.

~~(46)~~(45) "Remediated" means implementation of a removal or remedial action.

~~(47)~~(46) "Residual risk assessment" means both:

(a) A quantitative assessment of the risk resulting from concentrations of untreated waste or treatment residuals remaining at the conclusion of any treatment and offsite disposal taking into consideration current and reasonably likely future land and water use scenarios and the exposure assumptions used in the baseline risk assessment; and

(b) A qualitative or quantitative assessment of the adequacy and reliability of any institutional or engineering controls to be used for management of treatment residuals and untreated hazardous substances.

~~(48)~~(47) "Risk" means the probability that a hazardous substance, when released into the environment, will cause adverse effects in exposed humans or ecological receptors.

~~(49)~~(48) "Risk assessment" means the process used to determine the probability of an adverse effect due to the presence of hazardous substances. A risk assessment includes identification of the hazardous substances present in the environmental media; assessment of exposure and exposure pathways; assessment of the toxicity of the hazardous substances; characterization of human health risks; and characterization of the impacts or risks to the environment.

~~(50)~~(49) "Sensitive environment", for purposes of OAR 340-122-0045, means an area of particular environmental value where a hazardous substance could pose a greater threat than in other non-sensitive areas. Sensitive environments include but are not limited to: Critical habitat for federally endangered or threatened species; National Park, Monument, National Marine Sanctuary, National Recreational Area, National Wildlife Refuge, National Forest Campgrounds, recreational areas, game management areas, wildlife management areas; designated federal Wilderness Areas; wetlands (freshwater, estuarine, or coastal); wild and scenic rivers; state parks; state wildlife refuges; habitat designated for state endangered species; fishery resources; state designated natural areas; county or municipal parks; and other significant open spaces and natural resources protected under Goal 5 of Oregon's Statewide Planning Goals.

~~(51)~~(50) "Significant adverse effect on beneficial uses of water" means current or reasonably likely future exceedance of:

(a) Applicable or relevant federal, state or local water quality standards, criteria, or guidance;
(b) In the absence of applicable or relevant water quality standards, criteria, or guidance, the acceptable risk level; or

(c) If subsections (a) and (b) of this section do not apply, the concentration of a hazardous substance indicated by available published peer-reviewed scientific information to have a significant adverse effect on a current or reasonably likely future beneficial use of water.

(52)(51) "Soil" means a mixture of organic and inorganic solids, air, water, and biota which exists on the earth surface above bedrock, including materials of anthropogenic sources such as slag and sludge.

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

(a) Hazardous waste as defined in ORS 466.005.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

(54) "Solid waste landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(55)(52) "Surface water" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies, 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 waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(56)(53) "Total excess cancer risk" means the upper bound on the estimated excess cancer risk associated with exposure to multiple hazardous substances and multiple exposure pathways.

(57)(54) "Treatment" means to permanently and substantially eliminate or reduce the toxicity, mobility or volume of hazardous substances with the use of either in-situ or ex-situ remedial technologies

Stat. Auth.: ORS 465.315 & ORS 465.400

Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 2-1997, f. & cert. ef. 2-7-97; DEQ 11-1999(Temp), f. & cert. ef. 7-6-99 thru 1-2-2000; Administrative correction 6-12-01

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
Permanent Rules to Add Methane, Under Certain Conditions,
to the List of Environmental Cleanup Hazardous Substances

ADVISORY COMMITTEE MEMBERSHIP AND REPORT

In November 2001, the Department's Environmental Cleanup Program assembled a group of stakeholders, to discuss concerns about methane at sites where historic solid waste landfills were being redeveloped for commercial and residential uses. The Methane Stakeholders Group was comprised of representatives of local government, industry, attorneys, consultants and concerned citizens, as follows:

Elise Smith – CLEAN
Chuck Solin – City of Eugene
Don Cordell – Rogue Disposal
Don Haagensen – Cable, Huston, Benedict & Haagensen, LLP
Kristin Mitchell – Oregon Refuse & Recycling Association
Gerry Friesen – G. Friesen Associates
Joel Gorden – Haggen Stores
Fred Gast – Polygon Northwest
Terry Waldele – City of Beaverton
Jeff Bickford – Marion County Solid Waste
Chris Rich – Rycewicz & Chenoweth, LLP
Jon Chandler – OBIA
Craig Ware – GeoDesign
Richard Allen – Ball, Janik, LLP
Dennis Oneil – METRO
Billy Sherritt – Lane Plywood
Dan Swanson – Finley/Wasco Landfill
Pamela Pawelek, Waste Connections, Inc.

The group met three times and discussed options for regulating the investigation and cleanup of sources of potential methane problems. The Department's Solid Waste Program staff were also involved in the discussions. The group helped with the drafting of the initial temporary rules and supported the proposed adoption of permanent rules. The Department also discussed this matter with its Solid Waste Advisory Committee (SWAC). The SWAC also supported the draft rules.

On April 16, and May 21, 2002, Department staff discussed the proposed permanent methane rules with its Environmental Cleanup Advisory Committee (ECAC). The ECAC includes the following members:

Don Haagensen, Chair – Cable, Huston, Benedict & Haagensen, LLP
Connie Ozawa – Portland State University
Jan Betz – City of Portland
Rich Craig – Confederated Tribes of Warm Springs Reservation
Bill Funk – Northwestern School of Law
Kathleen Sayce – ShoreBank Pacific
John Ledger – Associated Oregon Industries (AOI)
Rhett Lawrence – OSPiRG
Paul Benoit – City of Astoria
Dawn Sanders – CH2M-Hill
Glenn Klein – Harrang, Long, Gary, Rudnick, P.C.
Bob Wyatt – Northwest Natural Gas Co.
Pamela Brody-Heine – Port of Portland

The ECAC made a number of comments and suggestions concerning the proposed rule amendments. As a result, DEQ staff made several minor revisions to the proposed rule amendments. In addition, the Department responded to the key issue raised by the Committee, which was whether or not the rule amendments should include exemptions, which would limit the applicability of certain sections of the rules for methane sites. The Committee recommended that any exemptions from the rules, for methane sites, should be identified in guidance, rather than in the rules. DEQ specifically asked reviewers to consider this issue during the public comment period. Overall, the Committee supported the proposed permanent rules.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
Permanent Rules to Add Methane, Under Certain Conditions,
to the List of Environmental Cleanup Hazardous Substances

PUBLIC INPUT AND DEPARTMENT'S RESPONSE

The following is a summary of comments received from the public on the Department's proposed methane rules and the Department's subsequent responses.

1. **The proposed regulations create potential cleanup liability for any person who ever generated or transported an organic solid waste that ended up in an old landfill.**

Comment: Submitted by Waste Management of Oregon, Inc. and the Oregon Refuse and Recycling Association (ORRA). Under Oregon law, any person who "caused, contributed to or exacerbated" a release of a hazardous substance may be liable for remedial action or cleanup costs related to the release. Because methane can be generated directly from the organic matter disposed in a solid waste landfill, the generator of the solid waste or the person who collects and takes the waste to a landfill for disposal can be argued to have "caused" the release. Promulgation of the proposed rule amendments should be postponed, to allow sufficient time to explore whether better regulatory approaches exist to address the methane problem, or whether new statutory solutions are needed.

Response: DEQ has consulted with the Department of Justice (DOJ) about the potential liability of generators and transporters under Oregon's Environmental Cleanup Law. DOJ has advised that while ORS 465.255(1)(d) creates the potential for causation-based liability, under some circumstances, it does not establish generator liability per se, and that the legislative history is clear on this point. DEQ is not aware of any cases holding generators or transporters of hazardous substances liable under Oregon law. Moreover, the generator or transporter of organic matter placed in a historic landfill will not be the generator of a "hazardous substance" under the proposed rule amendments. The proposed amendments designate methane as the hazardous substance, not organic matter. For these reasons, DEQ believes the threat of litigation under the proposed rule amendments is minimal and is probably less than that faced by any generator of a "hazardous substance" in Oregon. Accordingly, the Department believes that the proposed rule amendments should not be changed and that adoption of the proposed amendments should not be postponed.

2. **The Department has existing authority under its Air Quality Program to address the risks posed by methane releases from historic landfills.**

Comment: Submitted by Waste Management of Oregon, Inc. ORS Chapter 468A grants DEQ the authority to control, abate and prevent air pollution, including concentrations of air contaminants “likely to be injurious” to public welfare or health.

Response: DEQ agrees that, in the strictest sense, authority may exist within the Department’s Air Quality Program to regulate methane. However, the Department is not seeking to regulate methane as an air pollutant. Rather, the proposal is to address releases and threats of releases of methane in the context of unregulated solid waste disposal sites requiring remediation and possible on-going controls. The statutes cited by Waste Management do not provide sufficient authority for DEQ to achieve these objectives. As a practical matter, DEQ believes that providing authority for dealing with methane problems at historic solid waste landfills, in the manner proposed, will provide an effective approach for protecting human health from explosive methane vapors. It will also be clearer and more efficient for the regulated community and DEQ staff. Therefore, DEQ believes that the proposed rule amendments are necessary and appropriate.

3. **Methane accumulations in confined spaces and structures do not satisfy the statutory predicates under Oregon’s Environmental Cleanup Law.**

Comment: Submitted by Waste Management of Oregon, Inc. In order to designate methane as a “hazardous substance,” DEQ must find that methane may pose a hazard to human health, safety, welfare or the environment, if released “into the environment.” Although ORS 465.200 does not define “ambient air,” it is typically defined as atmosphere external to buildings. The proposed regulations, however, expressly provide that the risk to be prevented is the accumulation of methane “in confined spaces and occupied structures.” Accordingly, the appropriate statutory determination needed to designate methane as a “hazardous substance” cannot be made.

Response: DEQ disagrees. DEQ believes that the term “the environment” includes indoor as well as outdoor air. Also, the statutory definition of “release” is very broad and includes releases of hazardous substances to the environment that may not actually cause harm unless they reach receptors in confined structures or spaces. For example, indoor air vapors from gasoline leaks. DEQ, therefore, concludes that authority for the proposed rule amendments does exist and the Department continues to recommend their adoption.

4. **Defining methane as a “hazardous substance” based on concentration and source is not consistent with the cleanup statute’s structure.**

Comment: Submitted by Waste Management of Oregon, Inc. The proposed rules substantially depart from the current statutory model, in that they depend not only on the nature of the specific substance to be designated as hazardous, but also on its source. Specifically, for methane to be a “hazardous substance,” under the proposed rules, it must originate from a “historic solid waste landfill.” There does not appear to be a rational explanation why methane from a landfill would pose an unacceptable risk, while methane at the same concentration from other sources would not.

Response: DEQ acknowledges that defining methane from historic landfills as a “hazardous substance” is a relatively unique approach and not a perfect fit under the Environmental Cleanup Rules. It should be noted, however, that many other hazardous substances are subject to the Environmental Cleanup Rules by virtue of their Resource Conservation and Recovery Act (RCRA) listings, which may also be source specific. DEQ continues to believe that the Environmental Cleanup Rules are the appropriate venue for addressing this potential hazard. The purpose of the proposed rule amendments is to deal with a specific problem—methane from historic landfills. The definition is purposely narrow, as it is not DEQ’s intent to regulate methane from other sources. Accordingly, DEQ believes that the proposed rule amendments should not be changed.

5. **Methane does not pose the kinds of risk to human health and the environment that warrant designation as a “hazardous substance.”**

Comment: Submitted by Waste Management of Oregon, Inc. Methane is a common non-toxic, biologically inert gas. The sole reason for proposing it as a “hazardous substance” is that methane presents an explosion hazard when mixed with air at concentrations over 5.0%. A number of other common gases (propane, ethane, and butane) have similar flammability characteristics, yet are not (and should not be) designated as hazardous substances.

Response: As noted above, DEQ acknowledges that methane will be a unique “hazardous substance” under the Environmental Cleanup Rules. Again, however, it should be noted that a number of compressed gases are RCRA Hazardous Wastes (and thus Environmental Cleanup “hazardous substances”) when discarded. DEQ acknowledges that the proposed rules are purposely narrow in scope and do not address all potentially explosive gases. DEQ’s intent is to address a specific problem associated with solid waste landfills. Accordingly, DEQ believes that the proposed rule amendments are appropriate as written.

6. **While the proposed rules recognize that the risks of methane occur only when concentrations exceed 5.0%, the rules nonetheless do not establish any level below which methane is not considered a “hazardous substance.”**

Comment: Submitted by Waste Management of Oregon, Inc. As proposed, any amount of methane from a historic solid waste landfill would be considered a “hazardous substance”, even though remedial actions would only apply if concentrations exceed 1.25%. . If the proposed regulations are adopted, methane should be designated as a “hazardous substance” only if concentrations exceed 5% by volume – i.e., the level at which DEQ considers methane to pose a risk. As for OAR 340-122-0040(3), the proposed rule should be revised such that concentrations must be reduced to below the 5.0% limit, with a 10% margin of safety – i.e., to 4.5%. Given the availability of inexpensive explosivity meters to measure methane at low concentrations, it is not necessary to require reducing methane concentrations below 1.25%.

Response: DEQ does not agree. The proposed rule amendments are consistent with the legal structure provided by the existing rules. For example, other hazardous substances are not defined by the concentration at which they may pose an unacceptable risk and the rules define the “acceptable risk level” for other hazardous substances in a conservative manner. DEQ has proposed to define the “acceptable risk level” for methane at a concentration of 1.25%, which is 25% of the lower explosive level. DEQ believes that to define the “acceptable risk level” at 90% of the lower explosive level (i.e., at a concentration of 4.5%), as Waste Management of Oregon has proposed, would not provide an adequate margin of safety. DEQ, therefore, believes that the proposed rule amendments are necessary and appropriate and should not be changed.

7. The proposed rules could be read to preclude landfill gas control measures.

Comment: Submitted by Waste Management of Oregon, Inc. A literal interpretation of the proposed rules could prohibit measures that are necessary to control methane from landfills. Typically, the management of methane from landfills involves the collection of methane in “confined spaces” such as piping, wells, and other gas collection equipment, at concentrations that may exceed 5.0%. Presumably, the term “confined spaces” is not intended to include gas collection equipment. The proposed rules should be revised to clarify that the restrictions do not apply to gas collection equipment.

Response: DEQ agrees and has amended the proposed rules accordingly.

8. Delete the proposed amendments that limit the applicability of certain sections of the rules for sites with potential methane releases.

Comment: Submitted by Christopher Rich and by the Oregon Refuse and Recycling Association (ORRA). The proposed amendments include text that limits the applicability of those sections of the Environmental Cleanup Rules pertaining to Remedial Investigation [340-122-0080(8)]; Feasibility Study [340-122-0085(10)],

and; Selection or Approval of the Remedial Action [340-122-0090(8)], for sites with potential methane releases. It is neither necessary nor appropriate to exclude otherwise applicable sections in the rules for a single “hazardous substance.” This is a potentially bad precedent, which might clog the rules with extraneous provisions (for other hazardous substances), and have the unintended consequence of restricting DEQ’s ability to require appropriate remedial actions in the future. It would be more useful to prepare a guidance document to assist contractors, property owners and others in dealing with methane issues.

Response: DEQ agrees and has removed the subject text from the proposed amendments. DEQ will development brief written guidance on the applicability of the rules to historic solid waste landfills with potential methane problems, as soon as possible following adoption of the rule amendments.

9. **Expand the scope of the proposed rule amendments to include “land disposal sites.”**

Comment: Submitted by ORRA. The proposed rule amendments apply to “historic solid waste landfills.” A landfill, as defined at ORS 459.005(14), refers to a “facility for the disposal of solid waste...” However, many of the sites the Department is trying to reach by adoption of this rule were never “facilities,” but rather were development sites. Revise 340-122-0115(31)(a) as follows: “a solid waste landfill or other land disposal site that was never permitted for disposal of solid waste...” Also, add the definition of “land disposal site” at 340-122-0115(35). Land disposal site is defined at ORS.459.005(13) as follows: “Land disposal site” means a disposal site in which the method of disposal of solid waste is by landfill, dump, pit, pond or lagoon.” The effect of this new language is to broaden the scope of the rule to include those sites that were used for disposal, but were never “solid waste landfills.”

Response: DEQ, as a result of discussions with its advisory groups, has purposely kept the scope of the proposed rules narrow. DEQ does not agree that the scope of the proposed rule amendments is too narrow. Land development sites, where limited amounts of vegetation may be buried as a result of on-site clearing and grading activities, are not typically a concern. Landfills are a concern, because they can receive large quantities of organic wastes from off-site sources. The existing definition of “facility”, at OAR 340-122-0115(26), is broad and includes “any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located...” DEQ sees no value in adding the term “land disposal site” to the proposed rule amendments. Also, the recommended addition would have the explicit effect of bringing ponds and lagoons under the jurisdiction of these rule amendments, which is not DEQ’s intent. In summary, DEQ believes that the scope of the proposed rule amendments is appropriate as drafted and should not be changed.

10. Expand the scope of the proposed rule amendments to include facilities whose permits have been terminated or revoked.

Comment: Submitted by ORRA. The scope of the proposed rule amendments should be expanded by revising 340-122-0115(31)(b) as follows: “a solid waste landfill that was previously permitted for disposal of solid waste pursuant to ORS 459.205, if operational and post-closure permits for management of the facility have expired, have terminated, or have been revoked.”

Response: DEQ agrees and has incorporated the recommended text change into the proposed rule amendments.

11. The proposed rule amendments could force a landfill to be subject to regulation under both the Solid Waste and Hazardous Waste Sections of the Department.

Comment: Submitted by ORRA. Section 340-122-0115(31)(c) of the proposed rule amendments, as written, was designed to allow the Department to access the Solid Waste Orphan Site Account. However, this could subject a landfill to regulation under both DEQ’s Solid Waste and Hazardous Waste Programs. A better approach is to revise the previous section, 340-122-0115(31)(b), as suggested above. Then, if a landfill is failing to meet its permit requirements, upon revocation of the permit, the landfill is subject to the proposed new rule. And, if other existing statutory requirements were met, the Department could then access the Solid Waste Orphan Site account.

Response: DEQ acknowledges that, under the proposed rule amendments, there may be instances in which a landfill owner or operator is subject to regulation under the Department’s Solid Waste Program and the Environmental Cleanup Program. However, DEQ does not agree that this is necessarily a problem. Different programs deal with different issues and many businesses, including solid waste disposal facilities, are currently subject to regulation under more than one of the Department’s programs. As ORRA notes, one objective of the proposed rule amendments is to allow DEQ to use the Solid Waste Orphan Site Account, to perform needed work, in the event that the landfill permittee is financially unable to perform the required work. DEQ does not agree that revoking the permit should be necessary precursor for declaring a landfill an “orphan site”. The permit is an important tool that the Solid Waste Program uses to ensure compliance with its regulations, and to protect public health, safety and welfare and the environment. Revoking the permit is a very significant measure that may have broad repercussions. If a permittee is not in compliance, for reasons other than financial problems, there are other enforcement options available to the Department. The decision to revoke a permit should be made on a case-by-case basis and not be dictated by rule. In summary, DEQ believes that the proposed rule amendments are appropriate as written and should not be changed.

List of Commenters:

<u>Commenter</u>	<u>Comments</u>
Andrew M. Kenefick Senior Legal Council Western Group Waste Management of Oregon, Inc.	1-7
Kristen S. Mitchell Governmental Affairs Director Oregon Refuse & Recycling Association (ORRA)	1, 8-11
Christopher Rich Rycewicz & Chenoweth, LLP	8
Elise Smith CLEAN	See Attachment D

Date: May 29, 2002

To: Environmental Quality Commission

From: Bill Dana, Land Quality Division

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: May 23, 2002 – 1:00 PM
Hearing Location: DEQ Headquarters, Portland
Title of Proposal: Permanent Rule to Add Methane, Under Certain Conditions, to
the List of Environmental Cleanup Hazardous Substances

The rulemaking hearing on the above-titled proposal was convened at 1:00 PM. The hearing was closed at 3:00 PM. People were asked to sign an attendance list and to sign a registration form, if they wished to present comments. People were advised that the hearing was being recorded.

Three people attended the hearing, in addition to DEQ staff. One person 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.

The following report provides a summary of oral comments received at the hearing and the Department's response. No written comments were received at the hearing. Written comments received after the hearing are discussed in Attachment B, Public Input and Department's Response.

Ms. Elise Smith presented verbal comments on behalf of CLEAN, an association of citizens concerned about the former Cobb's Quarry landfill site, in Beaverton. Ms. Smith stated that members of CLEAN support the proposed permanent rule as drafted. She noted that her group is one that originally petitioned the Commission for a temporary rule to give the Department authority to regulate methane as a hazardous substance. She stated that she was pleased with the outcome and that the process of working with DEQ staff concerning this issue has been very positive. The Department thanks Ms. Smith and the other members of CLEAN for bringing this issue to our attention and for their support.

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

Permanent Rule to Add Methane, Under Certain Conditions,
To the List of Environmental Cleanup Hazardous Substances

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

Federal requirements are not applicable to the situation addressed by these proposed rules. Federal Resource Conservation and Recovery Act (RCRA) requirements for permitted solid waste disposal requirements are generally similar to the proposed rules but are not directly applicable because RCRA requirements apply only to facilities that are permitted ("historic solid waste landfills" generally applies to solid waste landfills that existed before permit requirements were in effect and formerly permitted solid waste disposal sites where permits have already expired).

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

N/A

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

N/A

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

Methane generated by inactive solid waste landfills is not subject to federal procedural, reporting or monitoring requirements. Methane can pose risks of explosive hazards associated with accumulations of methane in confined areas, especially in cases where a closed landfill is being redeveloped for future residential, commercial or industrial uses. A number of other states (Washington, California, Wisconsin, Michigan and Texas) are known to have developed regulatory programs for management of methane associated with former landfills.

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

The goal of the proposed regulations is to ensure that the Department has authority to oversee and/or require investigations, removal actions and remedial actions appropriate for historic solid waste landfills with potential methane explosion risks. In general, procedures for methane investigations are well-established. Similarly, if control measures need to prevent or safely manage concentrations of methane, a range of technologies and measures including passive and active collection and treatment systems and various design and construction measures are available for these purposes.

11. Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The proposed requirements address the current lack of adequate regulatory authority for DEQ to address potential methane risks associated with historic solid waste landfills.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Permanent Rule to Add Methane, Under Certain Conditions,
to the List of Environmental Cleanup Hazardous Substances

Fiscal and Economic Impact Statement

Introduction

DEQ believes the proposed rules have little if any financial or economic impact on businesses or individual Oregonians. If adopted, the proposed permanent will replace temporary rules currently in effect that are scheduled to expire automatically in August 2002.

The proposed rules apply only to historic solid waste landfills with methane issues and these historic facilities are defined in the rules. They include: a) solid waste disposal sites that were never permitted for disposal of solid waste; and b) solid waste disposal sites that were formerly permitted if the permit has expired. With rare exceptions, the proposed rules do not apply to permitted facilities (permitted facilities for disposal of solid waste are affected by the rule only in the extraordinary circumstance where the permittee is unable to comply with permit requirements for methane, such as bankruptcy or other financial hardship resulting in a Department determination that the permittee is financially unable to comply and therefore that the facility is an "orphan site").

While the proposed rules do not have a general impact on small businesses or individual Oregonians, for individual historic solid waste landfills with potential methane concerns, the rules conceivably could increase the cost of managing or redeveloping properties because methane investigation and remediation actions may be required.

General Public

Methane investigations and remediation actions, if required, would be conducted in a manner similar to other environmental cleanup sites, including former landfills now exhibiting groundwater contamination problems. However, the proposed rules explicitly limits the extent of investigation and analysis required and therefore provides a relatively streamlined process for addressing potential methane concerns that might be associated with historic solid waste landfills (see proposed OAR 340-122-080, for example).

Small Business

Owners of historic solid waste landfills generally understand that some formerly used solid waste disposal facilities present unique challenges especially if the landfill is to be redeveloped into residential, commercial or industrial land uses. Solid waste 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 and basements of occupied buildings--in concentrations that may present a fire or explosion hazard for site workers or residents.

Developers of historic solid waste landfills may incur additional project costs due to investigation and cleanup activities required by these rules. On the other hand, some prospective developers have indicated they would prefer DEQ oversight and involvement in methane investigations and cleanups so that lenders, local governments, prospective property buyers, nearby neighbors, and others have assurance that environmental conditions have been properly evaluated. In the absence of these rules, the Oregon Department of Justice has advised DEQ and the Oregon Environmental Quality Commission (EQC), that the Department has insufficient regulatory authority to provide this service.

Large Business

Same as small businesses.

Local Governments

Local governments may own historic solid waste disposal landfills and, should methane mitigation activities be necessary, would incur costs to eliminate risks from methane (see impacts described above for small and large businesses). Local governments also review and approve land development proposals and generally lack in-house expertise to evaluate potential methane risks associated with formerly used solid waste disposal landfills and, in these cases, DEQ believes that the rules provide local governments with useful assistance in dealing with potential methane risks.

State Agencies

Additional state staff are not required for implementation of the proposed rules. DEQ will incur minor costs for development of fact sheets and related public outreach and education efforts associated with the new rules, but these costs are modest and consistent with existing workload. In addition, adoption of the rules will allow the Department to oversee historic landfill methane investigation and cleanup actions conducted by participant's in DEQ's cleanup program or, if necessary, DEQ may conduct these activities using state funds. DEQ recovers state costs for oversight of cleanup projects from responsible parties.

No other state agencies would appear to be affected.

Assumptions

DEQ's prior experience with several "historic solid waste landfills" in Oregon served as the basis for formulating these projected fiscal and economic impacts.

Housing Cost Impact Statement

The Department has determined that this proposed rulemaking will have little if any 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 even in cases where the parcel proposed for single-family development is a historic solid waste disposal site. There is a possibility that methane control costs could be passed on to parcel purchasers from developers, but this could occur whether or not these rules were in place.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Permanent Rule to Add Methane, Under Certain Conditions,
to the List of Environmental Cleanup Hazardous Substances

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The purpose of this rulemaking is to define methane generated at certain "historic solid waste landfills" as a hazardous substance for purposes of administering the state's environmental cleanup law. Adoption of the rules will allow the Department to oversee historic landfill methane investigation and cleanup actions conducted by participants in DEQ's Cleanup program. In addition, these rules provide DEQ with authority, if necessary, to require or perform methane investigation and cleanup actions at these facilities using state funds.

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

Yes ___ No X

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

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes ___ No ___ (if no, explain):

c. If no, apply the following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

DEQ has previously evaluated cleanup program activities against these criteria and has determined that environmental cleanup projects do not affect land use.

3. **If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

Division



Intergovernmental Coord.

7/03/02
Date

fees approved by the 2001 Legislature and put into place during 2001-03. Those include the Wastewater Permit Fee, Wastewater Operator Certification Fee (EQC adoption is proposed for September 2002), Air Contaminant Discharge Permit Fee and Auto Dealer On-Site Testing Fee. We have given these packages the highest priority.

Baker City DEQ Office Closed

To manage budget shortfalls in the On-Site Sewage Septic System program, caused in part by the steady decline of new system applications (this program is entirely fee-funded), DEQ closed the Baker City office to the public on June 21. Attachment C is a (draft) guest editorial written by Joni Hammond for the Baker City Herald to supplement press releases issued at the time of the office closure. The Pendleton office is now processing on-site system applications for residents in Baker, Grant, Union and Wallowa Counties. To ensure continued customer service, we created a toll-free phone number for people to contact the Pendleton office with questions or needs. Technical staff remain in the Baker City office doing field work and inspections for on-site applications.

Status of the Umatilla Chemical Depot

On June 12, Governor Kitzhaber notified the Commission that an adequate emergency response program is in place and fully operational to protect the population surrounding the Umatilla Chemical Agent Disposal Facility (UMCDF). This notification was a major milestone for the Umatilla Project and unique among chemical agent stockpile sites nationally. The Governor's letter requested that the Chemical Stockpile Emergency Preparedness Program (CSEPP) Executive Review Panel continue to meet at least annually to monitor the status of the emergency response program.

On July 12, the Department authorized the U.S. Army and Washington Demilitarization Company to proceed with the start of Surrogate Chemical Operations. Over the past four months, we assessed compliance of UMCDF with the facility's hazardous waste permit, using a 95-item checklist that the Commission made part of the permit in March 2002. Our assessment took into account the Governor's emergency response system notification, as well as numerous engineering documents, including approval of the liquid incinerator 1 trial burn plan.

Surrogate chemical operations are scheduled to start the week of July 22, 2002, with the first surrogate trial burn in late August 2002. At a June 20, Citizens Advisory Commission meeting in Hermiston, the Army stated that the start of chemical agent operations is delayed until at least May 2003.

Air Quality Program Receives EPA Grant for Outreach

In June, EPA awarded DEQ's Air Quality Division \$95,792 to implement *Walk There!*, an innovative program to encourage students to walk to school with senior citizen volunteers from their community. EPA received over 46 grant proposals for their annual Mobile Source Outreach Assistance Competition. *Walk There!* was one of seven selected for funding. This is the third DEQ outreach project selected for funding in the last four years (others include the CHOICES voluntary vehicle scrap program and the Remote Sensing Vehicle Emission Testing project). In addition to building social capital in the community between generations and

increasing physical activity among children and seniors, *Walk There!* supports mobile source emission reductions and advances the Air Quality Division's mobile source outreach efforts.

Water Quality Certifies Two Major Hydroelectric Projects

In June, the Water Quality Division issued "Section 401" water quality certifications to two important hydroelectric projects in Oregon:

- The North Umpqua Hydroelectric Project, owned and operated by PacifiCorp, includes eight separate installations along the North Umpqua basin that can produce 185 Megawatts of power.
- The Pelton-Round Butte Hydroelectric Project, at the confluence of the Crooked, Deschutes and Metolius Rivers creating Lake Billy Chinook, can generate 484 Megawatts. Portland General Electric and the Confederated Tribes of the Warm Springs Reservation are co-applicants for its new license.

DEQ's certifications are required for the projects' new long term licenses, and include conditions that will lead to major improvements in water quality and are linked to ongoing basin TMDLs. Environmental issues addressed by the conditions in each certification include temperature, dissolved oxygen, total dissolved gases, flows, and fish habitat and passage. Each certification required years of technical coordination and evaluation by DEQ staff to reach reasonable assurance that water quality standards could be met during project operations. Dennis Belsky, of DEQ's Medford office, and Paul De Vito of DEQ's Bend office did the work on these certifications.

Meetings with Gubernatorial Candidates

On July 16, Chair Eden, Commissioner Van Vliet and I met with Ted Kulongoski to discuss state environmental issues, DEQ priorities and his interests for Oregon. On August 14, Chair Eden and I plan to meet with Kevin Mannix for a similar discussion.

New Land Quality Division Administrator Hired

Dick Pedersen, who has been managing DEQ's TMDL program, has been selected as the new Administrator for the Land Quality Division, replacing Paul Slyman. Dick will take his new position on August 5, and Mike Wiltsey of the TMDL staff will be Acting while a decision is made about a new TMDL manager. Appreciation is due to David Rozell, who has served as Acting Land Quality Administrator while Paul is on duty for the Coast Guard. Paul returns to DEQ as Deputy Director on October 1, 2002.

OVERVIEW

the mission, responsibilities, and proposed budget of the Department of Environmental Quality

Our Mission

"To be a leader in restoring, maintaining, and enhancing the quality of Oregon's air, water and land."

Department Priorities

- ◆ Deliver excellence in performance and product
- ◆ Protect Oregon's water
- ◆ Protect human health and the environment from toxics
- ◆ Involve Oregonians in solving environmental problems

Working locally to solve environmental problems

Before 1993, most DEQ staff was located at the Portland headquarters. Now, DEQ operates offices in 18 locations around the state.

DEQ works to solve environmental problems. In 1980, only 30% of Oregonians lived in clean air areas. Now, 100% live where the air meets federal health standards.

In Oregon, 64% of rivers monitored by DEQ are improving in water quality and only 1% is declining in water quality.

01-03 Legislatively Approved Budget

Includes special session reductions

Total:	\$306,991,325
Gen. Fund:	\$ 38,746,568
Lottery:	\$ 2,490,468
Other:	\$113,210,996
Federal:	\$ 35,373,520
Non-Limited:	\$117,169,773
FTE:	857.53

Adjusting to the state budget shortfall

The special sessions reduced DEQ's 01-03 budget by \$3M. The biggest effect is reduced funding for clean air work. In response to revenue shortfalls, DEQ implemented a hiring chill and curtailed out-of-state travel; the Governor later expanded this to a hiring freeze.

Budget Issues for 2003

- ◆ Funding work to **restore healthy water for the Willamette River:**
 - ◆ Plans to reduce pollution loads through TMDLs
 - ◆ Stricter pollution controls for regulated facilities
 - ◆ Technical assistance and education to help communities and small businesses reduce pollution from stormwater runoff
 - ◆ Better understanding of threats posed by toxic chemicals in the Willamette River, in order to address these threats
 - ◆ Help businesses and communities comply with clean water laws, and where necessary, enforce violations of clean water laws
- ◆ Support for DEQ's **environmental laboratory**, facing large rent increases and required to move out of its PSU facility. DEQ's Lab and the Oregon Public Health Laboratory are critical for monitoring Oregon's environmental and public health, and for response to threats to homeland security.
- ◆ Funding **cleanup of contaminated land and water, including mercury contamination** from abandoned and inactive mines.
- ◆ Funding to maintain **effective and safe hazardous waste management for Oregon.**
- ◆ Funding Community Solutions Team field staff's **work with communities to solve environmental and economic development problems.**
- ◆ Maintain **high quality Vehicle Inspection Program.**



DRAFT

Package Positions Summary

19-Jul-02

Package	Fund	Limitation	FTE SUMMARY			TOTAL
			Restore	Continue	New	
101	ACDP Fee Ratification					
	Air Contaminant Discharge Permit Fees	\$1,033,424	5.65	0.00	0.00	5.65
		\$1,033,424	5.65	0.00	0.00	5.65
102	Wastewater Permitting Fee Ratification					
	WQ Waste Water Permitting Fees	\$986,989	5.00	0.00	0.00	5.00
		\$986,989	5.00	0.00	0.00	5.00
103	Operator Certification Fee Ratification					
	WQ Sewerage Works Operator Certification	\$156,769	1.00	0.00	0.00	1.00
		\$156,769	1.00	0.00	0.00	1.00
104	Auto Dealer On-site VIP Fee Ratification					
	Vehicle Inspection Certificate Fees	\$204,080				
		\$204,080				
112	PM2.5 Monitoring Network					
	Air Quality Federal Funds	\$1,261,636	0.00	5.00	2.50	7.50
		\$1,261,636	0.00	5.00	2.50	7.50
113	Fine Particulates Monitoring & Air Toxics					
	Vehicle Inspection Certificate Fees	\$629,925	0.00	70.00	0.00	70.00
		\$629,925	0.00	70.00	0.00	70.00
120	Willamette Basin TMDL					
	WQ General Fund	\$1,999,476	0.00	3.50	6.75	10.25
		\$1,999,476	0.00	3.50	6.75	10.25
122	Statewide TMDL Implementation					
	WQ Base Grant	\$991,393	0.00	6.00	0.00	6.00
		\$991,393	0.00	6.00	0.00	6.00
123	Drinking Water Protection					
	WQ Drinking Water Protection	\$843,441	0.00	5.00	0.00	5.00
		\$843,441	0.00	5.00	0.00	5.00

Package	Fund	Limitation	FTE SUMMARY			
			Restore	Continue	New	TOTAL
124	Clean Water SRF Program Coordination					
	WQ SRF Loan Fees	\$162,176	0.00	0.00	1.00	1.00
		\$162,176	0.00	0.00	1.00	1.00
125	Environmental Monitoring Assessment (EMAP)					
	WQ Other Federal	\$412,321	0.00	0.00	2.00	2.00
		\$412,321	0.00	0.00	2.00	2.00
129	NPDES Stormwater Phase II Implementation					
	WQ Stormwater Permits	\$376,998	0.00	0.00	2.50	2.50
		\$376,998	0.00	0.00	2.50	2.50
131	Hazardous Waste/Toxics Restoration					
	HW General Fund	\$823,631	4.00	0.00	0.00	4.00
	Hazardous Waste Generator Fees	\$1,146,836	6.00	0.00	0.00	6.00
		\$1,970,467	10.00	0.00	0.00	10.00
133	Orphan Site Cleanup Restoration					
	Orphan Site Operating Funds	\$7,000,000				
		\$7,000,000				
136	Umatilla Compliance					
	Umatilla Chemical Demilitarization	\$203,474	0.00	0.00	1.25	1.25
		\$203,474	0.00	0.00	1.25	1.25
143	LaPine On-Site Continuation					
	WQ LaPine Natl. Demo. Project	\$965,161	0.00	4.50	1.00	5.50
		\$965,161	0.00	4.50	1.00	5.50
150	Community Solutions Team					
	Community Solutions Team	\$823,138	0.60	3.00	0.00	3.60
		\$823,138	0.60	3.00	0.00	3.60
151	Data Management Grant					
	Cross Media Federal Grants	\$258,682	0.00	0.75	0.50	1.25
		\$258,682	0.00	0.75	0.50	1.25
165	Agency Management Restorations					
	Miscellaneous Receipts Revenue	\$1,522,153	4.00	0.00	0.00	4.00
		\$1,522,153	4.00	0.00	0.00	4.00

Package	Fund	Limitation	FTE SUMMARY			TOTAL
			Restore	Continue	New	
166	Information Management					
	Miscellaneous Receipts Revenue	\$216,983	0.00	0.00	1.00	1.00
		\$216,983	0.00	0.00	1.00	1.00
167	Facilities Coordinator					
	Miscellaneous Receipts Revenue	\$141,654	0.00	0.00	1.00	1.00
		\$141,654	0.00	0.00	1.00	1.00
171	Laboratory Rent - AQ					
	AQ General Fund	\$328,646				
		\$328,646				
172	Laboratory Rent - WQ					
	WQ General Fund	\$392,111				
		\$392,111				
173	Laboratory Rent - LQ					
	Spills General Fund	\$28,430				
	HW General Fund	\$70,585				
		\$99,015				
180	Transfer Lower Columbia NEP to OWEB					
	WQ General Fund	(\$108,000)				
		(\$108,000)				
	Grand Total:	\$22,872,112	26.25	97.75	19.50	143.50

Attachment C

DEQ Maintains Commitment to Serving Baker County (draft)

By Joni Hammond

In 1994 the Oregon Department of Environmental Quality (DEQ) opened an office in Baker City specifically to meet the demand for on-site septic system installations, repairs, and upgrades in Baker, Grant, Wallowa, and Union counties. Due to revenue shortfalls, DEQ recently had to relocate one staff person and close the Baker City office to the public. Although the Baker City office no longer processes applications or provides general on-site information, our on-site inspector will continue to be based in Baker City and DEQ remains committed to meeting the area's on-site needs.

Decisions on the operation of the Baker City office were based on economics. DEQ's on-site program is 100% fee funded. A decline in on-site septic system applications - in this area as well as the rest of the state - coupled with a general downturn in the state's economy has meant that DEQ has had to make difficult decisions on how to meet our on-site customer needs at the same time revenues for the on-site program are declining. In Eastern Oregon this has meant closing the Baker City on-site office to the public and reassigning available on-site staff to other duties.

Diane Naglee, the on-site inspector who worked in the Baker City office, will continue to be based in Baker City. Because of the amount of time Diane spends in the field doing inspections, she will not be able to maintain office hours or accept applications. She will, however, continue to provide prompt service and technical assistance regarding on-site system site evaluations, pre-cover inspections, and final inspections, and to respond to complaints.

Ruth Ann Quinn, who was the on-site program service representative in the Baker City office, will be working on a variety of water quality related work from DEQ's Pendleton office.

The most noticeable change in service will be to septic system installers, contractors, and the public at large who used to stop by the Baker City office for on-site applications, permits, and to get answers to their questions on DEQ's on-site program. This information will now be provided by DEQ's on-site staff in Pendleton. They can be reached by calling (800) 304-3513. You can also find information on DEQ's website at www.deq.state.or.us. Click on Water Quality, then click on On-site. Applications can be mailed to our Pendleton office at 700 SE Emigrant, Suite 330, Pendleton, OR, 97801.

Changing the services offered by the Baker City office was not an easy decision and DEQ apologizes for any inconveniences these changes may cause. However, we believe these changes are the best way to continue to provide quality customer service given the on-site program's current revenues. We take our commitment to customer service very seriously and will continue to provide the prompt and efficient service our on-site customers have come to know and expect.

Joni Hammond is DEQ's Eastern Region Administrator. She is a licensed sanitarian and former on-site inspector. She is based in DEQ's Pendleton office.

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** July 8, 2002
From: Mikell O'Mealy, Assistant to the Commission *M. O'Mealy*
Subject: Item E: Discussion Item: Preparation for Director's Performance Evaluation

In January, the Commission approved a formal process for evaluating the DEQ Director's performance each biennium (attached), and decided to conduct the first evaluation this fall. In March, the Commission agreed to a tentative schedule for preparing and conducting the evaluation, shown below. At the July 25 meeting, to start the evaluation process, the Commission may:

- review, and if necessary, revise and adopt criteria for the fall 2002 evaluation,
- appoint a subcommittee of the Commission to prepare for the evaluation (2 members), and
- ask the Director to prepare a written self-evaluation of performance, to be provided to the Commission before the September 16-17 EQC meeting.

The Commission would then begin the evaluation process at its September meeting and conclude in December.

September 16-17 EQC meeting – Begin Performance Evaluation

- Review the Director's self-evaluation in an Executive Session, absent the Director.
- Follow review of the Director's self-evaluation with an Executive Session with the Director.

Late September

- Solicit and compile input from appropriate sources concerning the Director's performance.

October

- Review and provide due consideration to input received within the overall performance appraisal process.
- Commissioners complete individual evaluations of the Director using the adopted criteria.
- Commissioners submit individual evaluations to the Chair for compilation.

December 12-13 EQC meeting – Complete Performance Evaluation

- Hold an Executive Session with the Director to review results.
- Following this meeting, prepare a public release of the performance evaluation in summary form. The Chair reviews with the Director before release.

As an alternative, if the Commission would like to complete the process sooner, it could schedule an Executive Session meeting in late October or November to review results with the Director. If you have questions or would like to discuss this schedule before the July meeting, please contact me at (503) 229-5301.



Environmental Quality Commission

Performance Evaluation Director, Department of Environmental Quality

Approved January 25, 2002

- 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: _____

Mid-Rating Period: _____

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>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Outstanding</td> <td style="text-align: right; padding: 2px;">5</td> </tr> <tr> <td style="padding: 2px;">Exceeds expectations</td> <td style="text-align: right; padding: 2px;">4</td> </tr> <tr> <td style="padding: 2px;">Fully meets expectations</td> <td style="text-align: right; padding: 2px;">3</td> </tr> <tr> <td style="padding: 2px;">Needs improvement</td> <td style="text-align: right; padding: 2px;">2</td> </tr> <tr> <td style="padding: 2px;">Unsatisfactory</td> <td style="text-align: right; padding: 2px;">1</td> </tr> <tr> <td style="padding: 2px;">Not Rated</td> <td style="text-align: right; padding: 2px;">N</td> </tr> </table> <hr style="border: 0.5px solid black;"/> <p>Weight¹ _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
Outstanding	5												
Exceeds expectations	4												
Fully meets expectations	3												
Needs improvement	2												
Unsatisfactory	1												
Not Rated	N												
<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>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Outstanding</td> <td style="text-align: right; padding: 2px;">5</td> </tr> <tr> <td style="padding: 2px;">Exceeds expectations</td> <td style="text-align: right; padding: 2px;">4</td> </tr> <tr> <td style="padding: 2px;">Fully meets expectations</td> <td style="text-align: right; padding: 2px;">3</td> </tr> <tr> <td style="padding: 2px;">Needs improvement</td> <td style="text-align: right; padding: 2px;">2</td> </tr> <tr> <td style="padding: 2px;">Unsatisfactory</td> <td style="text-align: right; padding: 2px;">1</td> </tr> <tr> <td style="padding: 2px;">Not Rated</td> <td style="text-align: right; padding: 2px;">N</td> </tr> </table> <hr style="border: 0.5px solid black;"/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
Outstanding	5												
Exceeds expectations	4												
Fully meets expectations	3												
Needs improvement	2												
Unsatisfactory	1												
Not Rated	N												

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 border="0"> <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												
Exceeds expectations	4												
Fully meets expectations	3												
Needs improvement	2												
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 border="0"> <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												
Exceeds expectations	4												
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 border="0"> <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												
Exceeds expectations	4												
Fully meets expectations	3												
Needs improvement	2												
Unsatisfactory	1												
Not Rated	N												
<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 border="0"> <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												
Exceeds expectations	4												
Fully meets expectations	3												
Needs improvement	2												
Unsatisfactory	1												
Not Rated	N												

<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 border="0"> <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												
Exceeds expectations	4												
Fully meets expectations	3												
Needs improvement	2												
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 border="0"> <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												
Exceeds expectations	4												
Fully meets expectations	3												
Needs improvement	2												
Unsatisfactory	1												
Not Rated	N												
<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 border="0"> <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												
Exceeds expectations	4												
Fully meets expectations	3												
Needs improvement	2												
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 border="0"> <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												
Exceeds expectations	4												
Fully meets expectations	3												
Needs improvement	2												
Unsatisfactory	1												
Not Rated	N												

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.

Attachment

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 EvaluationEffectiveness 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 and Third Meeting

**June 6-7, 2002
Regular Meeting¹**

The following Environmental Quality Commission (EQC) members were present for the regular meeting, held at the Best Western New Kings Inn, located at 1600 Motor Court N.E., in Salem, Oregon.

Melinda Eden, Chair
Tony Van Vliet, Vice Chair
Mark Reeve², Member
Harvey Bennett, Member
Deirdre Malarkey, Member

Thursday, June 6, 2002

On June 6, the EQC and Oregon Water Resources Commission (WRC) held a joint meeting to discuss the intersection of water quality and water quantity management in Oregon. The Commissions focused on opportunities for greater program coordination between the Oregon Department of Environmental Quality (DEQ) and Oregon Water Resources Department (WRD). The following WRC members were present:

Dan Thorndike, Chair
Tyler Hansell, Member
Jim Nakano, Member
Ron Nelson, Member
Jay Rasmussen, Member
Susie Smith, Member

EQC Chair Melinda Eden called the joint meeting to order at approximately 11:00 a.m. Commissioners introduced themselves to the group.

Opening Comments

Paul Cleary, WRD Director, and Stephanie Hallock, DEQ Director, thanked Commissioners for their interest in improving the connections between water quality and water quantity management in the state, and gave an overview of discussion items for the day.

Overview of Water Quantity and Water Quality Authorities

Meg Reeves, WRD Deputy Director, and Mike Llewelyn, DEQ Water Quality Administrator, described Oregon's water law and the federal Clean Water Act as a foundation for Commission consideration of the gaps and overlaps between these authorities. Commissioners discussed the ways DEQ and WRD staff work together to coordinate and implement water regulations in different areas of the state.

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 Commissioner Reeve was absent on June 7, 2002.

The Intersection of Water Quantity and Water Quality Programs

Interagency Coordination

Dwight French, WRD Water Rights Manager, and Karen Tamow, DEQ Assistant to the Water Quality Administrator, presented the 1997 recommendations of the Water Quality and Quantity Task Force. Commissioners discussed on-going and future interagency coordination on many of the issues that the Task Force identified.

TMDL Development and Implementation

Dick Pederson, DEQ Watershed Management Section Manager, described the purpose and schedule for developing Total Maximum Daily Loads (TMDLs) to improve the quality of Oregon's impaired waterways. Mr. Pedersen then gave an overview of the Umatilla Basin TMDL, which demonstrated the ways water quantity can influence water quality problems in a system. Don Butcher, DEQ Eastern Region TMDL Specialist, and Mike Ladd, WRD North Central Region Manager, described the efforts of various stakeholders in the basin to restore stream flows. Tom Paul, WRD Field Services Administrator, and Mr. Pedersen concluded the presentation by describing lessons learned in the TMDL process and tools available for addressing stream flow issues to improve water quality. Commissioners discussed efforts to find innovative solutions to water quality-quantity challenges, and commended the Departments for their coordination and support of the local solution process.

Water Reuse Initiative

Mike Llewelyn, DEQ Water Quality Administrator, introduced DEQ's Water Reuse Initiative, an effort to encourage the reuse of wastewater in anticipation of growing future demands on Oregon's water resources. Mr. Llewelyn and Tom Paul, WRD Field Services Administrator, then gave an overview of DEQ and WRD water reuse responsibilities. Commissioners discussed opportunities and challenges associated with building support for reusing wastewater in various areas of the state.

Commission Discussion and Closing Comments

Commissioners discussed current issues and opportunities related to merging water quality and water quantity requirements. A panel of DEQ and WRD staff responded to questions. Members of each Commission expressed appreciation for Department efforts to align agency programs and jointly address management issues, and asked the Directors to continue coordination efforts and update the Commissions over time.

WRC Chair Dan Thorndike adjourned the meeting at approximately 5:30 p.m. Following the meeting, Commissioners held a joint reception to build relationships and discuss water quality-quantity issues in an informal setting. The reception concluded the joint meeting.

Friday, June 7, 2002³

The Commission held an executive session at 8:00 a.m., 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 EQC meeting to order and agenda items were taken in the following order.

A. Approval of Minutes

Commissioner Malarkey moved the Commission approve draft minutes of the April 23-25, 2002, EQC meeting. Commissioner Van Vliet seconded the motion and it passed with four "yes" votes.

B. Action Item: Consideration of Pollution Control Facility Tax Credits

Holly Schroeder, Acting DEQ Management Services Division Administrator, gave an overview of Pollution Control Facility Tax Credit requests, and introduced Maggie Vandehey, DEQ Tax Credit coordinator, to

³Commissioner Reeve was absent on June 7, 2002.

present applications to the Commission. Ms. Vandehey recommended the Commission approve tax credit requests from citizens, businesses and industry members for technology and process investments that reduce environmental pollution. The Commission discussed the applications with Ms. Schroeder and Ms. Vandehey. Commissioner Bennett moved the Commission approve Pollution Control Facility Tax Credit applications as recommended by the Department. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

C. Director's Dialogue

Director Hallock discussed current events and issues involving the Department with Commissioners, including the state budget situation and an update on DEQ's development of legislative concepts and budget requests for the 2003 Session.

D. Action Item: Umatilla Chemical Agent Disposal Facility Permit Modification

Wayne Thomas, DEQ Administrator of the Chemical Demilitarization Program, proposed a Class 3 Modification to the hazardous waste permit for the Umatilla Chemical Agent Disposal Facility (UMCDF). Mr. Thomas explained that the permit change would increase the amount of available storage at UMCDF for hazardous wastes generated during destruction of chemical agents, scheduled to start in February 2003. The U.S. Army requested the permit modification in February 2000, and DEQ solicited public input on the change in 2000 and 2002. Mr. Thomas introduced Sue Oliver, DEQ Hazardous Waste policy specialist, and Nick Speed, DEQ Hazardous Waste permit specialist, to explain the proposal in detail.

The Commission discussed the proposed permit modification with Director Hallock, Mr. Thomas, Mr. Speed and Ms. Oliver. Commissioner Van Vliet moved the Commission approve the proposed permit modification. Commissioner Bennett seconded the motion and it passed with four "yes" votes. The Commission directed the Department to prepare an order modifying the permit for the Director to sign on the Commission's behalf.

In addition, the Commission discussed concerns expressed by the Confederated Tribes of the Umatilla Indian Reservation regarding the Brine Reduction area at UMCDF, and asked the Department to prepare an informational item on this topic for the July 25-26, 2002, EQC meeting.

E. Work Session: Revising Enforcement and Compliance Rules

Anne Price, DEQ Administrator of the Office of Compliance and Enforcement, described DEQ's ongoing efforts to revise agency enforcement rules. In January 2000, the Commission provided direction for improving compliance with and enforcement of Oregon's environmental regulations. At this meeting, Ms. Price summarized rulemaking progress and solicited input from the Commission. Commissioners discussed improvements with Director Hallock and Ms. Price, and commended the Department for their attention to this important rulemaking.

Public Forum

At approximately 11:30 a.m., Chair Eden asked whether anyone wished to provide public comment. Jeff Allen, Executive Director of the Oregon Environmental Council (OEC), spoke to the Commission about OEC's interests and priorities for improving environmental quality. Commissions briefly discussed OEC's activities with Mr. Allen, and thanked him for his comments.

F. Discussion Item: Role of Hearings Officers as Agents of the Commission

Anne Price, DEQ Administrator of the Office of Compliance and Enforcement, facilitated Commission discussion about the role of Hearings Officers, which act as agents of the Commission on appeals of Department enforcement actions. Commissioners discussed the function of Hearings Officers with attention to the scope of their review and decision making in contested case appeals.

G. Commissioners' Reports

Commissioner Malarkey reported on her recent meeting with the Lane Regional Air Pollution Authority and thanked Andy Ginsburg, DEQ Air Quality Administrator, for his continued coordination with the group to address their funding concerns. Commissioner Malarkey also expressed her concerns about turbidity levels in the McKenzie River, caused by water releases from Cougar Dam by the Army Corps of

Engineers as part of a long term improvement project. Director Hallock discussed water quality concerns and projected benefits of this project with the Commission.

Chair Eden reported that on May 14, 2002, the Governor's Chemical Stockpile Emergency Preparedness Program (CSEPP) Executive Review Panel issued a unanimous recommendation that an adequate emergency response program was in place and fully operational to protect communities surrounding the Umatilla Chemical Depot. Chair Eden emphasized that the success of achieving consensus among panel members was due in part to Director Hallock's early involvement in and coordination of the process.

Chair Eden adjourned the meeting at approximately 1:15 p.m.

Date: July 8, 2002
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item G, Rule Adoption: Renewal of NPDES 1200-A, NPDES 1200-Z, and WPCF 1000 General Permits
July 26, 2002

Department Recommendation The Department recommends the Commission renew in rule three general water quality permits for industrial storm water discharges and wastewater disposal at sand and gravel mining operations.

Need for Rulemaking These permits expired on June 30, 2002, and remain in effect for permittees that submitted renewal applications. This rulemaking is needed to renew the permits for five-year terms, and update and improve permit language.

Effect of Rule The proposed revisions to OAR 340-045-0033 *Regulations Pertaining to General Permits* (Attachment A) will renew:

- National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge General Permit 1200-A, which covers industrial scale non-metallic mineral mining, asphalt mix batch plants, and concrete batch plants with storm water run-off.
- NPDES Storm Water Discharge General Permit 1200-Z, which covers approximately 850 industrial facilities with storm water discharges (such as wood products, fabricated metals, petroleum bulk storage facilities, etc.)
- Water Pollution Control Facilities (WPCF) General Permit 1000, which covers sand, gravel and other non-metallic mineral mining operations that dispose wastewater by recirculation, evaporation or controlled seepage, with no discharge to surface waters.

Over 1,000 facilities are currently assigned to these three general permits. Attachment E provides more detail on the permittees.

The proposed rule revisions recommend relatively few changes to the NPDES 1200-A and 1200-Z and the WPCF 1000 which were issued in 1997. The following two major types of changes are proposed:

- In Phase II of the federal NPDES storm water regulations, EPA adopted the “no exposure” conditional exclusion. This new rule allows any industrial

facility designated in the 1990 NPDES Phase I storm water rules to be excluded from permitting requirements if it certifies that storm water is not exposed to industrial activities or materials. The proposed NPDES 1200-A and 1200-Z general permits include this "no exposure" language.

- The proposed general permits clarify and add more specificity to particular permit requirements that address such activities as monitoring, revising storm water pollution control plans, and reporting.

Stakeholder Involvement

The Department water quality staff developed the proposed rule revisions and conducted the public comment and hearing process described in Attachment C. No other stakeholder involvement activities were initiated by the Department.

Public Comment

Overview of public comment period and hearings

A public comment period was held from April 16, 2002 to May 24, 2002 and included public hearings in Medford, Eugene, Bend, Pendleton, and Portland (see Attachment C). Five people attended the hearing in Portland, and two people provided oral comment. Two individuals attended the hearing in Medford, one person attended the Eugene hearing, one person attended the Pendleton hearing, and no one attended the Bend hearing. No one provided oral or written comment at the hearings outside of Portland.

Summary of comments

Fifteen people submitted written comment. Representatives of municipal storm sewer authorities generally focused their comments on improvements in the clarity and specificity of particular permit requirements. Commenters representing environmental organizations and one municipality advocated for substantive changes in the NPDES 1200-A and Z such as new parameters, different standards to set benchmarks, and level and frequency of storm water monitoring. Other commenters on the permits included one regulated business representative who supported the NPDES 1200-Z, and a representative from a manufacturer of water pollution control equipment who commented on the storm water treatment aspects of the NPDES 1200-A and Z.

Results of public input are provided in Attachment B.

Key Issues

Key issues stem from comments received for the NPDES 1200-A and Z, which generated the most interest. Comments on the WPCF 1000 are not discussed here because they were minimal, most likely because this permit does not allow discharge to surface waters and has been in place since the early 1980s. To provide a better understanding of the key issues surrounding the NPDES 1200-A and Z, a brief overview of these permits is provided followed by summaries of the key issues.

Why and when were NPDES 1200-A and Z developed?

The NPDES 1200-A and Z regulate storm water runoff from a variety of industrial activities. Initial versions of these permits were developed in 1991 in response to federal regulation adopted by EPA in 1990 to improve the quality of point source discharges of storm water to waters of the U.S.

What do the NPDES 1200-A and Z require?

The NPDES 1200-A and Z require permittees to develop storm water pollution control plans and use *best management practices* (BMPs) to prevent and treat contaminated storm water. These BMPs range from simple housekeeping practices, such as regular sweeping or covering of raw materials to prevent contaminated run-off, to complex engineered structural devices for treating runoff. Permittees are also required to monitor their storm water runoff by taking samples twice a year for a series of parameters and comparing their test results to *benchmarks* established by the Department.

What are storm water benchmarks?

Benchmarks are guideline concentrations developed to assist the permittee in determining whether their control plan is reducing pollutant concentrations in storm water runoff to below levels of concern. They are different from *effluent limitations* that are typically found in NPDES permits in that exceeding a limitation would be considered a permit violation, while exceeding a benchmark concentration is not a violation of the permit. Rather, storm water permittees that exceed benchmarks must revisit their control plans and revise them as necessary. Permittees that meet benchmarks for a continuous period over two years may discontinue monitoring.

Benchmarks and monitoring issues

During the public comment period, DEQ received comments from multiple organizations advocating for monitoring of temperature, mercury and turbidity and the establishment of new benchmarks for these pollutants. These organizations are concerned about the impacts of these pollutants on water quality limited streams, and possible contribution of urban storm water run-off to water quality problems. The methodology used to establish certain existing benchmarks was also questioned. Specifically, concerns were raised about the dilution factor and acute water quality standards used to establish the benchmarks for metals. In addition, a representative of two groups urged monitoring at least quarterly and did not want the Department to completely discontinue the monitoring requirement as currently allowed when sampling results demonstrate benchmarks are consistently being met. Instead, they assert that monitoring frequency should be increased when a permittee fails to meet permit requirements or benchmarks.

Department response: Monitoring was conducted for a wide range of pollutants during the initial five years of the storm water permitting program (1992-1997). The current set of benchmarks represent "indicator" pollutants determined by this initial monitoring to be the most common pollutants found in industrial storm water runoff. The Department also believes that the Total Maximum Daily Load (TMDL) process should drive monitoring requirements and benchmarks for new pollutants of concern.

In developing the benchmarks, DEQ used a dilution factor consistent with the assumptions and principles employed by DEQ when setting effluent limits for other NPDES wastewater discharge permits. In addition, acute water quality standards were chosen for setting benchmarks because they are more reflective of the episodic nature of storm water on surface water than the chronic standards. With respect to monitoring frequency, the Department does not believe that increased monitoring will characterize storm water more accurately because of the significant variability of such discharges. The Department also wishes to provide the reduced monitoring as an incentive to permittees to meet benchmarks through aggressive implementation of best management practices.

No changes were made in response to these comments. However, the Department did clarify in the permits that monitoring must be reinstated if none occurred during the previous permit period (because benchmarks were met) to ensure that monitoring at a permitted facility will not completely cease.

TMDLs and storm water issues

Multiple commenters suggested that DEQ more directly address identified pollutants of concern for water quality limited streams within the storm water general permits. In addition to requiring industrial storm water discharges to meet TMDL load allocations for urban storm water, commenters would have DEQ require permittees discharging storm water to streams for which TMDL allocations have not been established to at least monitor for the pollutants for which the receiving stream is impaired.

Department response: As discussed above, DEQ believes that the TMDL process should drive additional monitoring, limits, and best management practices. Currently, if DEQ determines permitted storm water discharges are contributing to a stream that is water quality limited where a TMDL has yet to be developed, an *individual* permit or different general permit may be required. When such storm water discharges are assigned waste load allocations under a TMDL, permits will specify additional requirements. Such requirements may be included in an individual permit, a separate general permit for industries

within a particular basin, or another appropriate regulatory tool.

DEQ recently assembled a work group to evaluate strategies for incorporating storm water load allocations directly into NPDES permits. The outcomes from the work group process will provide the agency with guidance for renewing or modifying storm water permits to address TMDL load allocations.

Next Steps

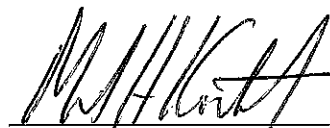
If the Commission renews these general permits in rule, DEQ regional offices will mail the permits to those facilities that have applied for coverage under one of these general permits. This will likely occur between mid and late August 2002.

Attachments

- A. Proposed Rule Revisions and General Permits
- 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. Fact Sheets for General Permits

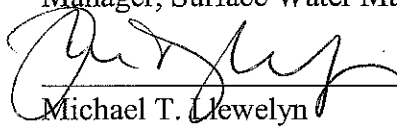
Approved:

Section:



Michael H. Kortenhof
Manager, Surface Water Management

Division:



Michael T. Lewelyn
Administrator, Water Quality Division

Report Prepared By: Kevin Masterson

Phone: (503) 229-5615

Attachment A

DEPARTMENT OF ENVIRONMENTAL QUALITY
PROPOSED AMENDMENTS TO OAR CHAPTER 340, DIVISIONS 045
(strikeout indicates deleted text; underline indicates proposed revisions)

340-045-0033

General Permits

(1) The Director may issue general permits for certain categories of minor discharge sources or minor activities where individual NPDES or WPCF permits are not necessary to adequately protect the environment. Before the Director can issue a general permit, the following conditions must be met:

(a) There must be several minor sources or activities that involve the same or substantially similar types of operations.

(b) The sources or activities must have the potential to discharge or dispose of the same or similar types of wastes.

(c) The general permit must require the same or similar monitoring requirements, effluent limitations and operating conditions for the categories.

(d) The category of sources or activities would be more appropriately controlled under a general permit than an individual permit.

(e) The Commission has adopted the general permit into rule by reference.

(2) General permits issued after the effective date of this rule will specify the following:

(a) The requirements to obtain coverage under a general permit, including application requirements and application submittal deadlines. The Department may determine that submittal of an application is not necessary after evaluating the type of discharge, potential for toxic and conventional pollutants in the discharge, expected discharge volume, availability of other means to identify dischargers, and estimated number of dischargers to be covered by the permit. The Department's evaluation must be provided in the public notice for the general permit.

(b) The process used by the Department to notify a person that coverage under a general permit has been obtained and the discharge or activity is authorized.

(3) Although general permits may include activities throughout the state, they may also be restricted to more limited geographical areas.

(4) Prior to issuing a general permit, the Department will follow the public notice and participation procedures outlined in OAR 340-045-0027, 340-045-0035(3), and ORS 183.325 to 183.410. In addition the Department will make a reasonable effort to mail notices of pending actions to those persons known by the Department who are likely to be covered by the general permit.

(5) Any person operating a discharge source or conducting an activity described in a general permit must apply for coverage under the general permit, unless the general permit does not require submission of an application pursuant to (2)(a) of this rule or the source or activity is specifically covered by an individual NPDES or WPCF permit. Any person seeking coverage under a general permit must submit an application as required under the terms of the applicable NPDES or WPCF general permit. If application requirements are not specified in the general permit, procedures in OAR 340-045-0030 or OAR 340-071-0162, whichever is applicable, must be followed. A person who fails to submit application in accordance with the terms of the general permit, OAR 340-045-0030 or OAR 340-071-0162, whichever is applicable, is not authorized to conduct the activity described in the permit.

(6) Any person required to have coverage under a general permit must pay permit fees as required in OAR 340-045-0070 to 340-045-0075 or OAR 340-071-0140 to obtain and maintain coverage under that permit.

(7) Any permittee covered by an individual NPDES or WPCF permit may request that the individual permit be canceled or allowed to expire, and that it be covered by a general permit if its discharge or activity may be covered by an existing general permit. As long as the permittee is covered by an individual NPDES or WPCF permit, the conditions and limitations of the individual permit govern, until such time as it is canceled or expires.

(8) Any person not wishing to be covered by a general permit may make application for an individual permit in accordance with OAR 340-045-0030 or OAR 340-071-0162, whichever is applicable.

(9) The Director may revoke coverage and authorization under a general permit pursuant to OAR 340-045-0060 as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit. Any interested person may petition the Director to take action under this section. Cases where an individual permit may be required include the following:

- (a) The discharge 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, submitted false information, or is in violation of any applicable law;
- (c) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;

(d) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit; or

(e) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

(10) The following general permits are adopted by reference in this rule and available for review at the Department:

- (a) NPDES 200-J, Filter backwash (issued August 29, 1997)
- (b) NPDES 500-J, Boiler blowdown (issued August 29, 1997)
- (c) WPCF 600, Offstream placer mining (issued April 9, 1997)
- (d) NPDES 700-J, Suction dredges (issued May 3, 1999)
- (e) WPCF 800, Confined animal feeding operations (issued August 8, 1990)
- (f) NPDES 900-J, Seafood processing (issued June 7, 1999)
- (g) WPCF 1000, Gravel mining (issued August 6, 1997 *insert date of EQC meeting at which permit is adopted*)
- (h) NPDES 1200-A, Storm water runoff from sand, gravel & non-metallic quarrying & mining in Standard Industrial Classification (SIC) 14, asphalt mix batch plants, and concrete batch plants. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see permit for details. (issued August 6, 1997 *insert date of EQC meeting at which permit is adopted*)
- (i) NPDES 1200-C, Storm water runoff from construction activities, including clearing, grading, and excavation, and stockpiling that disturbs five or more acres, including activities that will disturb five or more acres over time as part of a larger common plan of development; effective December 1, 2002, construction activities that disturb one or more acre are covered (issued February 20, 2001)
- (j) NPDES 1200-CA, Government agencies responsible for storm water runoff from construction activities that disturbs five or more acres; effective December 1, 2002, construction activities that disturb one or more acres are covered (issued February 20, 2001)
- (k) NPDES 1200-COLS, Storm water runoff in the Columbia Slough watershed from industrial activities listed in 8(l) of this rule (issued December 22, 1999)
- (l) NPDES 1200-Z, Storm water runoff from: Warehousing in SIC 4221-4225; Food processing in SIC 20; Landfills, land app. sites; Heavy industrial in SIC 28, 29, 30, 31, 32, 33 & steam electric power generating (includes coal/hogged fuel handling); Light mfg. in SIC 34, 35, 36, 37, 38 & 39 includes ship & boat building/repair; Printing in SIC 27; Textile & apparel mfg. in SIC 22 & 23; Transportation in SIC 40, 41, 42, 43, 44, 45 & 5171; Wood products mfg. in SIC 24 & 25; Metal scrap yards, battery reclaimers & auto salvage yards in SIC 5015 & 5093; Hazardous waste treatment, storage, & disposal facilities. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see permit for details. (issued July 22, 1997 *insert date of EQC meeting at which permit is adopted*)
- (m) NPDES 1300-J, Oily storm water runoff and oil/water separators (issued January 11, 2000)
- (n) WPCF 1400-A, Seasonal food processing & wineries, less than 25,000 gallons/day (issued August 22, 2000)

Agenda Item G, Rule Adoption: Renewal of NPDES 1200-A and 1200-Z and WPCF 1000 General Permits

July 26, 2002 EQC Meeting

Attachment A Proposed Rule Revisions

Page 3 of 3

- (o) WPCF 1400-B, Other food processing, less than 25,000 gallons/day (issued August 22, 2000)
- (p) NPDES 1500-A, Petroleum hydrocarbon cleanups discharged to surface waters (issued August 22, 2000)
- (q) WPCF 1500-B, Petroleum hydrocarbon cleanups (issued August 22, 2000)
- (r) NPDES 1700-A, Vehicle and equipment wash water discharged to surface waters (issued March 5, 1998)
- (s) WPCF 1700-B, Vehicle and equipment wash water (issued March 5, 1998)
- (t) NPDES 1900-J, Non-contact geothermal heat exchange (issued September 11, 1997)

Stat. Auth.: ORS 468.020, 468B.020 and 468B.035

Stats. Implemented: ORS 468.065, 468B.015, 468B.035, and 468B.050

Hist.: DEQ 28-1980, f. & ef. 10-27-80; DEQ 15-2000, f. & cert. ef. 10-11-2000

**GENERAL PERMIT
WATER POLLUTION CONTROL FACILITIES PERMIT**
Department of Environmental Quality
811 Southwest Sixth Avenue, Portland, OR
Telephone: (503) 229-5279/5630 or 1-800-452-4011 toll free in Oregon

Issued pursuant to ORS 468B.050

ISSUED TO:

All Owners or Operators of Sources ~~That are~~
that are Covered by This Permit

SOURCES COVERED BY THIS PERMIT:

Sand, gravel and other non-metallic mineral quarrying and mining operations that dispose of all process wastewater and storm water by recirculation, evaporation, and/or controlled seepage with no discharge to surface waters. Asphalt mix batch plants, concrete batch plants, and other related activities located on site are also covered.

Michael T. Llewelyn, Administrator
Water Quality Division

August 6, 1997 Issued:
Date Effective:

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the Permittee is authorized to operate a wastewater collection, treatment, control, and disposal system in conformance with requirements, limitations, and conditions set forth in attached schedules as follows:

	<u>Page</u>
Permit Coverage.....	<u>2</u>
Schedule A – Waste Disposal Limitations	<u>23</u>
Schedule B – Monitoring and Reporting Requirements.....	<u>34</u>
Schedule C – Not Applicable	
Schedule D – Special Conditions	<u>45</u>
Schedule E – Not Applicable (reserved for POTWs)	
Schedule F – General Conditions.....	<u>5-86</u>

Unless specifically authorized by this permit, by another NPDES or WPCF permit, or by Oregon Administrative Rule, any other direct or indirect discharge to waters of the state is prohibited, including discharges to an underground injection control system. Unless authorized by a NPDES permit, all discharges to surface waters are prohibited.

PERMIT COVERAGE
Application for General Permit Coverage

1. New facilities and existing facilities obtaining coverage for the first time

Owners or operators of sources covered by this permit must:

- a) Submit a complete copy of the Department approved application form to the Department requesting coverage under this permit at least 180 days prior to the planned activity that will result in the discharge to waters of the state, unless otherwise approved by the Department.
- b) Provide payment of all fees applicable to this permit prior to obtaining coverage.

2. Renewal of permit coverage for existing permittees

Owners or operators of sources covered by this permit must:

- a) Submit a complete copy of the Department approved application form 180 days prior to permit expiration, unless otherwise approved in writing by the Department.
- b) Provide payment of all applicable fees for permit renewal.
- c) The existing permit will continue to be in effect through administrative extension after the permit expiration date if a complete renewal application is submitted.

3. Notification that permit coverage has been obtained

- a) The Department will notify the applicant by mail that they have received coverage and are authorized to operate under the conditions of this permit.
- b) If the applicant's operation cannot be approved for coverage under this permit, the applicant may apply for an individual permit.

SCHEDULE A
Waste Disposal Limitations

1. The Permittee is authorized to manage and dispose of the following wastes in accordance with the conditions of this permit:
 - a. Process wastewater and waste solids derived from aggregate washing activities;
 - b. Wastewater and waste solids derived from air scrubber equipment;
 - c. Concrete mixer washout wastewater and waste solids;
 - d. Excavation dewatering wastewater that has come into contact with process or other wastewater; and
 - e. Storm water.
2. There ~~shall~~must be no discharge to surface waters. All wastewater ~~shall~~must be adequately controlled by settling, recirculation, seepage, irrigation, or ~~utilization~~used for dust control.
3. No activities ~~shall~~may be conducted that could adversely impact groundwater quality. If adverse impacts to groundwater quality are suspected from a facility covered by this permit, the Department may require the Permittee to perform a groundwater investigation.
4. ~~Discharges of Sstorm water exposed to industrial activities or materials and uncontaminated de-~~
~~watering water are not permitted to be discharged to surface waters is are not allowed under this~~
permit. If there is any potential for these discharges from a facility covered by this permit, the Department strongly recommends that the owners or operators apply for a National Pollutant Discharge Elimination System (NPDES) General Permit 1200-A. The NPDES General Permit 1200-A also provides for on-site disposal of wastewater, thus eliminating the need to obtain both permits.
5. The pH of wastewater in concrete mixer washout seepage ponds ~~shall~~must be kept between 6 and 9 standard units (~~s-u~~SU). If necessary, either dilution water or ~~chemicals buffering agents shall~~must be added to make the necessary pH adjustments. If concrete trucks are washed out into an unsealed pond, it is likely that pH adjustments will be necessary in order to keep pH below 9 SU.
6. Petroleum-base products, coagulants, flocculants, solvents, and acids, as well as other substances that might cause the water quality standards of the state of Oregon to be violated ~~shall~~must not be discharged, disposed, or placed in any locations where they would likely be carried into the waters of the state by any means.
7. All settling pond spoils and other waste solids ~~shall~~must be ~~utilized~~used or disposed in a manner ~~which~~that will prevent their entry into the waters of the state and ~~such that health hazards and nuisance conditions are not created~~not create health hazards or nuisance conditions.
8. ~~All~~Each wastewater ponds ~~shall~~must be maintained at a minimum freeboard of one (1)- foot, as measured from the lowest elevation of the top of the pond containment dikes. In situations where a facility is not able to maintain at least a one-foot the minimum freeboard requirement cannot be met, the facility shall~~permittee must~~ cease the discharge of wastewater into ~~that~~these ponds.
9. For facilities adjacent to streams, mining activities and wastewater seepage must be controlled such that no visible turbidity increase occurs within the stream.

SCHEDULE B
Monitoring and Reporting Requirements

1. The P~~ermittee shall~~must monitor the operation and efficiency of all wastewater treatment and disposal facilities. Facility monitoring ~~shall~~must include the following items or parameters:

Parameter	Frequency	Type
Inspect dikes, containment system, and pond freeboard*	Daily when operating Monthly when not operating	Record
Inspect all adjacent streams for seepage	3/Week, at different times in the day, when operating	Record the time of inspection, hours of operation before inspection, and results
pH**	<u>Weekly when operating if concrete trucks are washed out into the pond during that week</u>	Grab

* Pond freeboard may be monitored on a weekly basis if the facility has an alarm system or a float valve discharging to an overflow pond.

** Fresh litmus paper that has the capability of determining pH to one-tenths (0.1) standard units or a properly calibrated portable pH meter may be used to make field measurement of pH.

2. When a site is inaccessible due to adverse weather conditions, monitoring is not required. The permittee must make note of the adverse weather condition in its inspection records.

- 2.3. The P~~ermittee shall~~must retain monitoring records on-site and make them available to DEQ and the Department of Geology and Mineral Industries (DOGAMI) upon request.

SCHEDULE D
Special Conditions

1. This permit does not cover in-stream mining activities. Before conducting any in-stream mining activities, permits must be obtained from the Oregon Division of State Lands and the U. S. Army Corps of Engineers.
2. Except as provided in OAR 340-052-0045, prior to constructing or modifying wastewater management, treatment and disposal facilities, detailed plans and specifications ~~shall~~must be submitted to and approved in writing by the Department.
3. This permit does not authorize the disposal of sanitary waste.
4. The P~~ermittee~~ ~~shall~~must, during all times of disposal, provide personnel whose responsibility is to assure continuous performance of the disposal system in accordance with the conditions of this permit.
5. The P~~ermittee~~ ~~shall~~must follow all other state and local regulations pertaining to surface mining.
6. This general permit does not cover activities that are covered by an individual permit until the individual permit has expired or been canceled. Any person conducting an activity covered by an individual permit may request that the individual permit be canceled after applying for and obtaining this general permit.
7. The Director may revoke this general permit as it applies to any person and require such person to apply for and obtain an individual permit if:
 - a. The covered source or activity is a significant contributor of pollution or creates other environmental problems;
 - b. The P~~ermittee~~ is not in compliance with the terms and conditions of this general permit; or,
 - c. Conditions or standards have changed so that the source or activity no longer qualifies for this general permit.

8. DOGAMI and Local Public Agencies Acting as the Department's Agent

The Department authorizes DOGAMI and local public agencies to act as its Agent in implementing this permit. The Department's Agent may be authorized to conduct the following activities, including but not limited to: application review and approval, inspections, monitoring data review, and storm water and wastewater monitoring. Where the Department has entered into such an agreement, the Department or its Agent will notify the permittee of where to submit monitoring data and other notifications or correspondence associated with this permit.

SCHEDULE F
General Conditions

SECTION A. STANDARD CONDITIONS

1. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws, or regulations.

2. Liability

The Department of Environmental Quality, its officers, agents, or employees ~~shall do not sustain~~ assume any liability on account of the issuance of this permit or on account of the construction or maintenance of facilities because of this permit.

3. Permit Actions

After notice by the Department, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including but not limited to the following:

- a. Violation of any term or condition of this permit, any applicable rule or statute, or any order of the Commission;
- b. Obtaining this permit by misrepresentation or failure to fully disclose ~~fully~~ all relevant facts.

4. Transfer of Permit

This permit ~~shall~~ must not be transferred to a third party without prior written approval from the Department. Such approval may be granted by the Department where the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of this permit and the rules of the Commission. A transfer application and filing fee must be submitted to the Department.

5. Permit Fees

The permittee ~~shall~~ must pay the fees required to be filed with this permit application and to be paid annually for permit compliance determination as outlined in the Oregon Administrative Rules.

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The permittee ~~shall~~ must at all times maintain in good working order and properly operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit.

2. Standard Operation and Maintenance

All waste collection, control, treatment, and disposal facilities ~~shall~~ must be operated in a manner consistent with the following:

- a. At all times, all facilities ~~shall~~ must be operated as efficiently as possible and in a manner which will prevent discharges, health hazards, and nuisance conditions.
- b. All screenings, grit, and sludge ~~shall~~ must be disposed of in a manner approved by the Department such as to prevent any pollutant from such materials from reaching any waters of the state, creating a public health hazard, or causing a nuisance condition.
- c. Bypassing of untreated waste is generally prohibited. No bypassing ~~shall~~ may occur without prior written permission from the Department except where unavoidable to prevent loss of life, personal injury, or severe property damage.

3. Noncompliance and Notification Procedures

In the event the permittee is unable to comply with all the conditions of this permit because of surfacing sewage, a breakdown of equipment or facilities, an accident caused by human error or negligence, or any other cause such as an act of nature, the permittee ~~shall~~must:

- a. Immediately take action to stop, contain, and clean up the unauthorized discharges and correct the problem.
- b. Immediately notify the Department's Regional office, so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
- c. Within 5 days of the time the permittee becomes aware of the circumstances, the permittee ~~shall~~must submit to the Department a detailed written report describing the breakdown, the actual quantity and quality of resulting waste discharges, corrective action taken, steps taken to prevent a recurrence, and any other pertinent information.

Compliance with these requirements does not relieve the permittee from responsibility to maintain continuous compliance with the conditions of this permit or the resulting liability for failure to comply.

4. Wastewater System Personnel

The permittee ~~shall~~must provide an adequate operating staff which is duly qualified to carry out the operation, maintenance, and monitoring requirements to assure continuous compliance with the conditions of this permit.

SECTION C. MONITORING AND RECORDS

1. Inspection and Entry

The permittee ~~shall~~must, at all reasonable times, allow authorized representatives of the Department of Environmental Quality to:

- a. Enter upon the permittee's premises where a waste source or disposal system is located or where any records are required to be kept under the terms and conditions of this permit;
- b. Have access to and copy any records required to be kept under the terms and conditions of this permit;
- c. Inspect any treatment or disposal system, practices, operations, monitoring equipment, or monitoring method regulated or required by this permit; or
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location.

2. Averaging of Measurements

Calculations for all limitations which require averaging of measurements ~~shall~~must ~~utilize~~use an arithmetic mean, except for bacteria which ~~shall~~must be averaged as specified in the permit.

3. Monitoring Procedures

Monitoring must be conducted according to test procedures specified in the 18th Edition (1992) or most recent edition of **Standard Methods for the Examination of Water and Wastewater** (Joint Editorial Board, American Public Health Association, American Water Works Association and Water Pollution Control Federation), unless other test procedures have been approved in writing by the Department and specified in this permit.

SECTION D. REPORTING REQUIREMENTS

1. Plan Submittal

Pursuant to Oregon Revised Statute 468B.055, unless specifically exempted by rule, no construction, installation or modification of disposal systems, treatment works, or sewerage systems ~~shall~~ may be ~~started commeneed~~ until plans and specifications are submitted to and approved in writing by the Department. All construction, installation or modification ~~shall~~ must be in strict conformance with the Department's written approval of the plans.

2. Change in Discharge

Whenever a facility expansion, production increase, or process modification is anticipated which will result in a change in the character of pollutants to be discharged or which will result in a new or increased discharge that will exceed the conditions of this permit, a new application must be submitted together with the necessary reports, plans, and specifications for the proposed changes. No change ~~shall~~ may be made until plans have been approved and a new permit or permit modification has been issued.

3. Signatory Requirements

All applications, reports or information submitted to the Department ~~shall~~ must be signed and certified by the official applicant of record (owner) or authorized designee.

SECTION E. DEFINITIONS

1. BOD₅ means five-day biochemical oxygen demand.
2. TSS means total suspended solids.
3. FC means fecal coliform bacteria.
4. NH₃-N means Ammonia Nitrogen.
5. NO₃-N means Nitrate Nitrogen.
6. NO₂-N means Nitrite Nitrogen.
7. TKN means Total Kjeldahl Nitrogen.
8. Cl means Chloride.
9. TN means Total Nitrogen.
10. mg/l means milligrams per liter.
11. ug/l means micrograms per liter.
12. kg means kilograms.
13. GPD means gallons per day.
14. MGD means million gallons per day.
15. The term "bacteria" includes but is not limited to fecal coliform bacteria, total coliform bacteria, and E. coli bacteria.
16. Total residual chlorine means combined chlorine forms plus free residual chlorine.
17. Grab sample means an individual discrete sample collected over a period of time not to exceed 15 minutes.
18. Composite sample means a combination of samples collected, generally at equal intervals over a 24-hour period, and apportioned according to the volume of flow at the time of sampling.
19. Week means a calendar week of Sunday through Saturday.
20. Month means a calendar month.
21. Quarter means January through March, April through June, July through September, or October through December.

GENERAL PERMIT
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STORM WATER DISCHARGE PERMIT
Department of Environmental Quality
811 Southwest Sixth Avenue, Portland, OR 97204
Telephone: (503) 229-5279/5630 or 1-800-452-4011 toll free in Oregon
Issued pursuant to ORS 468B.050 and The Federal Clean Water Act

ISSUED TO:

All Owners Or Operators Of Storm Water
and Uncontaminated Excavation Dewatering
Point Source Discharges That Are Covered
By This Permit

SOURCES COVERED BY THIS PERMIT

Facilities with primary Standard Industrial Classification code 14, Mining and Quarrying of Nonmetallic Minerals, Except Fuels. Also covered are asphalt mix batch plants and concrete batch plants, including mobile operations of this type. This permit ~~can~~ may cover multiple non-metallic mining and quarrying sites under single ownership, each of less than 10 disturbed acres where only mining activities are conducted. This permit does not cover multiple asphalt mix batch plants and concrete batch plants. Facilities may qualify for a conditional exclusion from the requirement to obtain coverage under a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see Permit Coverage and Exclusion From Coverage on p. 2 for more information.

Michael T. Llewelyn, Administrator
Water Quality Division

August 6, 1997 Issued:
Date Effective:

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify, or operate an on-site wastewater disposal system, storm water treatment and/or control facilities, and to discharge uncontaminated excavation dewatering water and storm water to public waters in conformance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

	<u>Page</u>
<u>Permit Coverage and Exclusion From Coverage</u>	
Schedule A - Storm Water Pollution Control Plan, Additional Requirements, Limitations, and Benchmarks	2-7
Schedule B - Monitoring and Reporting Requirements	8-10
Schedule C - Compliance Conditions and Schedules	11
Schedule D - Special Conditions	12
Schedule F - General Conditions	13-18

Unless specifically authorized by this permit, by another NPDES or WPCF permit, or by Oregon Administrative Rule, any other direct or indirect discharge to waters of the state is prohibited, including discharges to an underground injection control system. Unless authorized by another NPDES permit, all other direct and indirect discharges to public waters are prohibited.

PERMIT COVERAGE AND EXCLUSION FROM COVERAGE

1. Application for General Permit Coverage

a) *New facilities and existing facilities obtaining coverage for the first time*

Owners or operators of sources covered by this permit must:

- i) Submit a complete copy of the Department-approved application form to the Department requesting coverage under this permit at least 180 days prior to the planned activity that will result in the discharge to waters of the state, unless otherwise approved by the Department.
- ii) Provide payment of all fees applicable to this permit prior to obtaining coverage.

b) *Renewal of permit coverage for existing permittees*

Owners or operators of sources covered by this permit must:

- i) Submit a complete copy of the Department approved application form 180 days prior to permit expiration, unless otherwise approved in writing by the Department.
- ii) Provide payment of all applicable fees for permit renewal.
- iii) The existing permit will continue to be in effect through administrative extension after the permit expiration date if a complete renewal application is submitted.

c) *Notification that permit coverage has been obtained*

- i) The Department will notify the applicant by mail that they have received coverage and is authorized to operate under the conditions of this permit.
- ii) If the applicant's operation cannot be approved for coverage under this permit, the applicant may apply for an individual permit.

2. "No Exposure" Conditional Exclusion from Permit Coverage

Application for permit coverage is not required to obtain the "No Exposure" conditional exclusion described below.

a) To qualify for this exclusion, the owner or operator must:

- i) Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff.
- ii) Complete and sign a certification, on a form approved by the Department, that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in 40 CFR §122.26(g)(2).
- iii) Submit the signed certification to the Department once every five years.
- iv) Allow the Department to inspect the facility to determine compliance with the "no exposure" conditions, and allow the Department to make any "no exposure" inspection reports available to the public upon request.
- v) For facilities that discharge through a municipal separate storm sewer system (MS4), upon request, submit a copy of the "no exposure" certification to the MS4 operator (i.e., local municipality), as well as allow inspection and public reporting by the MS4 operator.
- vi) Utilize the Environmental Protection Agency (EPA) *Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on "No Exposure" of Industrial Activities to Storm Water* (EPA 833-B-00-001, June 2000) to determine "no exposure."

b) Limitations for obtaining and/or maintaining the exclusion:

- i) This exclusion is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.
- ii) If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such

cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit coverage prior to the change of circumstances.

- iii) The Department retains the authority to require permit coverage (and deny this exclusion) upon making a determination that the discharge causes, has reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.
- iv) The Department will notify the permittee in writing of its approval of the "no exposure" conditional exclusion and termination of permit coverage. The owner or operator must maintain this notification on site.

**SCHEDULE A
STORM WATER POLLUTION CONTROL PLAN**

1. **Preparation and Implementation of the Storm Water Pollution Control Plan (SWPCP)**

The permittee must prepare and implement their SWPCP according to the following:

 - a) The SWPCP ~~shall~~must be prepared according to the requirements in Schedule A.2 by a person knowledgeable in storm water management and familiar with the facility. The person(s) preparing the plan must be identified in the plan.
 - b) The SWPCP ~~shall~~must be signed and certified in accordance with 40 CFR §122.22. Updates and revisions to the SWPCP ~~shall~~must also be signed and certified ~~in this manner pursuant to 40 CFR §122.22.~~ The SWPCP shall be signed as follows:
 - i) ~~For a Corporation—By a principal executive officer of at least the level of vice president;~~
 - ii) ~~For a Partnership or Sole Proprietorship—By a general partner or the proprietor, respectively; or~~
 - iii) ~~For a Municipality, State, Federal, or other Public Facility—By either a principal executive officer or ranking elected official.~~
 - c) The SWPCP ~~shall~~must be prepared and implemented according to the time frames set forth in Schedule C.
 - d) The SWPCP ~~shall~~must be kept current and updated as necessary to reflect any changes in facility operation.
 - e) The SWPCP and updates to the SWPCP ~~shall~~must be submitted to the Department in accordance with Schedule B.3.
 - f) A copy of the SWPCP ~~shall~~must be kept at the facility and made available upon request to government agencies responsible for storm water management in the permittee's area.

2. **Storm Water Pollution Control Plan Requirements.** The Oregon Department of Geology and Mineral Industries (DOGAMI) operating permit and reclamation plan or portions of this plan may be substituted for the SWPCP required by this permit this provision providing the if the required information in Schedule A of this permit is included in the DOGAMI plan.
 - a) **Site Description.** The SWPCP ~~shall~~must contain the following information:
 - i) A description of the mining and processing activities to take place on site. Describe the material to be mined, the mining method, the type(s) of on-site processing, and the area to be affected. List any hazardous or significant materials (see Schedule D.3, Definitions) that are stored, used, treated and/or disposed of in a manner that allows exposure to storm water.
 - ii) A general location map showing the location of the site in relation to surrounding properties, transportation routes, surface waters and other relevant features.
 - iii) A site map including the following:
 - (1) drainage patterns
 - (2) drainage and discharge structures
 - (3) outline of the drainage area for each storm water outfall
 - (4) paved areas and buildings within each drainage area
 - (5) site permit boundary
 - (6) area to be affected by mining, mineral processing, and stockpiles
 - (7) areas used for outdoor manufacturing, treatment, storage, and/or disposal of significant materials
 - (8) existing structural control measures for reducing pollutants in storm water runoff
 - (9) material loading and access areas
 - (10) hazardous waste treatment, storage and disposal facilities

- (11) location of wells including waste injection wells, seepage pits, drywells, infiltration galleries and other similar structures.
- (12) location of springs, wetlands and other surface water bodies.
- iv) Estimate the maximum amount of surface area that, within the next five (5) years, will be stripped of vegetation and could contribute to storm water discharges relative to the total area drained by each storm water outfall. Of the total area to be disturbed, estimate the percentage that will be impervious as opposed to areas that although disturbed will allow rainfall to be absorbed into the ground.
- v) For each area of the site where a reasonable potential exists for contributing pollutants to storm water runoff, identify the potential pollutants, in addition to soils and rock materials, that could be present in storm water discharges.
- vi) The name(s) of the receiving water(s) for storm water drainage. If drainage is to a municipal storm sewer system, the name(s) of the ultimate receiving waters and the name of the municipality.
- vii) Identification of the discharge outfall(s) and the point(s) where storm water monitoring will occur as required by Schedule B. If multiple discharge outfalls exist but will not all be monitored (as allowed in Schedule B.1.d), a description supporting this approach shall must also be included.
- viii) The period of expected use of the site. If the site is not operated on a year-around basis, steps must be identified to secure the site during prolonged periods of inactivity.
- ix) An estimate of the expected annual precipitation (rain and snowfall).

b) **Site Controls.** The permittee shall must maintain existing controls and/or develop new controls appropriate for the site. The purpose of these controls is to eliminate or minimize the exposure of pollutants to storm water. For techniques specific to the mining industry, DOGAMI's Best Management Practices Manual should be consulted. In developing a control strategy, the SWPCP shall must have the following minimum components. A description of each component shall must be included in the SWPCP.

- i) *Storm Water Best Management Practices.* If technically and economically feasible, the following best management practices shall must be employed at the site. A schedule for implementation of these practices shall must be included in the SWPCP if the practice has not already been accomplished. This schedule must be consistent with the requirements for developing and implementing the SWPCP in Schedule C of the permit.
 - (1) Containment - All hazardous ~~materials~~ substances (see Schedule D.3, Definitions) shall must be stored within berms or other secondary containment devices to prevent leaks and spills from contaminating storm water. If the use of berms or secondary containment devices is not possible, then hazardous ~~materials~~ substances must be stored in areas that do not drain to the storm sewer system.
 - (2) Oil and Grease - Oil/Water separators, booms, skimmers or other methods shall must be employed to eliminate or minimize oil and grease contamination of storm water discharges.
 - (3) Waste Chemicals and Material Disposal - Wastes shall must be recycled or properly disposed of in a manner to eliminate or minimize exposure of pollutants to storm water. All waste contained in bins or dumpsters where there is a potential for drainage of storm water through the waste shall must be covered to prevent exposure of storm water to these pollutants. Acceptable covers include, but are not limited to, storage of bins or dumpsters under roofed areas and use of lids or temporary covers such as tarps.
 - (4) Erosion and Sediment Control - Erosion control methods such as vegetating exposed areas, graveling or paving shall must be employed to minimize erosion of soil at the site. Sediment control methods such as detention facilities, sediment control fences,

- vegetated filter strips, bioswales, or grassy swales shall be employed to minimize sediment loads in storm water discharges. For activities that involve land disturbance for construction purposes, the permittee shall contact the local municipality to determine if there are other applicable requirements.
- (5) Debris Control - Screens, booms, settling ponds, or other methods shall be employed to eliminate or minimize debris in storm water discharges.
 - (6) Storm Water Diversion - Storm water shall be diverted away from fueling, manufacturing, treatment, storage, and disposal areas to prevent exposure of uncontaminated storm water to potential pollutants.
 - (7) Covering Activities - Fueling, manufacturing, treatment, storage, and disposal areas shall be covered to prevent exposure of storm water to potential pollutants. Acceptable covers include, but are not limited to, permanent structures such as roofs or buildings and temporary covers such as tarps.
 - (8) Housekeeping - Areas that may contribute pollutants to storm water shall be kept clean. Sweeping, prompt clean up of spills and leaks, and proper maintenance of vehicles shall be employed to eliminate or minimize exposure of storm water to pollutants.
- ii) *Spill Prevention and Response Procedures.* Methods to prevent spills along with clean-up and notification procedures shall be included in the SWPCP. These methods and procedures shall be made available to appropriate personnel. The required clean up material shall be on-site or readily available. Spills prevention plans required by other regulations may be substituted for this provision providing that storm water management concerns are adequately addressed.
- iii) *Preventative Maintenance.* A preventative maintenance program shall be implemented to ensure the effective operation of all storm water best management practices. At a minimum the program shall include:
- (1) Monthly inspections of areas where potential spills of significant materials or industrial activities could impact storm water runoff.
 - (2) Monthly inspections of storm water control measures, structures, catch basins, and treatment facilities.
 - (3) Cleaning, maintenance and/or repair of all materials handling and storage areas and all storm water control measures, structures, catch basins, and treatment facilities as needed upon discovery. Cleaning, maintenance, and repair of such systems must be performed in such a manner as to prevent the discharge of pollution.
 - (4) An annual evaluation of areas that can be revegetated to minimize the size of the disturbed areas. Revegetation shall take place prior to the onset of rain. Mulching or other storm water management practices must be implemented to minimize erosion of vegetated areas until the vegetation is established.
 - (5) Developing and following a mining program that eliminates removal and stockpiling of overburden and other materials that easily erode during wet weather.
 - (6) An annual review of the storm water control facilities prior to the wet weather period.
 - (7) A plan to remove material accumulated in settling ponds and similar facilities annually and to store the material in a location that will prevent erosion.
- iv) *Employee Education.* An employee orientation and education program shall be developed and maintained to inform personnel of the components and goals of the SWPCP. The program shall also address spill response procedures and the necessity of good housekeeping practices. A schedule for employee education shall be included in the SWPCP. The Department recommends this education and training occur at the time of an employee's hire and annually thereafter.

- c) **Record Keeping and Internal Reporting Procedures.** The following information shall must be recorded and maintained at the facility and provided to the Department and other government agencies upon request. This information does not need to be submitted as part of the SWPCP.
- i) Inspection, maintenance, cleanout, repair and education activities as required by the SWPCP.
 - ii) Spills or leaks of significant materials that ~~impacted~~ affected or had the potential to ~~impact~~ affect storm water or surface waters. Include the corrective actions to clean up the spill or leak as well as measures to prevent future problems of the same nature.

ADDITIONAL REQUIREMENTS

- ~~3. Oregon Administrative Rule (OAR) 340-44-50, Waste Disposal Wells for Surface Drainage. OAR 340-44-50 requires that waste disposal wells for storm drainage only be used in those areas where there is an adequate confinement barrier or filtration medium between the well and an underground source of drinking water; and where construction of surface discharging storm sewers is not practical. In addition, this rule requires the following:~~
- ~~a) New storm drainage disposal wells shall be as shallow as possible but shall not exceed a depth of 100 feet.~~
 - ~~b) Disposal wells shall be located at least 500 feet from domestic water wells.~~
 - ~~c) Using a disposal well for agricultural drainage is prohibited.~~
 - ~~d) Using a disposal well for surface drainage in areas where toxic chemicals or petroleum products are stored or handled is prohibited unless there is containment around the product area which will prevent spills and leaks from entering the well.~~
 - ~~e) Any owner or operator of the disposal well shall have available a means of temporarily plugging or blocking the well in the event of an accident or spill.~~
 - ~~f) Any area that is drained by a disposal well shall be kept clean of petroleum products and other organic or chemical wastes as much as practicable to minimize the degree of contamination of the storm water drainage.~~

~~4.3. Oregon Administrative Rule 340-041-0026(3)(a)(D), Surface Water Temperature Management Plan.~~ Individual storm water discharges are not expected to cause a measurable increase in stream temperature because the storm water discharges mainly occur at a time of year when ambient stream and runoff temperatures are relatively low. Compliance with this permit meets the requirement of OAR 340-041-0026(3)(a)(D) to develop and implement a surface water temperature management plan. If it is ~~determined that permitted storm water discharges~~ in a particular basin are ~~impacting assigned waste load allocations under~~ a Total Maximum Daily Load for temperature, then permittees in this basin will be required to implement additional management practices to reduce the temperature of the discharges. These practices include, but are not limited to, increased vegetation to provide for shading, underground conveyance systems or detention vaults, and filter treatment systems to reduce detention times.

~~5.4. Controls and Limitations for Process Wastewater, Excavation Dewatering Activities, Settling Ponds, Spoils, and Sanitary Waste.~~

- a) No discharge of process wastewater to surface waters of the state is permitted. All process wastewater shall must be adequately controlled by settling, recirculation, controlled seepage, irrigation or ~~utilization~~ use for dust control. Discharge of process wastewater to surface waters will require an application for and the issuance of an individual NPDES permit. Process

wastewater includes the following: process wastewater and waste solids from aggregate washing activities; wastewater and waste solids derived from air scrubber equipment; concrete mixer washout wastewater and waste solids; excavation dewatering water that has been mixed with process or other wastewater; and storm water that has mixed with process or other wastewater.

- b) Uncontaminated excavation dewatering water may be discharged under this permit provided the discharge does not violate water quality standards.
- c) No activities ~~shall~~may be conducted that could adversely ~~impair~~affect groundwater. If adverse groundwater ~~impacts~~effects are suspected, the Department may require the permittee to perform a groundwater investigation.
- d) For facilities adjacent to streams, mining activities and wastewater seepage ~~shall~~must be controlled such that no visible turbidity increase occurs within the stream.
- e) All settling pond spoils and other waste solids ~~shall~~must be ~~utilized~~used or disposed of in a manner which will prevent their entry into waterways of the state, except for adequately treated storm water allowed by this permit.
- f) The pH of wastewater in concrete mixer washout seepage ponds ~~shall~~must be kept between 6 and 9 (SU). If necessary, either dilution water or buffering agents ~~shall~~must be added to make the necessary pH adjustments. If concrete trucks are washed out into an unsealed pond, it is likely that pH adjustments will be necessary in order to keep the pH below 9.
- ~~g) Settling pond spoils and other waste solids shall be utilized or disposed in a manner which will prevent their entry into waters of the state.~~
- ~~h) All~~ Each wastewater ponds ~~shall~~must be maintained with a minimum freeboard of one (1) foot, as measured from the lowest elevation of the top of the pond containment dikes. In situations where the ~~facility is not able to meet the~~ minimum freeboard requirements ~~cannot be met~~, the ~~facility shall~~ permittee must cease the discharge of wastewater into ~~these~~that ponds.
- ~~i) This permit does not authorize the disposal of sanitary wastes.~~

~~6.5. Water Quality Limited Streams~~ If Total Maximum Daily Loads are established and storm water discharges from a permitted source are assigned waste load allocations, application for an individual or different general permit or other appropriate tools may be required to address the allocation. ~~Specific River Basin Requirements.~~ The permittee shall comply with any Oregon Administrative Rule requirements for storm water management specific to the applicable river basin.

~~7.6. Water Quality Standards.~~ The ultimate goal for permittees is to comply with water quality standards in OAR 340-041. In instances where a storm water discharge adversely ~~impacts~~affects water quality, the Department may require the facility to implement additional management practices, apply for an individual permit, or take other appropriate action.

STORM WATER DISCHARGE BENCHMARKS

8.7. Benchmarks. Benchmarks are guideline concentrations not limitations. They are designed to assist the permittee in determining if the implementation of the SWPCP is reducing pollutant concentrations to below levels of concern. The following benchmarks apply to each point source discharge of storm water associated with industrial activity:

Parameter	Benchmark
pH	5.5 — 9.0 SU
Total Suspended Solids	130 mg/l
Settleable Solids	0.2 ml/l
Total Oil & Grease	10 mg/l
Oil & Grease Sheen	No Visible Sheen

9.8. Review of SWPCP. If benchmarks are not achieved, the permittee shall must investigate the source of the elevated pollutant levels and review and, if necessary, revise their SWPCP within 60 days of receiving sampling results. The purpose of this review is to determine if the SWPCP is being followed and to identify any additional technically and economically feasible site controls that need to be implemented to further improve the quality of storm water discharges. These site controls include best management practices, spill prevention and response procedures, preventative maintenance, and employee education procedures as described in Schedule A.2.b.

- a) **SWPCP Revision.** Any newly identified site controls shall must be implemented in a timely manner and incorporated into the SWPCP as an update. A new SWPCP is not required. If no additional site controls are identified, the permittee shall must state as such in an update to the SWPCP.
- b) **SWPCP Revision Submittal.** Results of this review shall must be submitted to the Department in accordance with Schedule B.3 and made available upon request to government agencies responsible for storm water management in the permittee's area.
- c) **Background or Natural Conditions.** If the permittee demonstrates that background or natural conditions not associated with industrial activities at the site cause an exceedance of a benchmark, then no further modifications to the SWPCP are required for that parameter. Upon successful demonstration of natural or background conditions through monitoring of the same storm event used to evaluate benchmarks the permittee would be eligible for the monitoring reduction as outlined in Schedule B.2.

**SCHEDULE B
 MONITORING AND REPORTING REQUIREMENTS**

1. **Minimum Monitoring Requirements**

- a) All permittees ~~shall~~must monitor storm water associated with industrial activity for the following:

GRAB SAMPLES OF STORM WATER	
Parameter*	Frequency
Total Suspended Solids	Twice per Year
Total Oil & Grease	Twice per Year
* Parameters should be analyzed on samples collected from the same storm event.	

ON-SITE & VISUAL MONITORING OF STORM WATER	
Parameter	Frequency
pH** (grab sample)	Once a Month (when discharging)
Settleable Solids (grab sample)	Once a Month (when discharging)
Turbidity (visual)	Once a Month (when discharging)
Oil & Grease Sheen (visual)	Once a Month (when discharging)

- b) All permittees ~~shall~~must monitor the operation and efficiency of wastewater treatment and disposal facilities in accordance with the following (when a site is inaccessible due to adverse weather conditions, monitoring is not required; the permittee must make note of the adverse weather condition in its inspection records):

Parameter	Frequency	Type
Inspect dikes, containment system, and pond freeboard***	Daily when operating	Record
Inspect all streams within 300 feet of an active seepage pond	3/week, at different times in the day, when operating	Record the time of inspection, hours of operation before inspection, and results
pH**	Weekly when operating if concrete trucks are washed out into the pond during that week	Grab

** Fresh litmus paper that has the capability of determining pH to one-tenths (0.1) standard units or a properly calibrated portable pH meter may be used to make field measurement of pH.

*** Pond freeboard may be monitored on a weekly basis if the facility has an alarm system or a float valve discharging to an overflow pond.

- c) **Grab Samples.** Grab samples that are representative of the discharge ~~shall~~must be taken at least 60 days apart. It is preferred, but not required, that one sample be collected in the fall and one in the spring. Compositing of samples from different drainage areas is not allowed.
- d) **Multiple Point Source Discharges.** The permittee may reduce the number of storm water monitoring points provided the outfalls have substantially identical effluents. Substantially identical effluents are discharges from drainage areas serving similar activities where the discharges are expected to be similar in composition. Outfalls serving areas with no exposure of storm water to industrial activities are not required to be monitored.
- e) **Monitoring Location.** All storm water samples ~~shall~~must be taken at monitoring points specified in the SWPCP before the storm water joins or is diluted by any other waste stream, body of water or substance unless otherwise approved in writing by the Department.
- ~~f) **No Exposure.** If there is no exposure of storm water to material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by products, or industrial machinery at the site, monitoring is not required. The permittee shall submit an annual statement certifying as such in lieu of monitoring (refer to Schedule B.3.b). If exposure cannot be prevented, the permittee shall comply with Schedule B.~~

2. Monitoring Reduction

- a) **Visual Observations.** There is no reduction allowed of the required on-site monitoring and visual observations.
- b) **Storm Water Grab Samples.** The permittee is not required to conduct sampling if the benchmarks specified in Schedule A.8-7 are met, or if the exceedance is due to natural or background conditions for at least four consecutive storm water monitoring events conducted by the permittee over 24 continuous months.
 - i) Results from sampling events cannot be averaged to meet the benchmarks.
 - ii) Monitoring waivers may be allowed for individual parameters.
 - iii) Parameters in exceedance or not previously sampled ~~shall~~must be monitored as required in Schedule B.1 until the monitoring waiver condition above is met.
 - iv) Monitoring data from the previous permit period may be used to meet the waiver requirement. This data ~~shall~~must be evaluated against the benchmarks specified in this permit.
 - v) Monitoring data from the same storm event ~~shall~~must be used to demonstrate that background or natural conditions not associated with industrial activities at the site are contributing to the exceedance of a benchmark.
 - vi) The permittee ~~shall~~must submit written notification to the Department when exercising the monitoring waiver condition (refer to Schedule B.3.eb).
- c) **Reinstatement of Monitoring Requirements**
 - i) The permittee ~~shall~~must conduct monitoring as specified in Schedule B.1 if changes to site conditions are expected to impact storm water discharge characteristics.

- ii) The Department may reinstate monitoring requirements as specified in Schedule B.1 if prior monitoring efforts were improper or results were incorrect. The Department will notify the permittee of this reinstatement in writing.
- iii) Monitoring may also be reinstated if future sampling efforts by the permittee or the Department indicate benchmarks are being exceeded.
- iv) If no monitoring was performed during the previous permit period, the permittee must reinitiate monitoring as specified in Schedule B.1 to qualify for the monitoring reduction allowed in Schedule B.2.

3. **Reporting Requirements.** The permittee ~~shall~~must submit the following to the appropriate DEQ regional office (DEQ will provide regional office information when the permittee is notified that permit coverage has been obtained):

a) **Monitoring Data.** The permittee ~~shall~~must submit by July 15 of each year storm water grab sampling, on-site monitoring and visual monitoring data for the previous monitoring period (July 1- June 30). The permittee must also report the minimum detection levels and analytical methods for the parameters analyzed. ~~If there was insufficient rainfall to collect samples, the permittee shall~~must notify the Department by July 15 of each year. Monitoring data for wastewater treatment and disposal facilities ~~shall~~must be kept on-site and made available to the Department and DOGAMI upon request.

~~b) **No Exposure Certification.** The permittee shall submit an annual certification by July 15 of each year if monitoring is not required due to no exposure of storm water to industrial activities. The certification shall state that site conditions have been evaluated and the facility meets the requirements of Schedule B.1.f.~~

~~e)b) **Monitoring Reduction Notification.** The permittee shall~~must submit written notification when exercising the monitoring reduction condition in Schedule B.2.b.

~~b)c) **Initial Completion or Update of SWPCP-Update/Completion.** The permittee shall~~must prepare or update the SWPCP in accordance with Schedule C of the permit. The permittee ~~shall~~must submit an updated or completed SWPCP within 14 days after completion.

~~e)d) **SWPCP Revision- (when benchmarks are exceeded)** The permittee shall~~must submit any revisions to the SWPCP required by Schedule A.10-8 within 14 days after the SWPCP is revised. If the Department does not review and comment on the revised SWPCP within 30 days, the permittee ~~shall~~must implement the revisions as proposed. The permittee may proceed immediately with implementation of the following management practices as described in Schedule A.2.b without waiting for Department comment: waste chemical and materials disposal, debris control, storm water diversion, covering activities, housekeeping, and preventative maintenance

~~d)e) **Mobile Operations.** Mobile asphalt mix batch plants and concrete batch plants covered by this permit shall~~must provide written notification to the Department prior to relocating their operation.

**SCHEDULE C
COMPLIANCE CONDITIONS AND SCHEDULES**

1. **Existing Permittee** (for a facility with an NPDES storm water discharge permit assigned prior to ~~September 30, 1996~~June 30, 2002):
 - a) Not later than 90 days after receiving this permit, the existing permittee ~~shall~~must revise and begin implementation of their SWPCP to meet any new permit requirements.
 - b) Except for site controls that require capital improvements (see Schedule D.3, Definitions), the SWPCP ~~shall~~must be implemented within 90 days after revision of the SWPCP. Site control activities that require capital improvements ~~shall~~must be completed in accordance with the schedule set forth in the SWPCP.

2. **New Permittee with Existing Facility** (for a facility operating prior to ~~September 30, 1996~~June 30, 2002, without an NPDES storm water discharge permit):
 - a) Not later than 90 days after receiving this permit, the new permittee ~~shall~~must prepare and begin implementation of their SWPCP.
 - b) Except for site controls that require capital improvements (see Schedule D.3, Definitions), the SWPCP ~~shall~~must be implemented within 90 days after completion of SWPCP. Site control activities that require capital improvements ~~shall~~must be completed in accordance with the schedule set forth in the SWPCP.

3. **New Permittee with New Facility** (for a facility beginning operation after ~~September 30, 1996~~June 30, 2002):
 - a) Prior to starting operations, a new ~~facility-permittee~~ facility-permittee ~~shall~~must prepare and begin implementation of their SWPCP.
 - b) Except for site controls that require capital improvements (see Schedule D.3, Definitions), the SWPCP ~~shall~~must be implemented within 90 days after beginning operation. Site control activities that require capital improvements ~~shall~~must be completed in accordance with the schedule set forth in the SWPCP.

4. **New Permittee Discharging to Clackamas River, McKenzie River above Hayden Bridge (River Mile 15) or North Santiam River.** Not later than 180 days after receiving this permit, new permittees discharging to Clackamas River, McKenzie River above Hayden Bridge (river mile 15) or North Santiam River ~~shall~~must submit to the Department a monitoring and water quality evaluation program. This program ~~shall~~must be effective in evaluating the in-stream impacts of the discharge as required by OAR 340-041-0470. Within 30 days after Department approval, the permittee ~~shall~~must implement the monitoring and water quality evaluation program. For the purpose of this condition, N~~n~~ew permittees are defined to include potential or existing dischargers that did not have a permit prior to January 28, 1994, and existing dischargers that have a permit but request an increased load limitation.

**SCHEDULE D
SPECIAL CONDITIONS**

1. **Releases in Excess of Reportable Quantities.** This permit does not relieve the permittee of the reporting requirements of 40 CFR §117 Determination of Reportable Quantities for Hazardous Substances and 40 CFR §302 Designation, Reportable Quantities, and Notification.
2. **Availability of SWPCP and Monitoring Data.** The Storm Water Pollution Control Plan and/or storm water monitoring data ~~shall~~must be made available to government agencies responsible for storm water management in the permittee's area.
3. **Definitions**
 - a) *Capital Improvements* means the following improvements that require capital expenditures:
 - i) Treatment best management practices including but not limited to settling basins, oil/water separation equipment, catch basins, grassy swales, ~~and~~ detention/retention basins, and media filtration devices.
 - ii) Manufacturing modifications that incur capital expenditures, including process changes for reduction of pollutants or wastes at the source.
 - iii) Concrete pads, dikes and conveyance or pumping systems ~~utilized~~ used for collection and transfer of storm water to treatment systems.
 - iv) Roofs and appropriate covers for manufacturing areas.
 - b) *Hazardous MaterialsSubstances* as defined in 40 CFR §302 Designation, Reportable Quantities, and Notification.
 - c) *Material Handling Activities* include the storage, loading and unloading, transportation or conveyance of raw material, intermediate product, finished product, by-product or waste product.
 - d) *Point Source* means a discharge from any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, or conduit.
 - e) *Significant Materials* includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical that a facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ash, slag, and sludge that have the potential to be released with storm water discharges.
4. **DOGAMI and Local Public Agencies Acting as the Department's Agent**

The Department authorizes DOGAMI and local public agencies to act as its Agent in implementing this permit. The Department's Agent may be authorized to conduct the following activities, including but not limited to: application review and approval, inspections, monitoring data review, storm water and wastewater monitoring, SWPCP review, and verification and approval of no-exposure certifications. Where the Department has entered into such an agreement, the Department or its Agent will notify the permittee of where to submit monitoring data, SWPCPs, no-exposure certifications, and other notifications or correspondence associated with this permit.

**SCHEDULE F
NPDES GENERAL CONDITIONS**

SECTION A. STANDARD CONDITIONS

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of Oregon Revised Statutes (ORS) 468B.025 and is grounds for enforcement action; for permit termination, suspension, or modification; or for denial of a permit renewal application.

2. Penalties for Water Pollution and Permit Condition Violations

Oregon Law (ORS 468.140) allows the Director to impose civil penalties up to \$10,000 per day for violation of a term, condition, or requirement of a permit.

Under ORS 468.943, unlawful water pollution, if committed by a person with criminal negligence, is punishable by a fine of up to \$25,000 or by imprisonment for not more than one year, or by both. Each day on which a violation occurs or continues is a separately punishable offense.

Under ORS 468.946, a person who knowingly discharges, places or causes to be placed any waste into the waters of the state or in a location where the waste is likely to escape into the waters of the state, is subject to a Class B felony punishable by a fine not to exceed \$200,000 and up to 10 years in prison.

3. Duty to Mitigate

The permittee ~~shall~~must take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. In addition, upon request of the Department, the permittee ~~shall~~must correct any adverse impact on the environment or human health resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply ~~for and to~~ have the permit renewed. The application ~~shall~~must be submitted at least 180 days before the expiration date of this permit.

The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date.

5. Permit Actions

This permit may be modified, suspended, revoked and reissued, or terminated for cause including, but not limited to, the following:

- a. Violation of any term, condition, or requirement of this permit, a rule, or a statute;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all material facts; or
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- d. The permittee shall pay the fees required to be filed with this permit application and to be paid annually for permit compliance determination as outlined in the Oregon Administrative Rules, Chapter 340, Division 045.

The filing of a request by the permittee for a permit modification or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Toxic Pollutants

The permittee ~~shall~~must comply with any applicable effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

7. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege.

8. Permit References

Except for effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act, all rules and statutes referred to in this permit are those in effect on the date this permit is issued.

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The permittee shall must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Duty to Halt or Reduce Activity

For industrial or commercial facilities, upon reduction, loss, or failure of the treatment facility, the permittee shall must, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost. It shall must not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Bypass of Treatment Facilities

a. Definitions

- (1) "Bypass" means intentional diversion of waste streams from any portion of the treatment facility. The term "bypass" does not include nonuse of singular or multiple units or processes of a treatment works when the nonuse is insignificant to the quality and/or quantity of the effluent produced by the treatment works. The term "bypass" does not apply if the diversion does not cause effluent limitations to be exceeded, provided the diversion is to allow essential maintenance to assure efficient operation.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities or treatment processes which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Prohibition of bypass.

(1) Bypass is prohibited unless:

- (a) Bypass was necessary to prevent loss of life, personal injury, or severe property damage;
- (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
- (c) The permittee submitted notices and requests as required under General Condition B.3.c.

- (2) The Director may approve an anticipated bypass, after considering its adverse effects and any alternatives to bypassing, when the Director determines that it will meet the three conditions listed above in General Condition B.3.b.(1).

c. Notice and request for bypass.

- (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall must submit prior written notice, if possible at least ten days before the date of the bypass.

- (2) Unanticipated bypass. The permittee shall must submit notice of an unanticipated bypass as required in General Condition D.5.

4. Upset

- a. Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operation error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of General Condition B.4.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (1) An upset occurred and that the permittee can identify the causes(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted notice of the upset as required in General Condition D.5, hereof (24-hour notice); and
 - (4) The permittee complied with any remedial measures required under General Condition A.3 hereof.
- d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Treatment of Single Operational Event

For purposes of this permit, A Single Operational Event which leads to simultaneous violations of more than one pollutant parameter shall must be treated as a single violation. A single operational event is an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one Clean Water Act effluent discharge pollutant parameter. A single operational event does not include Clean Water Act violations involving discharge without a NPDES permit or noncompliance to the extent caused by improperly designed or inadequate treatment facilities. Each day of a single operational event is a violation.

6. Overflows from Wastewater Conveyance Systems and Associated Pump Stations

- a. Definitions
- (1) "Overflow" means the diversion and discharge of waste streams from any portion of the wastewater conveyance system including pump stations, through a designed overflow device or structure, other than discharges to the wastewater treatment facility.
 - (2) "Severe property damage" means substantial physical damage to property, damage to the conveyance system or pump station which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of an overflow.
 - (3) "Uncontrolled overflow" means the diversion of waste streams other than through a designed overflow device or structure, for example to overflowing manholes or overflowing into residences, commercial establishments, or industries that may be connected to a conveyance system.
- b. Prohibition of overflows. Overflows are prohibited unless:
- (1) Overflows were unavoidable to prevent an uncontrolled overflow, loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the overflows, such as the use of auxiliary pumping or conveyance systems, or maximization of conveyance system storage; and
 - (3) The overflows are the result of an upset as defined in General Condition B.4. and meeting all requirements of this condition.
- c. Uncontrolled overflows are prohibited where wastewater is likely to escape or be carried into the waters of the State by any means.

d. Reporting required. Unless otherwise specified in writing by the Department, all overflows and uncontrolled overflows must be reported orally to the Department within 24 hours from the time the permittee becomes aware of the overflow. Reporting procedures are described in more detail in General Condition D.5.

7. Public Notification of Effluent Violation or Overflow

If effluent limitations specified in this permit are exceeded or an overflow occurs, upon request by the Department, the permittee shall must take such steps as are necessary to alert the public about the extent and nature of the discharge. Such steps may include, but are not limited to, posting of the river at access points and other places, news releases, and paid announcements on radio and television.

8. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall must be disposed of in such a manner as to prevent any pollutant from such materials from entering public waters, causing nuisance conditions, or creating a public health hazard.

SECTION C. MONITORING AND RECORDS

1. Representative Sampling

Sampling and measurements taken as required herein shall must be representative of the volume and nature of the monitored discharge. All samples shall must be taken at the monitoring points specified in this permit and shall must be taken, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points shall must not be changed without notification to and the approval of the Director.

Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall must be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall must be installed, calibrated and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall must be capable of measuring flows with a maximum deviation of less than ± 10 percent from true discharge rates throughout the range of expected discharge volumes.

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part §136, unless other test procedures have been specified in this permit.

4. Penalties of Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall must, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment is a fine not more than \$20,000 per day of violation, or by imprisonment of not more than four years or both.

5. Reporting of Monitoring Results

Monitoring results shall must be summarized each month on a Discharge Monitoring Report form approved by the Department. The reports shall must be submitted monthly and are to be mailed, delivered or otherwise transmitted by the 15th day of the following month unless specifically approved otherwise in Schedule B of this permit.

6. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR §136 or as specified in this permit, the results of this monitoring shall must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report. Such increased frequency shall must also be indicated. For a pollutant parameter that may be sampled more than once per day (e.g., Total Chlorine Residual), only the average daily value shall must be recorded unless otherwise specified in this permit.

7. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall must utilize an arithmetic mean, except for bacteria which shall must be averaged as specified in this permit.

8. Retention of Records

Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall must be retained for a period of at least five years (or longer as required by 40 CFR part §503), the permittee shall must retain records of all monitoring information, including all calibration and maintenance records of all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

9. Records Contents

Records of monitoring information shall must include:

- a. The date, exact place, time and methods of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

10. Inspection and Entry

The permittee shall must allow the Director, or an authorized representative upon the presentation of credentials to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location.

SECTION D. REPORTING REQUIREMENTS

1. Planned Changes

The permittee shall must comply with Oregon Administrative Rules (OAR) 340, Division 052, "Review of Plans and Specifications". Except where exempted under OAR 340-052, no construction, installation, or modification involving disposal systems, treatment works, sewerage systems, or common sewers shall must be commenced until the plans and specifications are submitted to and approved by the Department. The permittee shall must give notice to the Department as soon as possible of any planned physical alternations or additions to the permitted facility.

2. Anticipated Noncompliance

The permittee shall must give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit may be transferred to a new permittee provided the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the permit and the rules of the Commission. No permit shall must be transferred to a third party without prior written approval from the Director. The permittee shall must notify the Department when a transfer of property interest takes place.

4. Compliance Schedule

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any compliance schedule of this permit shall must be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall must include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

5. Twenty-Four Hour Reporting

The permittee shall must report any noncompliance which may endanger health or the environment. Any information shall must be provided orally (by telephone) within 24 hours, unless otherwise specified in this permit, from the time the permittee becomes aware of the circumstances. During normal business hours, the Department's Regional office shall must be called. Outside of normal business hours, the Department shall must be contacted at 1-800-452-0311 (Oregon Emergency Response System).

A written submission shall must also be provided within 5 days of the time the permittee becomes aware of the circumstances. If the permittee is establishing an affirmative defense of upset or bypass to any offense under ORS 468.922 to 468.946, and in which case if the original reporting notice was oral, delivered written notice must be made to the Department or other agency with regulatory jurisdiction within 4 (four) calendar days. The written submission shall must contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected;
- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and
- e. Public notification steps taken, pursuant to General Condition B.7.

The following shall must be included as information which must be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass which exceeds any effluent limitation in this permit.
- b. Any upset which exceeds any effluent limitation in this permit.
- c. Violation of maximum daily discharge limitation for any of the pollutants listed by the Director in this permit.

The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

6. Other Noncompliance

The permittee shall must report all instances of noncompliance not reported under General Condition D.4 or D.5, at the time monitoring reports are submitted. The reports shall must contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected; and
- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

7. Duty to Provide Information

The permittee shall must furnish to the Department, within a reasonable time, any information which the Department may request to determine compliance with this permit. The permittee shall must also furnish to the Department, upon request, copies of records required to be kept by this permit.

Other Information: When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Department, it shall must promptly submit such facts or information.

3. Signatory Requirements

All applications, reports or information submitted to the Department shall must be signed and certified in accordance with 40 CFR §122.22.

9. Falsification of Reports

Under ORS 468.953, any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, is subject to a Class C felony punishable by a fine not to exceed \$100,000 per violation and up to 5 years in prison.

10. Changes to Indirect Dischargers - [Applicable to Publicly Owned Treatment Works (POTW) only]

The permittee must provide adequate notice to the Department of the following:

- a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of the Clean Water Act if it were directly discharging those pollutants and;
- b. Any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
- c. For the purposes of this paragraph, adequate notice shall must include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

11. Changes to Discharges of Toxic Pollutant - [Applicable to existing manufacturing, commercial, mining, and silvicultural dischargers only]

The permittee must notify the Department as soon as they know or have reason to believe of the following:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) One hundred micrograms per liter (100 µg/l);
 - (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g)(7); or
 - (4) The level established by the Department in accordance with 40 CFR §122.44(f).
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) Five hundred micrograms per liter (500 µg/l);
 - (2) One milligram per liter (1 mg/l) for antimony;
 - (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g)(7); or
 - (4) The level established by the Department in accordance with 40 CFR §122.44(f).

SECTION E. DEFINITIONS

1. BOD means five-day biochemical oxygen demand.
2. TSS means total suspended solids.
3. mg/l means milligrams per liter.
4. kg means kilograms.
5. m³/d means cubic meters per day.
6. MGD means million gallons per day.
7. Composite sample means a sample formed by collecting and mixing discrete samples taken periodically and based on time or flow.
8. FC means fecal coliform bacteria.
9. Technology based permit effluent limitations means technology-based treatment requirements as defined in 40 CFR §125.3, and concentration and mass load effluent limitations that are based on minimum design criteria specified in OAR 340-041.
10. CBOD means five day carbonaceous biochemical oxygen demand.

11. Grab sample means an individual discrete sample collected over a period of time not to exceed 15 minutes.
12. Quarter means January through March, April through June, July through September, or October through December.
13. Month means calendar month.
14. Week means a calendar week of Sunday through Saturday.
15. Total residual chlorine means combined chlorine forms plus free residual chlorine.
16. The term "bacteria" includes but is not limited to fecal coliform bacteria, total coliform bacteria, and E. coli bacteria.
17. POTW means a publicly owned treatment works.

GENERAL PERMIT
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STORM WATER DISCHARGE PERMIT

Department of Environmental Quality
811 Southwest Sixth Avenue, Portland, OR 97204
Telephone: (503) 229-5279/5630 or 1-800-452-4011 toll free in Oregon
Issued pursuant to ORS 468B.050 and The Federal Clean Water Act

ISSUED TO:

All Owners Or Operators Of Storm Water
Point Source Discharges That Are Covered
By This Permit

SOURCES COVERED BY THIS PERMIT

Facilities identified in 40 Code of Federal Regulation (CFR) §122.26(b)(14)(i -ix, xi) with storm water discharges. See Table 1: Sources Covered on p. 3 for more information on the CFR regulated industries covered by this permit. Facilities may qualify for a conditional exclusion from the requirement to obtain coverage under a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see Permit Coverage and Exclusion From Coverage on p. 7 for more information.

Construction activities, asphalt mix batch plants, concrete batch plants and Standard Industrial Classification code 14, *Mining and Quarrying of Nonmetallic Minerals, Except Fuels*, are excluded from this permit. These activities are regulated under separate permits.

See Table 1: Sources Covered on p. 3 for more information on the CFR-regulated industries covered by this permit.

Michael T. Llewelyn, Administrator
Water Quality Division

July 22, 1997 Issued:
Date Effective:

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify, or operate storm water treatment and/or control facilities, and to discharge storm water to public waters in conformance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

	<u>Page</u>
<u>Permit Coverage and Exclusion From Coverage</u>	
Schedule A - Storm Water Pollution Control Plan, Additional Requirements, Limitations, and Benchmarks	4-8
Schedule B - Monitoring and Reporting Requirements	9-10
Schedule C - Compliance Conditions and Schedules	11
Schedule D - Special Conditions	12
Schedule F - General Conditions	13

Unless specifically authorized by this permit, by another NPDES or WPCF permit, or by Oregon Administrative Rule, any other direct or indirect discharge to waters of the state is prohibited, including

Permit Number: 1200-Z
Expiration Date: 6/30/2002
Page 2 of 27

discharges to an underground injection control system. Unless authorized by another NPDES or WPCF permit, all any other direct and or indirect discharges to public waters are prohibited.

TABLE 1: SOURCES COVERED

Previous Permit Type	Sources Covered
1200-D	<p>Facilities with the following primary Standard Industrial Classification codes:</p> <ul style="list-style-type: none"> 21 Tobacco Products 22 Textile Mill Products 23 Apparel and Other Finished Products Made From Fabrics and Similar Material 27 Printing, Publishing and Allied Industries 4221 Farm Product Warehousing and Storage 4222 Refrigerated Warehousing and Storage 4225 General Warehousing and Storage <p>Facilities with SIC codes 22, 23, 27, 4221, 4222, and 4225 are only required to apply for permit if storm water is exposed to material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery.</p>
1200-F	<p>Facilities with primary Standard Industrial Classification code 20 Food and Kindred Products. Facilities with this SIC code are only required to apply for permit if storm water is exposed to material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery.</p>
1200-G	<p>Landfills, land application sites and open dumps.</p>
1200-H	<p>Facilities with the following primary Standard Industrial Classification codes:</p> <ul style="list-style-type: none"> 28 Chemicals and Allied Products (excluding 2874 Phosphate Fertilizer Manufacturing) 29 Petroleum Refining and Related Industries 30 Rubber and Miscellaneous Plastics Products 31 Leather and Leather Products 32 Stone, Clay, Glass, and Concrete Products 33 Primary Metal Industries <p>— and Steam Electric Power Generation including coal handling sites.</p> <p>Facilities with SIC codes 283, 285, 30, 31 (except 311), and 323 are only required to apply for permit if storm water is exposed to material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery.</p>
1200-L	<p>Facilities with the following primary Standard Industrial Classification codes:</p> <ul style="list-style-type: none"> 34 Fabricated Metal Products, Except Machinery and Transportation Equipment 35 Industrial and Commercial Machinery and Computer Equipment 36 Electronic and Other Electrical Equipment and Components, Except Computer Equipment 37 Transportation Equipment 38 Measuring, Analyzing, and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks 39 Miscellaneous Manufacturing Industries <p>Facilities with SIC codes 34 (except 3441), 35, 36, 37 (except 373), 38, and 39 are only required to apply for permit if storm water is exposed to material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery.</p>

TABLE 1: SOURCES COVERED (cont.)

Previous Permit Type	Sources Covered
1200-M	Facilities with the following primary Standard Industrial Classification codes: 10 Metal Mining 12 Coal Mining 13 Oil and Gas Extraction
1200-P	Facilities with primary Standard Industrial Classification code 26 Paper and Allied Products. Facilities with SIC codes 265 and 267 are only required to apply for permit if storm water is exposed to material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by products, or industrial machinery.
1200-R	Hazardous Waste Treatment, Storage and Disposal Facilities, and facilities with primary Standard Industrial Classification codes 5015 Motor Vehicle Parts, Used, and 5093 Scrap and Waste Materials.
1200-S	Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, recycling, and reclamation of municipal or domestic sewage (including land dedicated to the disposal of sewage sludge that are located within the confines of the facility) with the design flow capacity of 1.0 mgd or more, or required to have a pretreatment program under 40 CFR § 403.
1200-T	Facilities with the following primary Standard Industrial Classification codes that have vehicle maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport deicing operations: 40 Railroad Transportation 41 Local and Suburban Transit and Interurban Highway Passenger Transportation 42 Motor Freight Transportation and Warehousing (excluding 4221 Farm Product Warehousing and Storage, 4222 Refrigerated Warehousing and Storage, and 4225 General Warehousing and Storage) 43 United States Postal Service 44 Water Transportation 45 Transportation by Air 5171 Petroleum Bulk Stations and Terminals
1200-W	Facilities with the following primary Standard Industrial Classification codes: 24 Lumber and Wood Products, Except Furniture (excluding 2491 Wood Preserving and 2411 Logging) 25 Furniture and Fixtures Facilities with SIC codes 2434 and 25 are only required to apply for permit if storm water is exposed to material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by products, or industrial machinery.

Facilities with the following primary Standard Industrial Classification codes:

- 10 Metal Mining
- 12 Coal Mining
- 13 Oil and Gas Extraction
- 20 Food and Kindred Products
- 21 Tobacco Products
- 22 Textile Mill Products
- 23 Apparel and Other Finished Products Made From Fabrics and Similar Material
- 24 Lumber and Wood Products, Except Furniture (excluding 2491 Wood Preserving and 2411 Logging)
- 25 Furniture and Fixtures
- 27 Printing, Publishing and Allied Industries
- 28 Chemicals and Allied Products (excluding 2874 Phosphate Fertilizer Manufacturing)
- 29 Petroleum Refining and Related Industries
- 30 Rubber and Miscellaneous Plastics Products
- 31 Leather and Leather Products
- 32 Stone, Clay, Glass, and Concrete Products
- 33 Primary Metal Industries
- 34 Fabricated Metal Products, Except Machinery and Transportation Equipment
- 35 Industrial and Commercial Machinery and Computer Equipment
- 36 Electronic and Other Electrical Equipment and Components, Except Computer Equipment
- 37 Transportation Equipment
- 38 Measuring, Analyzing, and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks
- 39 Miscellaneous Manufacturing Industries
- 4221 Farm Product Warehousing and Storage
- 4222 Refrigerated Warehousing and Storage
- 4225 General Warehousing and Storage
- 5015 Motor Vehicle Parts, Used
- 5093 Scrap and Waste Materials

Facilities with the following primary Standard Industrial Classification codes that have vehicle maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport deicing operations:

- 41 Local and Suburban Transit and Interurban Highway Passenger Transportation
- 42 Motor Freight Transportation and Warehousing (excluding 4221 Farm Product Warehousing and Storage, 4222 Refrigerated Warehousing and Storage, and 4225 General Warehousing and Storage)
- 43 United States Postal Service
- 44 Water Transportation
- 45 Transportation by Air
- 5171 Petroleum Bulk Stations and Terminals

TABLE 1: SOURCES COVERED
continued

<u>Steam Electric Power Generation including coal handling sites</u>
<u>Landfills, land application sites and open dumps [excluding landfills regulated by 40 CFR §445 that discharge "contaminated storm water" (as defined by 40 CFR §445.2) to waters of the U.S.]</u>
<u>Hazardous Waste Treatment, Storage and Disposal Facilities [excluding hazardous waste landfills regulated by 40 CFR §445 that discharge "contaminated storm water" (as defined by 40 CFR §445.2) to waters of the U.S.]</u>
<u>Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, recycling, and reclamation of municipal or domestic sewage (including land dedicated to the disposal of sewage sludge that are located within the confines of the facility) with the design flow capacity of 1.0 mgd or more, or required to have a pretreatment program under 40 CFR § 403.</u>

PERMIT COVERAGE AND EXCLUSION FROM COVERAGE

1. Application for General Permit Coverage

a) *New facilities and existing facilities obtaining coverage for the first time*

Owners or operators of sources covered by this permit must:

- i) Submit a complete copy of the Department-approved application form to the Department requesting coverage under this permit at least 180 days prior to the planned activity that will result in the discharge to waters of the state, unless otherwise approved by the Department.
- ii) Provide payment of all fees applicable to this permit prior to obtaining coverage.

b) *Renewal of permit coverage for existing permittees*

Owners or operators of sources covered by this permit must:

- i) Submit a complete copy of the Department approved application form 180 days prior to permit expiration, unless otherwise approved in writing by the Department.
- ii) Provide payment of all applicable fees for permit renewal.
- iii) The existing permit will continue to be in effect through administrative extension after the permit expiration date if a complete renewal application is submitted.

c) *Notification that permit coverage has been obtained*

- i) The Department will notify the applicant by mail that they have received coverage and is authorized to operate under the conditions of this permit.
- ii) If the applicant's operation cannot be approved for coverage under this permit, the applicant may apply for an individual permit.

2. "No Exposure" Conditional Exclusion from Permit Coverage

Application for permit coverage is not required to obtain the "No Exposure" conditional exclusion described below.

a) To qualify for this exclusion, the owner or operator must:

- i) Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff.
- ii) Complete and sign a certification, on a form approved by the Department, that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in 40 CFR §122.26(g)(2).
- iii) Submit the signed certification to the Department once every five years.
- iv) Allow the Department to inspect the facility to determine compliance with the "no exposure" conditions, and allow the Department to make any "no exposure" inspection reports available to the public upon request.
- v) For facilities that discharge through a municipal separate storm sewer system (MS4), upon request, submit a copy of the "no exposure" certification to the MS4 operator (i.e., local municipality), as well as allow inspection and public reporting by the MS4 operator.
- vi) Utilize the Environmental Protection Agency (EPA) *Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on "No Exposure" of Industrial Activities to Storm Water* (EPA 833-B-00-001, June 2000) to determine "no exposure."

b) Limitations for obtaining and/or maintaining the exclusion:

- i) This exclusion is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.
- ii) If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such

cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit coverage prior to the change of circumstances.

- iii) The Department retains the authority to require permit coverage (and deny this exclusion) upon making a determination that the discharge causes, has reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.
- iv) The Department will notify the permittee in writing of its approval of the "no exposure" conditional exclusion and termination of permit coverage. The owner or operator must maintain this notification on site.

**SCHEDULE A
STORM WATER POLLUTION CONTROL PLAN**

1. Preparation and Implementation of the Storm Water Pollution Control Plan (SWPCP)

The permittee must prepare and implement their SWPCP according to the following:

- a) The SWPCP ~~must~~ shall be prepared according to the requirements in Schedule A.2 by a person knowledgeable in storm water management and familiar with the facility. The person(s) preparing the plan must be identified in the plan.
- b) The SWPCP ~~must~~ shall be signed in accordance with 40 CFR §122.22. Updates and revisions to the SWPCP ~~must~~ shall also be signed and certified pursuant to 40 CFR §122.22. ~~in this manner. The SWPCP shall be signed as follows:~~
 - i) ~~For a Corporation—By a principal executive officer of at least the level of vice president;~~
 - ii) ~~For a Partnership or Sole Proprietorship—By a general partner or the proprietor, respectively; or~~
 - iii) ~~For a Municipality, State, Federal, or other Public Facility—By either a principal executive officer or ranking elected official.~~
- c) The SWPCP ~~must~~ shall be prepared and implemented according to the time frames set forth in Schedule C.
- d) The SWPCP ~~must~~ shall be kept current and updated as necessary to reflect any changes in facility operation.
- e) The SWPCP and updates to the SWPCP ~~must~~ shall be submitted to the Department in accordance with Schedule B.3.
- f) A copy of the SWPCP ~~must~~ shall be kept at the facility and made available upon request to government agencies responsible for storm water management in the permittee's area.

2. Storm Water Pollution Control Plan Requirements

- a) **Site Description** The SWPCP ~~must~~ shall contain the following information:
 - i) A description of the industrial activities conducted at the site. Include a description of the significant materials (see Schedule D.3, Definitions) that are stored, used, treated and/or disposed of in a manner that allows exposure to storm water. Also describe the methods of storage, usage, treatment and/or disposal.
 - ii) A general location map showing the location of the site in relation to surrounding properties, transportation routes, surface waters and other relevant features.
 - iii) A site map including the following:
 - (1) drainage patterns
 - (2) drainage and discharge structures
 - (3) outline of the drainage area for each storm water outfall
 - (4) paved areas and buildings within each drainage area
 - (5) areas used for outdoor manufacturing, treatment, storage, and/or disposal of significant materials
 - (6) existing structural control measures for reducing pollutants in storm water runoff
 - (7) material loading and access areas
 - (8) hazardous waste treatment, storage and disposal facilities
 - (9) location of wells including waste injection wells, seepage pits, drywells, etc.
 - (10) location of springs, wetlands and other surface water bodies.
 - iv) Estimates of the amount of impervious surface area (including paved areas and building roofs) relative to the total area drained by each storm water outfall.
 - v) For each area of the site where a reasonable potential exists for contributing pollutants to storm water runoff, identify the potential pollutants that could be present in storm water discharges.

- vi) The name(s) of the receiving water(s) for storm water drainage. If drainage is to a municipal storm sewer system, the name(s) of the ultimate receiving waters and the name of the municipality.
 - vii) Identification of the discharge outfall(s) and the point(s) where storm water monitoring will occur as required by Schedule B. If multiple discharge outfalls exist but will not all be monitored (as allowed in Schedule B.1.c), a description supporting this approach ~~must~~shall also be included.
- b) **Site Controls** The permittee ~~shall~~must maintain existing controls and/or develop new controls appropriate for the site. The purpose of these controls is to eliminate or minimize the exposure of pollutants to storm water. In developing a control strategy, the SWPCP ~~shall~~must have the following minimum components. A description of each component ~~shall~~must be included in the SWPCP.
- i) *Storm Water Best Management Practices* If technically and economically feasible, the following best management practices ~~shall~~must be employed at the site. A schedule for implementation of these practices ~~shall~~must be included in the SWPCP if the practice has not already been accomplished. This schedule must be consistent with the requirements for developing and implementing the SWPCP in Schedule C of the permit.
 - (1) Containment - All hazardous materials~~substances~~ (see Schedule D.3, Definitions) ~~shall~~must be stored within berms or other secondary containment devices to prevent leaks and spills from contaminating storm water. If the use of berms or secondary containment devices is not possible, then hazardous materials~~substances~~ must be stored in areas that do not drain to the storm sewer system.
 - (2) Oil and Grease - Oil/Water separators, booms, skimmers or other methods ~~shall~~must be employed to eliminate or minimize oil and grease contamination of storm water discharges.
 - (3) Waste Chemicals and Material Disposal - Wastes ~~shall~~must be recycled or properly disposed of in a manner to eliminate or minimize exposure of pollutants to storm water. All waste contained in bins or dumpsters where there is a potential for drainage of storm water through the waste ~~shall~~must be covered to prevent exposure of storm water to these pollutants. Acceptable covers include, but are not limited to, storage of bins or dumpsters under roofed areas and use of lids or temporary covers such as tarps.
 - (4) Erosion and Sediment Control - Erosion control methods such as vegetating exposed areas, graveling or paving ~~shall~~must be employed to minimize erosion of soil at the site. Sediment control methods such as detention facilities, sediment control fences, vegetated filter strips, bioswales, or grassy swales ~~shall~~must be employed to minimize sediment loads in storm water discharges. For activities that involve land disturbance, the permittee ~~shall~~must contact the local municipality to determine if there are other applicable requirements.
 - (5) Debris Control - Screens, booms, settling ponds, or other methods ~~shall~~must be employed to eliminate or minimize debris in storm water discharges.
 - (6) Storm Water Diversion - Storm water ~~shall~~must be diverted away from fueling, manufacturing, treatment, storage, and disposal areas to prevent exposure of uncontaminated storm water to potential pollutants.
 - (7) Covering Activities - Fueling, manufacturing, treatment, storage, and disposal areas ~~shall~~must be covered to prevent exposure of storm water to potential pollutants. Acceptable covers include, but are not limited to, permanent structures such as roofs or buildings and temporary covers such as tarps.

- (8) **Housekeeping** - Areas that may contribute pollutants to storm water ~~shall~~must be kept clean. Sweeping, prompt clean up of spills and leaks, and proper maintenance of vehicles ~~shall~~must be employed to eliminate or minimize exposure of storm water to pollutants.
- ii) **Spill Prevention and Response Procedures** Methods to prevent spills along with clean-up and notification procedures ~~shall~~must be included in the SWPCP. These methods and procedures ~~shall~~must be made available to appropriate personnel. The required clean up material ~~shall~~must be on-site or readily available. Spills prevention plans required by other regulations may be substituted for this provision providing that storm water management concerns are adequately addressed.
- iii) **Preventative Maintenance** A preventative maintenance program ~~shall~~must be implemented to ensure the effective operation of all storm water best management practices. At a minimum the program ~~shall~~must include:
- (1) Monthly inspections of areas where potential spills of significant materials or industrial activities could impact storm water runoff.
 - (2) Monthly inspections of storm water control measures, structures, catch basins, and treatment facilities.
 - (3) Cleaning, maintenance and/or repair of all materials handling and storage areas and all storm water control measures, structures, catch basins, and treatment facilities as needed upon discovery. Cleaning, maintenance, and repair of such systems must be performed in such a manner as to prevent the discharge of pollution.
- iv) **Employee Education** An employee orientation and education program ~~shall~~must be developed and maintained to inform personnel of the components and goals of the SWPCP. The program ~~shall~~must also address spill response procedures and the necessity of good housekeeping practices. A schedule for employee education ~~shall~~must be included in the SWPCP. The Department recommends this education and training occur at the time of an employee's hire and annually thereafter.
- c) **Record Keeping and Internal Reporting Procedures** The following information ~~shall~~must be recorded and maintained at the facility and provided to the Department and other government agencies upon request. This information does not need to be submitted as part of the SWPCP.
- i) Inspection, maintenance, repair and education activities as required by the SWPCP.
 - ii) Spills or leaks of significant materials that impacted or had the potential to impact storm water or surface waters. Include the corrective actions to clean up the spill or leak as well as measures to prevent future problems of the same nature.

ADDITIONAL REQUIREMENTS

2. ~~Oregon Administrative Rule (OAR) 340-44-50, Waste Disposal Wells for Surface Drainage~~
OAR 340-44-50 requires that waste disposal wells for storm drainage only be used in those areas where there is an adequate confinement barrier or filtration medium between the well and an underground source of drinking water; and where construction of surface discharging storm sewers is not practical. In addition, this rule requires the following:
- a) ~~New storm drainage disposal wells shall be as shallow as possible but shall not exceed a depth of 100 feet.~~
 - b) ~~Disposal wells shall be located at least 500 feet from domestic water wells.~~
 - c) ~~Using a disposal well for agricultural drainage is prohibited.~~
 - d) ~~Using a disposal well for surface drainage in areas where toxic chemicals or petroleum products are stored or handled is prohibited unless there is containment around the product area which will prevent spills and leaks from entering the well.~~
 - e) ~~Any owner or operator of the disposal well shall have available a means of temporarily plugging or blocking the well in the event of an accident or spill.~~
 - f) ~~Any area that is drained by a disposal well shall be kept clean of petroleum products and other organic or chemical wastes as much as practicable to minimize the degree of contamination of the storm water drainage.~~

4.3. **Oregon Administrative Rule 340-041-0026(3)(a)(D), Surface Water Temperature Management Plan** Individual storm water discharges are not expected to cause a measurable increase in stream temperature because the storm water discharges mainly occur at a time of year when ambient stream and runoff temperatures are relatively low. Compliance with this permit meets the requirement of OAR 340-041-0026(3)(a)(D) to develop and implement a surface water temperature management plan. If it is determined that permitted storm water discharges in a particular basin are contributing to assigned waste load allocations under a Total Maximum Daily Load for temperature, then permittees in this basin will be required to implement additional management practices to reduce the temperature of the discharges. These practices include, but are not limited to, increased vegetation to provide for shading, underground conveyance systems or detention vaults, and filter treatment systems to reduce detention times.

5.4. **Storm Water Only** This permit only regulates the discharge of storm water. It does not authorize the discharge or on-site disposal of process wastewater, wash water, boiler blowdown, cooling water, air conditioning condensate, deicing residues, or any other non-storm discharges associated with the facility. The Department recommends that piping and drainage systems for floor drains and other process wastewater discharge points be separated from the storm drainage system to prevent inadvertent discharge of pollutants to waters of the state.

Any other wastewater discharge or disposal must be permitted in a separate permit. A separate Department permit may not be required if the wastewater is reused or recycled without discharge or disposal, or discharged to the sanitary sewer with approval from the local sanitary authority.

6.5. **Water Quality Limited Streams** - If Total Maximum Daily Loads are established and the discharge from a permitted source is assigned a waste load allocation, application for an individual or different general permit or other appropriate tools may be required to address the allocation. **Specific River Basin Requirements** - The permittee shall comply with any Oregon Administrative Rule requirements for storm water management specific to the applicable river basin.

7.6. **Water Quality Standards** The ultimate goal for permittees is to comply with water quality standards in OAR 340-041. In instances where a storm water discharge adversely impacts water

quality, the Department may require the facility to implement additional management practices, apply for an individual permit, or take other appropriate action.

CODE OF FEDERAL REGULATION STORM WATER DISCHARGE LIMITATIONS

~~§.7.~~ The permittee with the following activities ~~shall~~must be in compliance with the applicable limitations at the time of permit assignment:

CFR Industry Category	Parameter	Limitation	
Cement manufacturing facilities for runoff from material storage piles (40 CFR §411)	pH	6.0 – 9.0 SU	
	Total Suspended Solids (TSS)	50 mg/l	
Steam powered electric power generation facilities with coal handling and storage facilities (40 CFR §423)	TSS	50 mg/l, Daily Maximum	
Manufacturing of asphalt paving and roofing emulsions (40 CFR §443)	Oil & Grease	20 mg/l, Daily Maximum	15 mg/l, 30 Day Average
	pH	6.0 – 9.0 SU	

CFR Industry		Parameter	Limitation	
Category	Subcategory			
Cement manufacturing (40 CFR §411)	Materials storage piles runoff	pH	6.0 - 9.0 SU	
		Total Suspended Solids (TSS)	50 mg/l	
Steam powered electric power generating (40 CFR §423)	Coal pile runoff	TSS	50 mg/l, Daily Maximum	
Paving and roofing materials (tars and asphalt) (40 CFR §443)	Runoff from manufacturing of asphalt paving or roofing emulsion	Oil & Grease	20 mg/l, Daily Maximum	15 mg/l, 30 Day Average
		pH	6.0 - 9.0 SU	

STORM WATER DISCHARGE BENCHMARKS

9.8. Benchmarks Benchmarks are guideline concentrations not limitations. They are designed to assist the permittee in determining if the implementation of their SWPCP is reducing pollutant concentrations to below levels of concern. For facilities that are subject to federal limitations, benchmarks apply to only those pollutants that are not limited by the federal regulations. The following benchmarks apply to each point source discharge of storm water associated with industrial activity:

Parameter	Benchmark
Total Copper	0.1 mg/l
Total Lead	0.4 mg/l
Total Zinc	0.6 mg/l
pH	5.5 – 9.0 S.U.
Total Suspended Solids	130 mg/l
Total Oil & Grease	10 mg/l
E. coli	406 counts/100 ml
Floating Solids (associated with industrial activities)	No Visible Discharge
Oil & Grease Sheen	No Visible Sheen

** The benchmark for E. coli applies only to landfills, if septage and sewage biosolids are disposed at the site, and sewage treatment plants.

10.9. Review of SWPCP If benchmarks are not achieved, the permittee shall ~~shall~~ **must** investigate the source of the elevated pollutant levels and review and, if necessary, revise their SWPCP within 60 days of receiving sampling results. The purpose of this review is to determine if the SWPCP is being followed and to identify any additional technically and economically feasible site controls that need to be implemented to further improve the quality of storm water discharges. These site controls include best management practices, spill prevention and response procedures, preventative maintenance, and employee education procedures as described in Schedule A.2.b.

- a) **SWPCP Revision** Any newly identified site controls shall ~~shall~~ **must** be implemented in a timely manner and incorporated into the SWPCP as an update. A new SWPCP is not required. If no additional site controls are identified, the permittee shall ~~shall~~ **must** state as such in an update to the SWPCP.
- b) **SWPCP Revision Submittal** Results of this review shall ~~shall~~ **must** be submitted to the Department in accordance with Schedule B.3 and made available upon request to government agencies responsible for storm water management in the permittee's area.
- c) **Background or Natural Conditions** If the permittee demonstrates that background or natural conditions not associated with industrial activities at the site cause an exceedance of a benchmark, then no further modifications to the SWPCP are required for that parameter. Upon successful demonstration of natural or background conditions through monitoring of the same storm event used to evaluate benchmarks the permittee would be eligible for the monitoring reduction as outlined in Schedule B.2.

**SCHEDULE B
 MONITORING AND REPORTING REQUIREMENTS**

1. **Minimum Monitoring Requirements**

- a) All permittees ~~shall~~must monitor storm water associated with industrial activity for the following:

GRAB SAMPLES OF STORM WATER	
Parameter*	Frequency
Total Copper	Twice per Year
Total Lead	Twice per Year
Total Zinc	Twice per Year
pH	Twice per Year
Total Suspended Solids	Twice per Year
Total Oil & Grease	Twice per Year
E. coli	Twice per Year

* Parameters should be analyzed on samples collected from the same storm event.

**The monitoring for E. coli applies only to landfills, if septage and sewage biosolids are disposed at the site, and sewage treatment plants.

VISUAL MONITORING OF STORM WATER	
Parameter	Frequency
Floating Solids (associated with industrial activities)	Once a Month (when discharging)
Oil & Grease Sheen	Once a Month (when discharging)

- b) **Grab Samples** Grab samples that are representative of the discharge ~~must~~shall be taken at least 60 days apart. It is preferred, but not required, that one sample be collected in the fall and one in the spring. Compositing of samples from different drainage areas is not allowed.
- c) **Multiple Point Source Discharges** The permittee may reduce the number of storm water monitoring points provided the outfalls have substantially identical effluents. Substantially identical effluents are discharges from drainage areas serving similar activities where the discharges are expected to be similar in composition. Outfalls serving areas with no exposure of storm water to industrial activities are not required to be monitored.
- d) **Monitoring Location** All samples ~~must~~shall be taken at monitoring points specified in the SWPCP before the storm water joins or is diluted by any other wastestream, body of water or substance unless otherwise approved in writing by the Department.
- e) ~~No Exposure~~ If there is no exposure of storm water to material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by products, or industrial machinery at the site, monitoring is not required. ~~The permittee shall submit an~~

~~annual statement certifying as such in lieu of monitoring (refer to Schedule B.3.b). If exposure cannot be prevented, the permittee shall comply with Schedule B.~~

2. **Monitoring Reduction**

- a) **Visual Observations** There is no reduction allowed of the required visual observations.
- b) **Grab Samples** The permittee is not required to conduct sampling if the benchmarks specified in Schedule A.98 are met, or if the exceedance is due to natural or background conditions for at least four consecutive storm water monitoring events conducted by the permittee over 24 continuous months. Note that there is no reduction in monitoring allowed for facilities subject to limitations under CFR (Schedule A.87).
- i) Results from sampling events cannot be averaged to meet the benchmarks.
 - ii) Monitoring waivers may be allowed for individual parameters.
 - iii) Parameters in exceedance or not previously sampled ~~shall~~must be monitored as required in Schedule B.1 until the monitoring waiver condition above is met.
 - iv) Monitoring data from the previous permit period may be used to meet the waiver requirement. This data ~~shall~~must be evaluated against the benchmarks specified in this permit.
 - v) Monitoring data from the same storm event ~~shall~~must be used to demonstrate that background or natural conditions not associated with industrial activities at the site are contributing to the exceedance of a benchmark.
 - vi) The permittee ~~shall~~must submit written notification to the Department when exercising the monitoring waiver condition (refer to Schedule B.3.eb).
- c) **Reinstatement of Monitoring Requirements**
- i) The permittee must conduct monitoring as specified in Schedule B.1 if changes to site conditions are expected to ~~impact~~affect storm water discharge characteristics.
 - ii) The Department may reinstate monitoring requirements as specified in Schedule B.1 if prior monitoring efforts were improper or results were incorrect. The Department will notify the permittee of reinstatement in writing.
 - iii) Monitoring may also be reinstated if future sampling efforts by the permittee or the Department indicate benchmarks are being exceeded.
 - iv) If no monitoring was performed during the previous permit period, the permittee must reinitiate monitoring as specified in Schedule B.1 to qualify for the monitoring reduction allowed in Schedule B.2.

3. **Reporting Requirements** The permittee ~~shall~~must submit the following to the appropriate DEQ regional office (DEQ will provide regional office information when the permittee is notified that permit coverage has been obtained):

- a) **Monitoring Data** The permittee ~~shall~~must submit by July 15 of each year grab sampling and visual monitoring data for the previous monitoring period (July 1- June 30). If there was insufficient rainfall to collect samples, the permittee ~~shall~~must notify the Department by July 15 of each year. The permittee must also report the minimum detection levels and analytical methods for the parameters analyzed.
- b) ~~**No Exposure Certification** The permittee shall submit an annual certification by July 15 of each year if monitoring is not required due to no exposure of storm water to industrial activities.~~

The certification must state that site conditions have been evaluated and the facility meets the requirements of Schedule B.1.e.

e)b) Monitoring Reduction Notification The permittee shall ~~must~~ submit written notification when exercising the monitoring reduction condition in Schedule B.2.b.

d)c) Initial Completion or Update of SWPCP-Update/Completion The permittee shall ~~must~~ prepare or update the SWPCP in accordance with Schedule C of the permit. The permittee shall ~~must~~ submit an updated or completed SWPCP within 14 days after completion.

e)d) SWPCP Revision (when benchmarks are exceeded) The permittee shall ~~must~~ submit any revisions to the SWPCP required by Schedule A.10-9 within 14 days after the SWPCP is revised. If the Department does not review and comment on the revised SWPCP within 30 days, the permittee shall ~~must~~ implement the revisions as proposed. The permittee may proceed immediately with implementation of the following management practices as described in Schedule A.2.b without waiting for Department comment: waste chemical and materials disposal, debris control, storm water diversion, covering activities, housekeeping, and preventative maintenance.

**SCHEDULE C
COMPLIANCE CONDITIONS AND SCHEDULES**

1. **Existing Permittee** (for a facility with an NPDES storm water discharge permit assigned prior to ~~September 30, 1996~~June 30, 2002):
 - a) Not later than 90 days after receiving this permit, the existing permittee ~~shall~~must revise and begin implementation of their SWPCP to meet any new permit requirements.
 - b) Except for site controls that require capital improvements (see Schedule D.3, Definitions), the SWPCP ~~shall~~must be implemented within 90 days after revision of SWPCP. Site control activities that require capital improvements ~~shall~~must be completed in accordance with the schedule set forth in the SWPCP.

2. **New Permittee with Existing Facility** (for a facility operating prior to ~~September 30, 1996~~June 30, 2002, without an NPDES storm water discharge permit):
 - a) Not later than 90 days after receiving this permit, the new permittee ~~shall~~must prepare and begin implementation of their SWPCP.
 - b) Except for site controls that require capital improvements (see Schedule D.3, Definitions), the SWPCP ~~shall~~must be implemented within 90 days after completion of SWPCP. Site control activities that require capital improvements must be completed in accordance with the schedule set forth in the SWPCP.

3. **New Permittee with New Facility** (for a facility beginning operation after ~~September 30, 1996~~June 30, 2002):
 - a) Prior to starting operations, a new permittee facility ~~shall~~must prepare and begin implementation of their SWPCP.
 - b) Except for site controls that require capital improvements (see Schedule D.3, Definitions), the SWPCP ~~shall~~must be implemented within 90 days after beginning operation. Site control activities that require capital improvements ~~shall~~must be completed in accordance with the schedule set forth in the SWPCP.

4. **New Permittee Discharging to Clackamas River, McKenzie River above Hayden Bridge (River Mile 15) or North Santiam River.** Not later than 180 days after receiving this permit, new permittees discharging to Clackamas River, McKenzie River above Hayden Bridge (river mile 15) or North Santiam River must submit to the Department a monitoring and water quality evaluation program. This program must be effective in evaluating the in-stream impacts of the discharge as required by OAR 340-041-0470. Within 30 days after Department approval, the permittee must implement the monitoring and water quality evaluation program. For the purpose of this condition, ~~New permittees are defined to include potential or existing dischargers that did not have a permit prior to January 28, 1994, and existing dischargers that have a permit but request an increased load limitation.~~

**SCHEDULE D
SPECIAL CONDITIONS**

1. **Releases in Excess of Reportable Quantities.** This permit does not relieve the permittee of the reporting requirements of 40 CFR §117 Determination of Reportable Quantities for Hazardous Substances and 40 CFR §302 Designation, Reportable Quantities, and Notification.
2. **Availability of SWPCP and Monitoring Data.** The Storm Water Pollution Control Plan and/or storm water monitoring data ~~shall~~must be made available to government agencies responsible for storm water management in the permittee's area.
3. **Definitions**
 - a) *Capital Improvements* means the following improvements that require capital expenditures:
 - i) Treatment best management practices including but not limited to settling basins, oil/water separation equipment, catch basins, grassy swales, ~~and~~ detention/retention basins, and media filtration devices.
 - ii) Manufacturing modifications that incur capital expenditures, including process changes for reduction of pollutants or wastes at the source.
 - iii) Concrete pads, dikes and conveyance or pumping systems utilized for collection and transfer of storm water to treatment systems.
 - iv) Roofs and appropriate covers for manufacturing areas.
 - b) *Hazardous MaterialsSubstances* as defined in 40 CFR §302 Designation, Reportable Quantities, and Notification.
 - c) *Material Handling Activities* include the storage, loading and unloading, transportation or conveyance of raw material, intermediate product, finished product, by-product or waste product.
 - d) *Point Source* means a discharge from any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, or conduit.
 - e) *Significant Materials* includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical that a facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ash, slag, and sludge that have the potential to be released with storm water discharges.
4. **Local Public Agencies Acting as the Department's Agent**

The Department authorizes local public agencies to act as its Agent in implementing this permit. The Department's Agent may be authorized to conduct the following activities, including but not limited to: application review and approval, inspections, monitoring data review, storm water and wastewater monitoring, SWPCP review, and verification and approval of no-exposure certifications. Where the Department has entered into such an agreement, the Department or its Agent will notify the permittee of where to submit monitoring data, SWPCPs, no-exposure certifications, and other notifications or correspondence associated with this permit.

SCHEDULE F NPDES GENERAL CONDITIONS

SECTION A. STANDARD CONDITIONS

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of Oregon Revised Statutes (ORS) 468B.025 and is grounds for enforcement action; for permit termination, suspension, or modification; or for denial of a permit renewal application.

2. Penalties for Water Pollution and Permit Condition Violations

Oregon Law (ORS 468.140) allows the Director to impose civil penalties up to \$10,000 per day for violation of a term, condition, or requirement of a permit.

Under ORS 468.943, unlawful water pollution, if committed by a person with criminal negligence, is punishable by a fine of up to \$25,000 or by imprisonment for not more than one year, or by both. Each day on which a violation occurs or continues is a separately punishable offense.

Under ORS 468.946, a person who knowingly discharges, places or causes to be placed any waste into the waters of the state or in a location where the waste is likely to escape into the waters of the state, is subject to a Class B felony punishable by a fine not to exceed \$200,000 and up to 10 years in prison.

3. Duty to Mitigate

The permittee ~~shall~~must take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. In addition, upon request of the Department, the permittee ~~shall~~must correct any adverse impact on the environment or human health resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply ~~for and to~~ have the permit renewed. The application ~~shall~~must be submitted at least 180 days before the expiration date of this permit.

The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date.

5. Permit Actions

This permit may be modified, suspended, revoked and reissued, or terminated for cause including, but not limited to, the following:

- a. Violation of any term, condition, or requirement of this permit, a rule, or a statute;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all material facts; or
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- d. The permittee shall pay the fees required to be filed with this permit application and to be paid annually for permit compliance determination as outlined in the Oregon Administrative Rules, Chapter 340, Division 045.

The filing of a request by the permittee for a permit modification or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Toxic Pollutants

The permittee shall must comply with any applicable effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

7. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege.

8. Permit References

Except for effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act, all rules and statutes referred to in this permit are those in effect on the date this permit is issued.

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The permittee shall must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Duty to Halt or Reduce Activity

For industrial or commercial facilities, upon reduction, loss, or failure of the treatment facility, the permittee shall must, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost. It shall must not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Bypass of Treatment Facilities

a. Definitions

- (1) "Bypass" means intentional diversion of waste streams from any portion of the treatment facility. The term "bypass" does not include nonuse of singular or multiple units or processes of a treatment works when the nonuse is insignificant to the quality and/or quantity of the effluent produced by the treatment works. The term "bypass" does not apply if the diversion does not cause effluent limitations to be exceeded, provided the diversion is to allow essential maintenance to assure efficient operation.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities or treatment processes which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Prohibition of bypass.

- (1) Bypass is prohibited unless:
 - (a) Bypass was necessary to prevent loss of life, personal injury, or severe property damage;

- (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (c) The permittee submitted notices and requests as required under General Condition B.3.c.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects and any alternatives to bypassing, when the Director determines that it will meet the three conditions listed above in General Condition B.3.b.(1).

c. Notice and request for bypass.

- (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it ~~shall~~must submit prior written notice, if possible at least ten days before the date of the bypass.
- (2) Unanticipated bypass. The permittee ~~shall~~must submit notice of an unanticipated bypass as required in General Condition D.5.

4. Upset

- a. Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operation error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of General Condition B.4.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset ~~shall~~must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the permittee can identify the causes(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted notice of the upset as required in General Condition D.5, hereof (24-hour notice); and
 - (4) The permittee complied with any remedial measures required under General Condition A.3 hereof.
- d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Treatment of Single Operational Event

For purposes of this permit, A Single Operational Event which leads to simultaneous violations of more than one pollutant parameter ~~shall~~must be treated as a single violation. A single operational event is an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one Clean Water Act effluent discharge pollutant parameter. A single operational event does not include Clean Water Act violations involving discharge without a NPDES permit or noncompliance to the extent caused by improperly designed or inadequate treatment facilities. Each day of a single operational event is a violation.

6. Overflows from Wastewater Conveyance Systems and Associated Pump Stations

- a. Definitions

- (1) "Overflow" means the diversion and discharge of waste streams from any portion of the wastewater conveyance system including pump stations, through a designed overflow device or structure, other than discharges to the wastewater treatment facility.
 - (2) "Severe property damage" means substantial physical damage to property, damage to the conveyance system or pump station which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of an overflow.
 - (3) "Uncontrolled overflow" means the diversion of waste streams other than through a designed overflow device or structure, for example to overflowing manholes or overflowing into residences, commercial establishments, or industries that may be connected to a conveyance system.
- b. Prohibition of overflows. Overflows are prohibited unless:
- (1) Overflows were unavoidable to prevent an uncontrolled overflow, loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the overflows, such as the use of auxiliary pumping or conveyance systems, or maximization of conveyance system storage; and
 - (3) The overflows are the result of an upset as defined in General Condition B.4. and meeting all requirements of this condition.
- c. Uncontrolled overflows are prohibited where wastewater is likely to escape or be carried into the waters of the State by any means.
- d. Reporting required. Unless otherwise specified in writing by the Department, all overflows and uncontrolled overflows must be reported orally to the Department within 24 hours from the time the permittee becomes aware of the overflow. Reporting procedures are described in more detail in General Condition D.5.

Public Notification of Effluent Violation or Overflow

If effluent limitations specified in this permit are exceeded or an overflow occurs, upon request by the Department, the permittee shall take such steps as are necessary to alert the public about the extent and nature of the discharge. Such steps may include, but are not limited to, posting of the river at access points and other places, news releases, and paid announcements on radio and television.

8. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in such a manner as to prevent any pollutant from such materials from entering public waters, causing nuisance conditions, or creating a public health hazard.

SECTION C. MONITORING AND RECORDS

1. Representative Sampling

Sampling and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and shall be taken, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Director.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than \pm 10 percent from true discharge rates throughout the range of expected discharge volumes.

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part §136, unless other test procedures have been specified in this permit.

4. Penalties of Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall must, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment is a fine not more than \$20,000 per day of violation, or by imprisonment of not more than four years or both.

5. Reporting of Monitoring Results

Monitoring results shall must be summarized each month on a Discharge Monitoring Report form approved by the Department. The reports shall must be submitted monthly and are to be mailed, delivered or otherwise transmitted by the 15th day of the following month unless specifically approved otherwise in Schedule B of this permit.

6. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR §136 or as specified in this permit, the results of this monitoring shall must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report. Such increased frequency shall must also be indicated. For a pollutant parameter that may be sampled more than once per day (e.g., Total Chlorine Residual), only the average daily value shall must be recorded unless otherwise specified in this permit.

7. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall must utilize an arithmetic mean, except for bacteria which shall must be averaged as specified in this permit.

8. Retention of Records

Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall must be retained for a period of at least five years (or longer as required by 40 CFR §503), the permittee shall must retain records of all monitoring information, including all calibration and maintenance records of all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

9. Records Contents

Records of monitoring information shall must include:

- a. The date, exact place, time and methods of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

10. Inspection and Entry

The permittee ~~shall~~must allow the Director, or an authorized representative upon the presentation of credentials to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location.

SECTION D. REPORTING REQUIREMENTS

1. Planned Changes

The permittee ~~shall~~must comply with Oregon Administrative Rules (OAR) 340, Division 052, "Review of Plans and Specifications". Except where exempted under OAR 340-052, no construction, installation, or modification involving disposal systems, treatment works, sewerage systems, or common sewers ~~shall~~must be commenced until the plans and specifications are submitted to and approved by the Department. The permittee ~~shall~~must give notice to the Department as soon as possible of any planned physical alternations or additions to the permitted facility.

2. Anticipated Noncompliance

The permittee ~~shall~~must give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

Transfers

This permit may be transferred to a new permittee provided the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the permit and the rules of the Commission. No permit ~~shall~~must be transferred to a third party without prior written approval from the Director. The permittee ~~shall~~must notify the Department when a transfer of property interest takes place.

4. Compliance Schedule

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any compliance schedule of this permit ~~shall~~must be submitted no later than 14 days following each schedule date. Any reports of noncompliance ~~shall~~must include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

5. Twenty-Four Hour Reporting

The permittee ~~shall~~must report any noncompliance which may endanger health or the environment. Any information ~~shall~~must be provided orally (by telephone) within 24 hours, unless otherwise specified in this permit, from the time the permittee becomes aware of the circumstances. During normal business hours, the Department's Regional office ~~shall~~must be called. Outside of normal business hours, the Department ~~shall~~must be contacted at 1-800-452-0311 (Oregon Emergency Response System).

A written submission ~~shall~~must also be provided within 5 days of the time the permittee becomes aware of the circumstances. If the permittee is establishing an affirmative defense of upset or bypass to any offense under ORS 468.922 to 468.946, and in which case if the original reporting notice was oral, delivered written notice must be made to the Department or other agency with regulatory jurisdiction within 4 (four) calendar days. The written submission ~~shall~~must contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected;

- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and
- e. Public notification steps taken, pursuant to General Condition B.7.

The following shall be included as information which must be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass which exceeds any effluent limitation in this permit.
- b. Any upset which exceeds any effluent limitation in this permit.
- c. Violation of maximum daily discharge limitation for any of the pollutants listed by the Director in this permit.

The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

6. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under General Condition D.4 or D.5, at the time monitoring reports are submitted. The reports shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected; and
- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

7. Duty to Provide Information

The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

Other Information: When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Department, it shall promptly submit such facts or information.

8. Signatory Requirements

All applications, reports or information submitted to the Department shall be signed and certified in accordance with 40 CFR §122.22.

9. Falsification of Reports

Under ORS 468.953, any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, is subject to a Class C felony punishable by a fine not to exceed \$100,000 per violation and up to 5 years in prison.

10. Changes to Indirect Dischargers - [Applicable to Publicly Owned Treatment Works (POTW) only]

The permittee must provide adequate notice to the Department of the following:

- a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of the Clean Water Act if it were directly discharging those pollutants and;
- b. Any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
- c. For the purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

11. Changes to Discharges of Toxic Pollutant - [Applicable to existing manufacturing, commercial, mining, and silvicultural dischargers only]

The permittee must notify the Department as soon as they know or have reason to believe of the following:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) One hundred micrograms per liter (100 µg/l);
 - (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g)(7); or
 - (4) The level established by the Department in accordance with 40 CFR §122.44(f).

- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) Five hundred micrograms per liter (500 µg/l);
 - (2) One milligram per liter (1 mg/l) for antimony;
 - (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g)(7); or
 - (4) The level established by the Department in accordance with 40 CFR §122.44(f).

SECTION E. DEFINITIONS

1. BOD means five-day biochemical oxygen demand.
2. TSS means total suspended solids.
3. mg/l means milligrams per liter.
4. kg means kilograms.
5. m³/d means cubic meters per day.
6. MGD means million gallons per day.
7. Composite sample means a sample formed by collecting and mixing discrete samples taken periodically and based on time or flow.
8. FC means fecal coliform bacteria.
9. Technology based permit effluent limitations means technology-based treatment requirements as defined in 40 CFR §125.3, and concentration and mass load effluent limitations that are based on minimum design criteria specified in OAR 340-041.
10. CBOD means five day carbonaceous biochemical oxygen demand.
11. Grab sample means an individual discrete sample collected over a period of time not to exceed 15 minutes.
12. Quarter means January through March, April through June, July through September, or October through December.
13. Month means calendar month.
14. Week means a calendar week of Sunday through Saturday.
15. Total residual chlorine means combined chlorine forms plus free residual chlorine.
16. The term "bacteria" includes but is not limited to fecal coliform bacteria, total coliform bacteria, and E. coli bacteria.
17. POTW means a publicly owned treatment works.

Attachment B
Public Input and Department's Response

State of Oregon
Department of Environmental Quality

Memorandum

To: Mike Llewelyn
Water Quality Division Administrator

Date: June 11, 2002

From: Kevin Masterson through Mike Kortenhof
Surface Water Management

Subject: Summary of comments and response to comments received for the proposed renewal of the NPDES 1200-A, NPDES 1200-Z, and WPCF 1000 general permits.

OVERVIEW

Comment period and public hearings

Five public hearings for the proposed NPDES 1200-A, NPDES 1200-Z, and WPCF 100 were held on May 17 (Portland), May 20 (Bend and Eugene), and May 22, 2002 (Medford and Pendleton). A total of nine people attended the hearings; while two people provided oral comment. The public comment period closed on May 24, 2002, at 5 p.m. Fifteen written comments were received over this period.

Process of summarizing comments and providing responses

Due to the similar nature of the comments, 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.



Organization of comments and responses The comments and response to comments are organized in the same format as the general permits, with comments relating to each major permit section grouped together. Only one comment concerned the WPCF 1000 general permit. Most of the remaining comments were focused on provisions found in both the NPDES 1200-A and 1200-Z permits, while a smaller number of comments related only to the 1200-Z or 1200-A.

SOURCES COVERED (1200-Z)

Comment #1 One commenter (10) noted that SIC Code 20 (Food and Kindred Products) was not listed as one of the sources covered in the draft 1200-Z permit, as it was during the previous permit. The commenter wasn't certain if this SIC code was intentionally excluded from the permit or inadvertently left out of the draft permit.

Response SIC code 20 was inadvertently left out of the draft 1200-Z permit. DEQ has revised the permit to include this SIC codes as one of the sources covered.

Comment #2 During the public comment period, DEQ staff noted that a clarification of the landfills and hazardous waste disposal facilities categories was necessary to reflect new federal effluent limitation guidelines for these industries.

Response DEQ has revised the permit to clarify that landfills and hazardous waste disposal facilities subject to these effluent limitation guidelines are excluded from coverage under the 1200-Z permit. Such facilities discharge "contaminated storm water", as defined in 40 CFR § 455, which must be regulated through an individual NPDES permit or a solid waste or hazardous waste permit (as per leachate management requirements).

PERMIT COVERAGE AND EXCLUSION FROM COVERAGE (1200-A AND 1200-Z)

Comment #3 One commenter (3) questioned the statutory and regulatory basis for DEQ providing a "no exposure" conditional exclusion from permit coverage.

Response The "no exposure" exclusion was explicitly included in EPA's Phase II Storm Water Rules adopted in 1999 (Chapter 40 Code of Federal Regulations § 122.26[g]). DEQ believes the statutory basis for offering the "no exposure" exclusion also exists. EPA's Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on "No Exposure" of Industrial Activities to Storm Water states the following: *"The intent of the no exposure exclusion is to provide all industrial facilities regulated under Phase I of the NPDES Program (with the exception of construction activities; Category (x)), whose industrial activities and materials are completely sheltered, with a simplified method for complying with the Clean Water Act."* (p. 2). No modifications were made to the permits.

Comment #4 One commenter (3) raised concerns about the adequacy of the "storm resistant shelter" required to qualify for the no exposure exclusion, as well as DEQ's ability to verify that all of the no exposure certifications are warranted.

Response The no exposure conditional exclusion is intended only for those facilities that can ensure that storm water run-off is not contaminated by industrial activities or materials. Therefore, if a protective cover does not completely prevent the contact of storm water on these activities and materials, DEQ would not consider this cover a "storm resistant" shelter for the purposes of evaluating a site for no exposure. EPA's Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on "No Exposure" of Industrial Activities to Storm Water provides detailed information on the expectations for facilities qualifying for the no exposure exclusion. DEQ anticipates that relatively few facilities will qualify for this conditional exclusion, given the large capital expense required for most industrial facilities to cover their materials and activities. Therefore, the staff resources required to conduct selected site visits to verify no exposure should be limited. No modifications were made to the permits.

Comment #5 Two commenters (4 and 12) stated that municipal storm sewer authorities (i.e., DEQ Agents) should also receive a copy of the no exposure certification forms and the DEQ responses, while one (7) requested that DEQ or a designated municipality should conduct an on-site verification of each facility submitting a certification and then send a confirmation letter.

Response DEQ has revised Schedule D (Special Conditions) of the permits to include a description of the involvement of DEQ Agents in the implementation of these permits. DEQ may not be able to verify each no exposure certification submitted. Where appropriate, DEQ will work closely with its Agent and the municipal separate storm sewer system (if different from its Agent) to verify no exposure has been achieved. DEQ has also revised the permits to state that permittees will be notified regarding agency approval of the no exposure conditional exclusion and the concurrent termination of permit coverage.

Comment #6 One commenter (4) recommended another criterion for limiting the applicability of the no exposure exclusion should be a poor compliance and environmental performance history at a facility.

Response EPA's criteria will be used to determine no exposure qualification and certification. However, DEQ will consider compliance history, the sensitivity of the receiving stream, and other criteria in selecting facilities to inspect for no exposure verification. No modifications were made to the permits.

Comment #7 One commenter (12) recommended the deletion of Provision 2(a)(i) of this section of the permits (specifying the provision of a storm resistant shelter as the first step in the process of qualifying for the no exposure exclusion) because it's included in the EPA guidance manual referenced in Provision 2(a)(vi).

Response The provisions in 2(a) are outlining the requirements and actions necessary for obtaining the no exposure exclusion certification. The EPA guidance manual is a tool that can be used to accurately determine how to achieve no exposure. Thus, DEQ believes that both elements are necessary. No modifications were made to the permits.

SCHEDULE A

Signatory Requirements (1200-A and 1200-Z)

Comment #8 Two commenters (9 and 12) asked that the signatory requirements for the 1200-A and 1200-Z Storm Water Pollution Control Plan (SWPCP) be updated and further clarified.

Response The federal requirements related to the individual signing the SWPCP changed since the issuance of the previous 1200-A and 1200-Z general permits, however, this change was not reflected in the draft permits. Rather than revising the permits to incorporate these new signatory requirements, DEQ referenced the federal rule citation that specifies these requirements in the permits. The reason for making such a citation is that if the rules change again within the five-year time frame for the permits, then the permit language will not be consistent with federal rules.

SWPCP Requirements: Site Description (1200-A and 1200-Z)

Comment #9 One commenter (12) suggested the inclusion of additional elements within the SWPCP, such as a title page, location of spill kits, drainage structures, and outfall descriptions.

Response These are all good suggestions, and the Department will consider incorporating them into its Guidance Document for Preparation of the NPDES Storm Water Pollution Control Plan. As SWPCPs are updated and revised, these elements can be incorporated. No modifications were made to the permits.

SWPCP Requirements: Site Controls (1200-A and 1200-Z)

Comment #10 One commenter (11) recommended removing the phrase “technically and economically feasible” from the management practices specified in the site controls section of Schedule A. The concern was that such an assessment was too subjective and allows facilities to easily opt out of certain measures.

Response DEQ continues to believe that technical and economic feasibility should be considered in determining site controls. DEQ will consider developing specific guidance for conducting such feasibility assessments for inclusion in the Guidance Document for Preparation of the NPDES Storm water Pollution Control Plan. No modifications were made to the permits.

Comment #11 One commenter (12) stated that containment should not just be for hazardous materials, but also for other materials that can result in pollution of surface waters.

Response The containment requirement is for all hazardous substances listed Chapter 40 Code of Federal Regulations, Part 302. This is a comprehensive list of substances and wastes that includes, but is not limited to, oils, fuels, solvents, corrosives, and toxic materials. DEQ has replaced the term “hazardous materials” with “hazardous substances” in Schedule A(2)(b)(i)(1) to more accurately represent the term used for the 40 CFR § 302 list.

Given the breadth of the materials covered in this definition, DEQ believes it's not necessary to expand the list to a range of non-hazardous materials. However, there may be some materials not on the 40 CFR § 302.4 list that pose a risk to surface waters if spilled. DEQ will consider outlining examples of such materials and risk conditions that warrant containment in its Guidance Document for Preparation of the NPDES Storm Water Pollution Control Plan.

Comment #12 One commenter (11) stated that media filtration be specified within the permits as an acceptable method for oil and grease removal.

Response The current permit language is broad enough to allow the use of media filtration in situations where it would be effective in controlling oil and grease. DEQ does not believe it is necessary to specifically reference media

filtration as a control mechanism in the permit. No modifications were made to the permits.

Comment #13 One commenter (11) stated that preventative maintenance programs for pollution control devices entail cleaning, maintenance, and inspection in accordance with manufacturer specifications.

Response DEQ does not necessarily believe that manufacturer specifications should be the sole driver in developing a preventative maintenance program. However, DEQ does believe that manufacturer specifications should be considered in developing such a program. Accordingly, DEQ will consider including a statement within the Guidance Document for Preparation of an NPDES Storm Water Pollution Control Plan that recommends considering manufacturer specifications in conducting cleaning, maintenance, and inspection activities. No modifications were made to the permits.

Comment #14 In response to new language in the draft permit that recommends an employee education and training frequency, one commenter (12) responded by advocating that DEQ should require a minimum training frequency (i.e., at the time of hire and annually thereafter, as recommended in the draft permit)

Response The permit requires an employee orientation and education program to inform employees about the goals and components of the SWPCP. While we believe that such a program is essential and provide guidance on training frequency, the specific details regarding when, how often, and to whom the training should be offered are more appropriately determined by the permittee. No modifications was made to the permits.

SWPCP Requirements: Record Keeping and Internal Reporting

Comment #15 One commenter (12) stated that visual observations should be a required element of record-keeping by the permittee.

Response DEQ agrees and has revised the draft 1200-A and 1200-Z permits to include visual observations as a record-keeping requirement.

Additional Requirements (1200-A and 1200-Z)

Comment #16 Two commenters (3 and 5) objected to the assertion in the 1200-A and 1200-Z permits that "*individual storm water discharges are not expected to cause a measurable increase in stream temperature...*" These commenters stated that industrial storm water discharges could have significant temperature impacts during summer storms, and therefore, industrial permittees should be responsible for addressing temperature concerns. They further assert that the general permits cannot substitute for a temperature management plan required by Oregon law because the permits do not contain any temperature-related requirements.

Response Based on the information generated as part of the TMDL process to date, DEQ has not determined that urban storm water run-off is a contributor to elevated temperatures in streams that are water quality limited for temperature. For instance, the completed TMDL for the Tualatin Basin – a highly urbanized basin – did not assign a temperature waste load allocation to urban storm water run-off. These TMDL experiences indicate that industrial storm water run-off is not a widespread problem that would lead DEQ to include additional requirements in the 1200-A and 1200-Z permits. However, if and when such storm water discharges are identified as sources of concern in a particular basin, and where waste load allocations are assigned, additional management practices will be specified. Such requirements may be included in an individual permit, a separate general permit for industries within a particular basin, or another appropriate regulatory tool.

No modifications were made to the permits.

Comment #17 One commenter (3) stated that Willamette River Keeper will research temperature issues associated with storm water discharges and submit their findings to DEQ.

Response DEQ looks forward to receiving and evaluating this information.

**Comment #18
(1200-Z only)** Multiple commenters (2, 4, and 12) requested that the 1200-Z permit require, rather than simply recommend, that permittees separate piping and drainage systems for floor drains and other process discharge points from their storm drainage system(s).

Response DEQ has retained the proposed language as permittees may have alternatives to separating piping and drainage systems such as plugging or sealing floor drains. The permit continues to prohibit non-storm water discharges, unless they are otherwise authorized by DEQ.

Comment #19 One commenter (4) noted that DEQ is currently coordinating the efforts of a work group focused on how to incorporate TMDLs into municipal storm sewer permits. Since the guidance provided by this work group may have implications for other storm water permits, the commenter suggested the language in the 1200-A and 1200-Z regarding TMDLs be changed to reflect the range of outcomes that could result from this process. The draft permit language indicates that a different permit will be issued that includes waste allocations, which is only one of the possible outcomes.

In addition, another commenter (6) recommended that DEQ ensure the permit language related to the criteria for determining actions in response to the TMDL (i.e., "assigned waste load allocations" vs. "contributor") is consistent.

Response DEQ agrees that the commenter's recommendation better represents the range of actions that DEQ may take in response to a completed TMDL. Accordingly, DEQ has revised the draft Schedule A(6) of the permits to state: *"If TMDLs are established and the discharge from a permitted source is assigned a waste load allocation, other appropriate tools or application for an individual or different general permit may be required to address that allocation."*

Also, DEQ addressed the language consistency issue by using the phrase "..... assigned a waste load allocation" in both Schedule A(3) and Schedule A(5) of the 1200-Z permit.

Comment #20 One commenter (8) objected to issuing general storm water permits to any source discharging to a water body with established TMDLs. Individual permits should be issued to these sources that contain quantifiable and enforceable limits. In addition, another commenter (3) stated that additional permit requirements should exist for permittees discharging to water bodies that are water quality limited, even if TMDLs have not been established. The requirements should focus on steps to reduce the pollutants for which the water body is water quality limited.

Response DEQ does not believe that individual permits are necessary for storm water discharges to TMDL streams. If, during the development of a TMDL, storm water discharges are determined to be a specific source of concern and assigned waste load allocations, DEQ will (as noted in the response to Comment #18) use an alternative regulatory tool or permit (an individual permit would be one option) to address the waste load allocation.

The storm water general permits are designed to facilitate the implementation of best management practices that will reduce the loading of typical pollutants in storm water, largely by emphasizing pollution prevention. DEQ believes limitations and strategies designed to reduce the discharge of specific pollutants should be driven by the TMDL process, and would be accomplished through the development of other tools than the broad 1200-A and 1200-Z permits.

No modifications were made to the permits.

Comment #21 (1200-Z only) One commenter (14) stated that DEQ should modify the 1200-Z permit to require selected industries to monitor for mercury in storm water discharges. As DEQ develops the mercury TMDL for the Willamette, the agency will need to identify and control the sources of mercury, as well as establish baseline data on mercury discharges. The commenter asserted that requiring such monitoring in the 1200-Z permit will assist in achieving these objectives.

Response DEQ believes it would be more appropriate to wait for the Willamette River mercury TMDL before requiring mercury monitoring by selected 1200-Z permittees, since the Willamette TMDL process has not yet identified mercury discharges in industrial storm water to be a specific source of concern. If

industrial storm water discharges are identified as a source of concern and assigned waste load allocations, DEQ may then require certain permittees to monitor for mercury and implement appropriate best management practices. In addition, a benchmark for mercury may also be established through this process. Further, if a specific facility(s) is identified as major problem source of mercury storm water discharges through inspections and associated monitoring by DEQ or other agencies, DEQ can terminate the facility's general permit coverage and require they apply for an individual NPDES permit. The individual permit would require monitoring and many other requirements related to the specific facility. No modifications were made to the permit.

Comment #22
(1200-Z only)

One commenter (14) requested that DEQ add language to the 1200-Z permit requiring automotive wrecking yards to remove mercury switches from automobiles prior to crushing of the cars, as authorized by HB 3007 (The Mercury Reduction Act) that was passed by the 2001 Legislature. The industrial storm water permit can be utilized as an implementation mechanism for this HB 3007 provision.

Response

DEQ's Hazardous Waste Program has been assigned responsibility for implementing HB 3007 for the agency. Specifically, the Hazardous Waste Program is tasked with providing technical assistance and guidance to wrecking yards and local governments regarding the proper removal and management of mercury switches from automobiles. DEQ believes that the 1200-Z general permit is not the appropriate mechanism for ensuring the removal of mercury switches at wrecking yards. Although the proper removal of these switches could potentially impact storm water quality at wrecking yards, this type of best management practice is much more directly related to the functions of the agency's Solid and Hazardous Waste Programs. Furthermore, it is likely that many auto wrecking yards do not have point source discharges of storm water, and thus, would not be required to obtain a 1200-Z permit. Thus, if management practices were included in the 1200-Z permit, they would apply to a very small number of facilities. Therefore, we believe it is more appropriate to implement management practices through the Solid and Hazardous Waste Program, which will reach a broader audience. No modifications were made to the permit. No modifications were made to the permit.

Comment #23

One commenter (3) questioned why the draft 1200-A and 1200-Z permits do

not reference the Oregon Salmon Plan's goals and requirements. The commenter advocated for more monitoring and reporting of discharges to streams where salmonids are present.

Response In an effort to address the Oregon Plan goals, DEQ is continuing its work to review, develop, and improve water quality standards designed to protect salmonids, as well as other beneficial uses. In water bodies and sub-basins that do not meet water quality standards, DEQ is developing TMDLs. Included in those TMDLs, are waste load allocation for point sources. The NPDES permits that DEQ issues are the mechanisms for implementing water quality standards and TMDL waste load allocations. As water quality standards expand and/or change or TMDLs are modified, DEQ's NPDES permit requirements (e.g., storm water benchmarks) will be revised to reflect these changes. No modifications were made to the permits.

Code of Federal Regulations Storm Water Discharge Limitations (1200-Z only)

Comment #24 One commenter (2) asked for clarification on where the discharge limitations are applied (i.e., sampling locations).

Response DEQ has revised the table to better clarify the source of the run-off for the applicable limitation. For sampling procedures or a description of sampling points, see Schedule B.

Storm Water Benchmarks (1200-A and 1200-Z)

Comment #25 One commenter (3) advocated for the establishment of benchmarks for two new parameters: temperature and turbidity.

Response As explained in the response to Comment #15, DEQ has yet to identify urban storm water run-off as a contributor to elevated temperatures in water quality limited streams. Waste load allocations for temperature have not been assigned to urban storm water during any completed TMDL process. Thus,

DEQ believes that requiring monitoring and benchmarks for temperature at all industrial storm water permittees is not warranted at this time.

Turbidity is an instream water quality standard. To determine compliance with the turbidity standard, a permittee would need to monitor the stream or river both upstream and downstream of their facility and conduct a comparative analysis. Furthermore, many facilities discharge to a storm sewer system, and it would not be possible for those facilities to determine compliance with an instream standard. DEQ has committed to revising its turbidity standard. The feasibility of establishing turbidity benchmarks in future permits will be assessed once the turbidity standard is revised. Currently, DEQ believes that the total suspended solids (TSS) benchmark provides an adequate indicator of turbidity problems.

No modifications were made to the permits.

Comment #26 One commenter (3) questioned DEQ's methodology and reasoning in using acute water quality standards and a 5:1 dilution factor in establishing the benchmarks for metals. Chronic water quality standards would be more appropriate given that rainfall is more of a consistent, rather than episodic, phenomenon western Oregon, according to the commenter.

Response Although storm events occur frequently in western Oregon during winter months, DEQ believes that when viewed over the course of an entire year, such storm events are much more episodic in nature than continuous. Hence, using an acute water quality standard for setting benchmarks is deemed more reflective of the impacts of storm water on surface water bodies. DEQ also believes that using a dilution factor in determining these benchmarks is consistent with the assumptions and principles employed by DEQ when setting effluent limits for other NPDES wastewater discharge permits. It is reasonable to assume some level of dilution, but given the variability of storm water discharges, establishing a scientifically precise dilution rate is not feasible. As a result, DEQ developed the 5:1 dilution factor using best professional judgment. No modifications were made to the permits.

Comment #27 One commenter (3) objected to the establishment of pH benchmark range of 5.5 to 9.0 S.U. in the 1200-A and 1200-Z permits, since the water quality standard is 6.0 to 9.0 S.U. The commenter views such a discrepancy as inconsistent with state and federal anti-backsliding policies and conflicts with the anti-degradation requirements of state and federal law.

Response The pH benchmark was lowered from 6.0 S.U. to 5.5 S.U. during the previous permit renewed in 1997 to account for lower pH levels in rainfall experienced by some permittees. Low rainfall pH levels were detected at various locations in the state and at various times of the year. Since the lowered pH range is based on natural conditions, DEQ believes such a benchmark is not inconsistent with anti-backsliding and/or anti-degradation laws and policies. In addition, since the same pH range was included the previous 1200-A and 1200-Z permits, no backsliding or anti-degradation issues exist. No modifications were made to the permits.

Comment #28 Two commenters (2 and 4) noted that the pH benchmark should be stated as 5.5 to 9.0 S.U., rather than 5.5. to 9 S.U.

Response DEQ has revised the 1200-A and 1200-Z permit to reflect this correction.

Comment #29
1200-Z only Two commenters (2 and 4) inquired whether the E. Coli benchmark (and associated monitoring) in the draft 1200-Z permit that applies only to landfills (disposing septage and biosolids on-site) and wastewater treatment plants would also apply to any storm water discharges released to a stream or municipal storm sewer system subject to a TMDL for bacteria.

Response If storm water discharges from industrial sources are specifically identified as a source of bacteria and assigned a waste load allocation through the TMDL process, it would be appropriate to not only require monitoring and analysis, but also to establish required best management practices for the dischargers. However, such requirements may be included in a separate basin-specific general permit, an individual permit, or another regulatory tool, rather than in the 1200-Z permit. No modifications were made to the permits.

Review of SWPCP

Comment #30 One commenter (12) stated that Schedule A(9) of the 1200-A and 1200-Z, outlining requirements for reviewing the SWPCP in response to not meeting benchmarks, is confusing and unclear. The commenter suggested that this section be revised to be more explicit in explaining when SWPCP review and revisions need to occur.

Response DEQ has revised the 1200-A and 1200-Z permits to state the following: “... *the permittee must investigate the source of elevated pollutant levels and review, and if necessary, revise their SWPCP within 60 day of receiving sampling results.*”

Comment #31 One commenter (4) stated that this section of the 1200-A and 1200-Z permit should explicitly require the permittee to both investigate the source of elevated pollutant levels and take action to resolve it.

Response The permits do require the permittee to investigate sources, review, and (as added in response to Comment #30) if necessary, revise the SWPCP within 60 days. SWPCP revisions would outline new actions the permittee is committing to undertake. Further, the permittee is required to continue sampling until the storm water discharge consistently meets benchmarks. No modifications were made to the permits.

Comment #32 One commenter (12) requested DEQ to define “background or natural conditions”, as referenced in Schedule A(9)(c) of the 1200-Z permit and Schedule A(8)(c) in the 1200-A permit. It's unclear whether background would be considered groundwater infiltration, run-on from adjacent property, or some other definition.

Response These terms are not defined more specifically to allow a case-by-case determination. Groundwater infiltration and run-on from adjacent property would both likely be considered background/natural conditions. No modifications to the permits.

SCHEDULE B

Monitoring and Reporting Requirements (1200-A and 1200-Z)

Comment #33 Several commenters (2, 3, 4, and 5) advocated for monitoring of additional parameters by 1200-Z permittees. These parameters include temperature (3 and 5), turbidity (3), and bacteria (2 and 4).

Response As explained in the responses to comments on the temperature management plan (Schedule A(3)) and benchmarks (Schedule A(8)), DEQ believes that monitoring of additional parameters should be based on the results of the TMDL process for various basins. If waste load allocations are assigned to storm water run-off for parameters not currently addressed by the 1200-Z permit, permittees may be required to monitor for such parameters, and implement specific measures to limit the discharge of the pollutants of concern. These additional requirements may be incorporated into a separate basin-specific general permit or an individual permit.

No changes were made to the permits.

Comment #34 One commenter (3) stated that the monitoring frequency required for 1200-A and 1200-Z permittees should be increased from twice per year to at least four times per year to provide more reasonable assurance of the types and concentrations of pollutants being discharged in storm water.

Response The monitoring required under the 1200-A and 1200-Z permits entails capturing "grab" samples of storm water for the purpose of conducting a general assessment of the relative effectiveness of a permittee's best management practices. DEQ believes that two sets of samples per year is sufficient to allow the permittee to conduct this general assessment. This monitoring is not designed to fully characterize storm water discharges. Because of the significant variability of such discharges, grab samples – regardless of the number taken – will not be sufficient to accurately characterize storm water quality. To ensure an accurate characterization, flow-weighted composite samples would need to be captured and analyzed. This type of monitoring is not technically or economically feasible for many 1200-A and 1200-Z permittees. No modifications were made to this section of the permits.

Comment #35 One commenter (3) objected to the allowance in the 1200-A and 1200-Z permits for eliminating monitoring when benchmarks have been met over the course of four consecutive monitoring cycles. The commenter agreed that reduced monitoring is appropriate, but a complete cessation of any monitoring requirements would remove any incentive for permittees to continue the implementation of best management practices.

Response DEQ believes that because most storm water best management practices (BMPs) involve operational changes and, when they are implemented for two or more years at a facility, the BMPs become institutionalized elements of facility operations for most permittees. As a result, BMPs will likely continue at most permitted facilities, regardless of the presence of on-going monitoring requirements. However, DEQ did not intend to allow a complete cessation of monitoring over the life of a facility's operation. Schedule A(2)(c)(iv) states that monitoring data from the previous permit period can be used to meet the waiver requirement. Although the provision does allow the monitoring waiver to extend from one permit period to another, if no monitoring data is available from the previous permit, the waiver cannot continue. Thus, in such situations, monitoring would be reinstated at the outset of the new permit period. If there is a time lag between the expiration date of an existing permit and the issuance of a renewed permit, the terms and conditions of the existing permit (e.g., the monitoring waiver) would continue to be in effect for permittees submitting permit renewal applications.

DEQ has clarified Schedule A(2)(c) of the 1200-A and 1200-Z permits to more explicitly state that if no monitoring occurred during the previous permit period, monitoring requirements are reinstated at the outset of the renewed permit period. Monitoring could then be discontinued again if benchmarks are met for four consecutive monitoring events.

Comment #36 One commenter (7) noted that the requirement in Schedule B(1)(d) of the 1200-A and 1200-Z permits regarding monitoring locations may be impossible to comply with for a permittee sharing the same storm water conveyance system with another permittee located immediately upstream from it. The commenter recommended adding the following phrase to this section of the permits: "*...or other sampling locations as detailed in the storm water pollution control plan.*"

Response DEQ has revised Schedule B(1)(d) to allow for other sampling points if approved in writing by the Department or its Agent.

Comment #37 One commenter (12) advocated for the removal of the proposed language in the draft 1200-A and 1200-Z permits stating that parameters be analyzed on samples from the same storm event. According to the commenter, this provision places an unnecessary economic burden on permittees with numerous monitoring locations, some of which may be difficult to sample.

Response DEQ has revised the footnote at the bottom of the table in Schedule B(1)(a) of the 1200-A and 1200-Z permits to state: "*Parameters should be analyzed on samples collected from the same storm event.*" This wording reflects DEQ's preference for the type of sampling protocol to be followed, while providing flexibility in situations where such a sampling approach is not reasonable or practical.

Comment #38 One commenter (12) noted that the monitoring waiver in Schedule B(2)(b) of 1200-A and 1200-Z permits doesn't specify whether only self-monitoring results can be used to receive the sampling, or if monitoring results obtained by regulatory agencies during inspections can also be used to obtain the waiver.

Response DEQ has clarified the language in Schedule B(2)(b) to explicitly state that only self-monitoring results can be used to obtain the monitoring waiver. The compliance monitoring conducted by DEQ or its local government agents may not be focused on the full suite of parameters specified in the permit (e.g., a complaint response that is related to a particular pollutant of concern). Therefore, this agency data will often not be as comprehensive as self-monitoring data. In addition, DEQ believes the permittees benefit from regular self-monitoring by using the data they collect to evaluate the effectiveness of their best management practices.

Comment #39 One commenter (12) stated that the 1200-A and 1200-Z permits be clarified to indicate that the monitoring waiver will not be granted if results from samples collected by DEQ or its agents during the same sampling period demonstrate that benchmarks have been exceeded. Further, the commenter recommended that the permits clarify that the re-instatement of monitoring requirements can occur if samples collected by DEQ or its agents reveal benchmarks have been exceeded.

Response DEQ has added language to Schedule B(2)(b) of the 1200-A and 1200-Z permits stating that the monitoring waiver cannot be exercised if results from samples collected by DEQ or its agents during the same sampling period demonstrate that benchmarks have been exceeded. In addition, Schedule B(2)(b)(iii) has been clarified to indicate that monitoring may be re-instated if future sampling efforts by the permittee or by DEQ or its agent demonstrate benchmarks were exceeded.

Comment #40 One commenter (12) recommended that permittees report not only the minimum detection limits for analyzed samples, but also report the analytical methods used.

Response DEQ has added wording to Schedule B(3)(a) of the 1200-A and 1200-Z permits to require permittees to include the analytical methods used, as well as minimum detection limits, in the annual reports submitted to DEQ.

Comment #41 One commenter (12) stated that Schedule B(3)(b) requiring written notification when the monitoring reduction waiver is exercised is redundant because the same provision is found in Schedule B(2)(b)(vi). Also, the commenter stated that linking this notification to the SWPCP Update/Completion, as is done within B(2)(b)(vi) is confusing and inappropriate.

Response DEQ is retaining the monitoring reduction notification provision in B(3)(b) because it is both a permit reporting requirement and a condition of the monitoring reduction waiver. However, DEQ has corrected the parenthetical reference in Schedule B(2)(b)(vi) from Schedule B(3)(c) to Schedule B(3)(b). In addition, DEQ has clarified in Schedule B(3)(b) that notification must be made prior to exercising the waiver.

Comment #42 One commenter (12) stated that Schedule B(3)(c) and B(3) needs to be clarified and simplified, and to explain the difference between SWPCP Update/Completion and SWPCP Revision.

Response To clarify the differences between SWPCP Updates/Completions and SWPCP Revisions, DEQ has revised the headings that include these terms. SWPCP Update/Completion refers to initial plan development or updates designed to incorporate changes in facility operations, whereas SWPCP Revision refers to

changes made to the plan by the permittee to address benchmark exceedances.

pH Monitoring for Sand and Gravel Mining Operations (WPCF 1000 and NPDES 1200-A)

Comment #43 One commenter (13) stated that weekly pH sampling for rock crushing operations (in addition to monthly storm water monitoring) is unnecessary, as pH is not influenced by rock crushing activities. Any fluctuations in pH are attributable to changes in natural conditions.

Response DEQ has revised Schedule B(1) of the WPCF 1000 permit and Schedule B(1)(b) of the NPDES 1200-A permit to state that weekly pH monitoring is only required for facilities engaged in concrete truck washing activities.

Reporting Requirements: (NPDES 1200-A)

Comment #44 One commenter (1) requested that the 1200-A permit require that monitoring reports for those permitted sites under the jurisdiction of DOGAMI be submitted only to DOGAMI, rather than both DEQ and DOGAMI. This will minimize the administrative burden on the permittees.

Response DEQ has revised Schedule B(3)(a) of the 1200-A permit to state that monitoring data be submitted to DEQ or DOGAMI for those permitted sites under DOGAMI's jurisdiction. A memorandum of agreement (MOA) was developed between DEQ and DOGAMI that specifies the types of documents and information (e.g., monitoring reports) that is to be shared between the two agencies. This MOA ensures that DEQ, upon request, will receive all of the monitoring data permittees submit to DOGAMI.

SCHEDULE C

Compliance Conditions (NPDES 1200-A and 1200-Z)

Comment #45 One commenter (11) recommended that DEQ include a maximum acceptable time frame for implementation of storm water best management practices or site controls that require capital improvements in Schedule C(1), (2), and (3).

Response Since the permits cover a wide array of industries and activities, DEQ does not believe that a "one size fits all" time limitation is appropriate to include within the permits. No modifications were made to the permits.

SCHEDULE D

Special Conditions (NPDES 1200-A and 1200-Z)

Comment #46 One commenter (11) stated that Schedule D(3)(a)(i), defining the definition of capital improvements related to treatment, be modified to include media filtration.

Response DEQ has modified Schedule D(3)(a)(i) to include media filtration in the list of treatment best management practices included in the definition of "capital improvements."

SCHEDULE F

NPDES General Conditions (NPDES 1200-A and 1200-Z, and WPCF 1000)

Comment #47 One commenter (10) recommended changing the wording in Schedule F(A)(5)(d) related to fee payments to be more consistent with the other conditions in Schedule F(A)(5).

Response

While DEQ appreciates the suggestion to revise this provision of the 1200-A and 1200-Z permits to improve consistency, these provisions are directly from federal or state regulations, and DEQ includes them in all permits. Thus, no change is made to this Schedule of the permits.

Attachment C
Presiding Officers' Report on Public Hearings

State of Oregon

Department of Environmental Quality

Memorandum

To: Environmental Quality Commission Date: June 11, 2002

From: Kevin Masterson, Water Quality Division

Subject: Presiding Officers' Report for Rulemaking Hearings in May 2002
Title of Proposal: Amendment of Rules to Renew NPDES 1200-A and 1200-Z and WPCF 1000 General Permits

Overview of Public Hearing Dates, Times and Locations

Date and Time	May 17, 2002 at 10am	May 20, 2002 at 10am	May 20, 2002 at 7pm
Location	DEQ Headquarters Room 3A 811 SW 6 th Ave. Portland, OR 97204	City of Bend City Council Chambers 710 NW Wall Bend, OR 97701	Lane County Harris Hall 125 E. 8 th Ave. Eugene, OR 97401

Date and Time	May 22, 2002 at 2pm	May 22, 2002 at 7pm
Location	Smullin Education Ctr Lecture Hall #1 Rogue Valley Medical Center 2825 E. Barnett Rd. Medford, OR 97501	Pendleton Convention Center Room 1 1601 Westgate Pendleton, OR 97801

Summary of Public Hearings

PORTLAND HEARING: Ranei Nomura, DEQ Water Quality Division, was the presiding officer. The rulemaking hearing was convened at 10:30 a.m. and closed at 10:55 a.m. Five people were in attendance: Brent Foster, Willamette River Keeper, Wayne Wooster, Goldendale Aluminum Company, Rick Fischl, Clean Water Services, John Wohler, Rod McLellan Company, and Sebrina Alberg, City of Portland Bureau of Environmental Services. Mr. Foster and Mr. Wooster provided oral comments at the hearing.

Brent Foster, Willamette Riverkeeper, 2021 SE 44th Ave, Portland, OR 97215

Mr. Foster indicated that he would also be submitting written comments. He focused his comments on the NPDES 1200-A and 1200-Z permits. He said that there were significant problems with the existing permit. He also commented on the lack of resources to implement the storm water program and suggested that the changes be made to the current permits to take this into consideration. Generally, he said the monitoring needs to be strengthened and encouragements for compliance should be added. Mr. Foster also expressed concern about the

lack of a temperature benchmark and suggested that monitoring for temperature should be required to demonstrate that there is no temperature problem. He stated that one big parking lot could cause a problem and that there is a lack of data. He questioned the lack of a discussion on turbidity, which could have a significant adverse effect and since it is not a toxic it would be cheap to monitor. He also expressed concern about the use of the acute standard for the benchmarks and the 5:1 dilution factor. He commented that the pH benchmark went down to 5.5 but is not conditioned in the permit in such a way that the permittee has to demonstrate that it is a background condition as other parameters. He also questioned whether or not this was backsliding or if there were antidegradation issues with this lower level of pH. Mr. Foster suggested that the frequency of reporting be quarterly and focus on fall monitoring, and he had problems with no monitoring towards the end of the permit period, suggesting that permittees would not continue with their management practices if they do not have to monitor because they are forgetful. He suggested a tiered compliance scenario with increased monitoring for noncompliance with the permit and for violating benchmarks. Mr. Foster also questioned the language change at the bottom of the face page of the permit. He said that the language seems to allow discharge where the previous language did not. He also stated that a general permit is not appropriate for a waterbody with a TMDL and would only work if the general permit is developed for the most sensitive situation. For water quality limited streams, he stated that increased monitoring was important. Mr. Foster commented that the permit should require, not just recommend, that wastewater piping be segregated from storm water piping. Finally, he questioned EPA's regulations for no exposure, asking if they are consistent with the Clean Water Act and reminded DEQ that it is required to implement the Clean Water Act. He also asked what is meant by storm resistant shelter and that the wording should be changed from protecting industrial materials form storm water to protecting storm water from industrial materials.

Wayne Wooster, Goldendale Aluminum Company, 85 John Day Dam Rd., Goldendale, WA 98620
Mr. Wooster expressed support for the NPDES 1200-Z permit and indicated that he would be submitting written comments.

EUGENE HEARING: Bill Perry, DEQ Western Region, was the presiding officer. The rulemaking hearing was convened at 7:00 p.m. and closed at 7:30 p.m. One person was in attendance: Mark McCormick, Willamette Industries. No one provided oral or written comment.

BEND HEARING: Walt West, DEQ Eastern Region, was the presiding officer. The rulemaking hearing was convened at 10:15 a.m. and closed shortly thereafter. There was no one in attendance.

PENDLETON HEARING: Dan Labato, DEQ Eastern Region, was the presiding officer. The rulemaking hearing was convened at 7:00 p.m. and closed at 7:45 p.m. One person was in attendance: Sean Moriarty, Fleetwood Travel Trailers of Oregon. No one provided oral or written comment

MEDFORD HEARING: Brad Prior, DEQ Western Region, was the presiding officer. The rulemaking hearing was convened at 2:30 p.m. and closed at 3:00 p.m. Two people were in

Agenda Item G, Rule Adoption: Renewal of NPDES 1200-A and 1200-Z and WPCF 1000 General Permits

July 26, 2002 EQC Meeting

Attachment C Presiding Officer's Report on Public Hearings

Page 3 of 3

attendance: Andy Cole, Gibson Steel Basins and Douglas Paul, Gibson Steel Basins. No one provided oral or written comment.

Attachment D
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
WPCF 1000, NPDES 1200-A and 1200-Z General Permit Renewals

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

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

The Department is proposing to renew National Pollutant Discharge Elimination System (NPDES) General Permits 1200-A for storm water runoff from non-metallic mineral mining and 1200-Z for storm water runoff from industrial activities and Water Pollution Control Facilities (WPCF) General Permit 1000 for non-metallic mineral mining activities that dispose of wash water and storm water through seepage or evaporation ponds. Of these three permits, only NPDES 1200-A and 1200-Z are issued pursuant to federal requirements. The following federal requirements apply to the NPDES 1200-A and 1200-Z:

- 40 Code of Federal Regulations (CFR) §122.26 *Storm water discharges*
- 40 CFR §122.28 *General Permits*
- 40 CFR §411 *Cement manufacturing facilities for runoff from material storage piles*
- 40 CFR §423 *Steam powered electric power generation facilities with coal handling and storage facilities*
- 40 CFR §443 *Manufacturing of asphalt paving and roofing emulsions*

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

Requirements pursuant to 40 CFR §411, 423 and 443 are both technology-based and performance-based, with limitations established for storm water runoff from specified industries. The other federal requirements pertain to program administration so the question is not applicable. 40 CFR §122.26 specifies the types of storm water discharges requiring NPDES permits and 40 CFR §122.28 *General Permits* outlines permitting procedures for general permit development.

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?**

The applicable federal requirements do address permit specific issues in Oregon. Data and information used to establish the federal requirements can be reasonably assumed to reflect Oregon's concerns.

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 general permits proposed for renewal do clarify several permit requirements. In addition, in December 1999, EPA adopted regulation to allow NPDES industrial storm water permittees to certify that storm water runoff from their site is not exposed to industrial activities. If "no exposure" is achieved, the facility can certify as such and be excluded from the permitting requirement. This conditional exclusion was previously only available to specific industrial categories. The expansion of the exclusion to other categories and the process to qualify for "no exposure" as adopted by EPA will be proposed for the renewal of NPDES General Permit 1200 A and Z for storm water discharges from industrial activities. This eliminates the discrepancy that currently exists between state and federal requirements, and will be more cost effective for the regulated community in the instances when a permit is no longer required because the "no exposure" qualification criteria have been met.

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

There is no timing issue. The applicable federal requirements are currently implemented in the existing permits and will continue to be effective in the proposed permits. These general permits expire on June 30, 2002, and their renewal does not conflict with any federal requirements.

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 proposed permit renewals maintain reasonable equity for sources that are required to be under permit. Renewal of the NPDES 1200-Z will further establish equity by extended the "no exposure" permit exclusion process to all industrial activities covered under this permit.

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?

The NPDES 1200-A and 1200-Z are generally similar to EPA's NPDES general permits for storm water runoff and contain similar procedural, reporting and monitoring requirements. However, the EPA general permit has been developed to address specific industrial categories, which is different than the approach taken by the Oregon permitting program. During the previous renewal process, the Department determined that it was not necessary to maintain permit requirements specific to industrial categories. Monitoring requirements were also reduced during the previous renewal process to reflect indicator parameters and benchmark levels for these parameters based on data collected from Oregon facilities during the first five years of the permit (1991 to 1996).

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, the NPDES 1200-A and 1200-Z focus on pollution prevention as a best management practice for controlling pollutants discharged in storm water. In addition, the “no exposure” exclusion proposed in the 1200-A and 1200-Z promotes pollution prevention by allowing facilities to be exempt from the permit requirement if storm water is not exposed to industrial activities and materials.

Attachment E
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
WPCF 1000, NPDES 1200-A and NPDES 1200-Z General Permit Renewals

Fiscal and Economic Impact Statement

Introduction

The Department is proposing to renew the following general permits through rulemaking:

- Water Pollution Control Facilities (WPCF) General Permit 1000 for non-metallic mineral mining activities that dispose of wash water and storm water through seepage or evaporation ponds,
- National Pollutant Discharge Elimination System (NPDES) General Permit 1200-A for storm water runoff from non-metallic mineral mining, and
- NPDES General Permit 1200-Z for storm water runoff from industrial activities.

The following table summarizes both existing permittees and estimated new permittees.

WPCF 1000, NPDES 1200-A and NPDES 1200-Z Permittees

Permit Type	Current Permittees (as of March 2002)	Estimated New Permittees (yearly, based on 2001 applications)
NPDES 1200-A	188	30
NPDES 1200-Z	805	80
WPCF 1000	98	14
Total	1,091	124

Overview of Fiscal Impact

Existing Permittees: *There are no major changes to permit requirements that would increase operating costs for the existing permit holder.* Therefore, the Department does not anticipate an increase in expenses for compliance with this renewed permit over and above the expenses incurred with the previous WPCF 1000 and NPDES 1200-A and 1200-Z permits. However, general permit application and annual fees were increased by 20% effective July 1, 2001.

New Permittees: New applicants would incur costs as discussed later in this statement. The cost of permit compliance will vary considerably for new facilities depending on the size and complexity of the operation. Other factors that will determine the cost for compliance include the type of facility, the level of employee expertise available to conduct monitoring and other compliance tasks, the costs for training employees, and the potential need to hire external contractors or consultants to perform some compliance tasks. Please see the following sections for more information on estimated costs. Also provided at the end of this section are summary tables further explaining how the Department arrived at these costs.

General Public

The general public may be indirectly affected 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. However, the potential price impact for consumers is expected to be minimal.

Small Business

In developing the NPDES storm water regulations, EPA focused on industrial activities with primary Standard Industrial Classification (SIC) codes in the manufacturing and transportation sectors. Business size, as measured by number of employees, is unrelated to SIC code. Costs to small businesses obtaining NPDES permit coverage for the first time will be significant; this was also the case during the previous permit period. The Department estimates that over the 5-year term of the permit total costs for the NPDES 1200-A or 1200-Z could be from \$3,840 to \$4,180. However, small business facilities are typically less complex, and thus, storm water management is generally easier. In most cases, the Department expects that small business will qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water. This conditional exclusion would require that businesses submit certification of no exposure to the Department every five years and is a proposed change in the NPDES 1200 A and 1200-Z. To keep permit application costs lower, the Department does allow multiple quarry sites to be covered under the NPDES 1200-A provided each site is less than 10 disturbed acres.

Small businesses obtaining coverage under the WPCF 1000 for the first time may see costs in the range of \$4,155 to \$6,880 to comply with this permit over five years. Since this permit is for wash water disposal onsite, the no exposure provision discussed previously for the NPDES 1200-Z does not apply.

As is the case with all three permits, the permit conditions that require the previously discussed expenditures have not changed since the previous permit period; businesses covered under the previous permit likely experienced the same range of costs.

Large Business

Large businesses obtaining permit coverage under these permits for the first time will likely have the greatest costs. However, the conditional exclusion from the requirement to obtain an NPDES 1200-Z if there is no exposure of industrial activities and materials to storm water is also available to large businesses. Costs for the compliance with the NPDES 1200-A over a five year period are in the range of \$3,840 to \$14,330, and \$4,180 to \$26,530 for the NPDES 1200-Z. The range of costs for the WPCF 1000 are in the range of \$4,155 to \$6,880. Permit application costs may be lower for NPDES 1200-A permittees than for WPCF 1000 and 1200-Z permittees because the Department allows multiple quarry sites to be covered under one permit provided each site is less than 10 disturbed acres.

Local Governments and State Agencies

Municipalities may have the need for any combination and number of the permits proposed for renewal if they operate industrial activities described in the NPDES storm water regulations or have wash water disposal activities at quarry sites regulated by the WPCF 1000. As such they can expect to experience the same costs as small and large businesses.

Assumptions

To derive the costs for proposed monitoring, reporting, and plan development requirements for new permittees the Department roughly estimated the average hourly wages for a facility's employees to perform these activities. For routine monitoring activities, an estimate of \$15 per hour was used and for activities that are considered to be more technical in nature an estimate of \$50 per hour was used. Due to the individual nature of each operation, these estimates are examples and may not exactly represent costs for any one specific facility. Costs may be greater if consultants are used. However, the permit requirements are not complex and consultants are not required to implement the provisions of these permits.

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.

Estimated Annual Costs for Proposed WPCF 1000 permit

Required Item or Action	Assumptions	Year 1	Year 2	Year 3	Year 4	Year 5
Permit Application Fee	<ul style="list-style-type: none"> fees do not increase during permit period 	\$485				
Annual permit fee	<ul style="list-style-type: none"> fees do not increase during permit period 		\$330	\$330	\$330	\$330
Completing application	<ul style="list-style-type: none"> varies based on facility size and complexity 2 – 4 hours @ \$50/hr 	\$100 - \$200				
Inspection of operation <ul style="list-style-type: none"> daily when operating monthly when not operating 	<ul style="list-style-type: none"> operating 24 - 52 weeks 15 min./week @ \$15/hr 	\$90 - \$195	\$90 - \$195	\$90 - \$195	\$90 - \$195	\$90 - \$195
Inspection of adjacent streams, 3 times/week when operating	<ul style="list-style-type: none"> operating 24 - 52 weeks 30 min./week @ \$15/hr 	\$180 - \$390	\$180 - \$390	\$180 - \$390	\$180 - \$390	\$180 - \$390
pH testing, weekly when operating	<ul style="list-style-type: none"> operating 24 - 52 weeks using pH paper 30 min./week @ \$15/hr 	\$180 - \$390	\$180 - \$390	\$180 - \$390	\$180 - \$390	\$180 - \$390
TOTAL		\$1,035 - \$1,660	\$780 - 1,305	\$780 - 1,305	\$780 - 1,305	\$780 - 1,305
TOTAL for 5 yrs						\$4,155 - \$6,880

Estimated Annual Costs for Proposed 1200-A permit

Required Item or Action	Assumptions	Year 1	Year 2	Year 3	Year 4	Year 5
Permit Application Fee	<ul style="list-style-type: none"> fees do not increase during permit period 	\$670				
Annual permit fee	<ul style="list-style-type: none"> fees do not increase during permit period 		\$330	\$330	\$330	\$330
Completing application	<ul style="list-style-type: none"> varies based on facility size and complexity 2 – 4 hours @ \$50/hr 	\$100 - \$200				
Plan preparation	<ul style="list-style-type: none"> varies based on facility size and complexity 4 – 16 hours @ \$50/hr 	\$200 - \$800				
Plan implementation (employee education; record keeping; implementation of best management practices)	<ul style="list-style-type: none"> variable based on facility size and current practices, etc. capital improvements may or may not be necessary capitol cost likely to be incurred in second year if benchmarks not met 	\$100 - \$1,000	\$100 - \$5,000	\$100 - \$1,000	\$100 - \$1,000	\$100 - \$1,000
Grab sampling of runoff, two storm/yr	<ul style="list-style-type: none"> varies based on facility size and complexity benchmarks met after first two years then sampling not required 1 to 4 hours \$15/hr 	\$15 - \$60	\$15 - \$60			
Laboratory costs, two storms/yr	<ul style="list-style-type: none"> benchmarks met after first two years then sampling not required \$30/TSS \$50/O&G 	\$160	\$160			
Visual monitoring, monthly when runoff occurs	<ul style="list-style-type: none"> runoff in every month varies depending on size of facility 6 – 12 hrs/yr @\$15/hr 	\$90 - \$180	\$90 - \$180	\$90 - \$180	\$90 - \$180	\$90 - \$180
Reporting annually	<ul style="list-style-type: none"> varies based on facility size and complexity 1 to 4 hrs/yr @\$50/hr 	\$50 - \$200	\$50 - \$200	\$50 - \$200	\$50 - \$200	\$50 - \$200
TOTAL		\$1,385 - \$3,270	\$745 - \$5,930	\$570 - \$1,710	\$570 - \$1,710	\$570 - \$1,710
TOTAL for 5 yrs						\$3,840 - \$14,330

Estimated Annual Costs for Proposed 1200-Z permit

Required Item or Action	Assumptions	Year 1	Year 2	Year 3	Year 4	Year 5
Permit Application Fee	<ul style="list-style-type: none"> fees do not increase during permit period 	\$670				
Annual permit fee	<ul style="list-style-type: none"> fees do not increase during permit period 		\$330	\$330	\$330	\$330
Completing application	<ul style="list-style-type: none"> varies based on facility size and complexity 2 – 4 hours @ \$50/hr 	\$100 - \$200				
Plan preparation	<ul style="list-style-type: none"> varies based on facility size and complexity 4 – 24 hours @ \$50/hr 	\$200 - \$1,200				
Plan implementation (employee education; record keeping; implementation of best management practices)	<ul style="list-style-type: none"> highly variable based on facility size and complexity, current practices, etc. capital improvements may or may not be necessary capital cost likely to be incurred in second year if benchmarks not met 	\$100 - \$2,000	\$100 - \$10,000	\$100 - \$2,000	\$100 - \$2,000	\$100 - \$2,000
Grab sampling of runoff, two storm/yr	<ul style="list-style-type: none"> varies based on facility size and complexity benchmarks met after first two years then sampling not required 1 to 4 hours \$15/hr 	\$15 - \$60	\$15 - \$60			
Laboratory costs, two storms/yr	<ul style="list-style-type: none"> benchmarks met after first two years then sampling not required # of outfalls vary; 1 to 4 \$75/3 metals \$10/pH \$30/TSS \$50/O&G \$30/E. coli at landfills taking sewage biosolids and sewage treatment plants 	\$330 - \$1,560	\$330 - \$1,560			
Visual monitoring, monthly when runoff occurs	<ul style="list-style-type: none"> runoff in every month varies depending on size of facility 6 – 12 hrs/yr @\$15/hr 	\$90 - \$180	\$90 - \$180	\$90 - \$180	\$90 - \$180	\$90 - \$180
Reporting annually	<ul style="list-style-type: none"> varies based on facility size and complexity 1 to 4 hrs/yr @\$50/hr 	\$50 - \$200	\$50 - \$200	\$50 - \$200	\$50 - \$200	\$50 - \$200
TOTAL		\$1,555 - \$6,070	\$915 - \$12,330	\$570 - 2,710	\$570 - 2,710	\$570 - 2,710
TOTAL for 5 yrs						\$4,180 - \$26,530

Attachment F
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
WPCF 1000, NPDES 1200-A and NPDES 1200-Z General Permit Renewals
Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The Department is proposing to renew the following general permits through rulemaking:

- National Pollutant Discharge Elimination System (NPDES) General Permits 1200-A for storm water runoff from non-metallic mineral mining and 1200-Z for storm water runoff from industrial activities, and
- Water Pollution Control Facilities (WPCF) General Permit 1000 for non-metallic mineral mining activities that dispose of wash water and storm water through seepage or evaporation ponds.

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

Yes No

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

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 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.

N/A

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.

Water Quality Division _____
Division

[signed by Roberta Young] _____
Intergovernmental Coordinator

9/13/01
Date

Agenda Item G, Rule Adoption: Renewal of NPDES 1200-A and 1200-Z and WPCF 1000 General Permits
July 26, 2002 EQC Meeting

Attachment G

Fact Sheets for General Permits

State of Oregon
Department of Environmental Quality

Memorandum

To: Administrative File - WPCF General Permit 1000
Water Quality Division

Date: April 12, 2002
revised June 11, 2002

From: Kevin Masterson, Water Quality Division
Ranei Nomura, Water Quality Division

Subject: Water Pollution Control Facilities (WPCF) General Permit 1000 Renewal Fact Sheet

BACKGROUND

The WPCF General Permit 1000 applies to aggregate and other non-metallic mineral quarrying and mining operations. Asphalt mix batch plants, concrete batch plants and other related activities located on site are also covered. The permit was issued on August 6, 1997, and will expire on June 30, 2002. There are approximately 98 sources covered under this permit. The pollutant discharged to seepage or evaporation ponds through the WPCF 1000 is primarily sediment from washing gravel, but pH can be elevated and oil and grease from machinery may be present as well. The Oregon Department of Geology and Mineral Industries (DOGAMI) assists the Department in administering a majority of these permits for mining activities that are under their jurisdiction. DOGAMI inspects these facilities for the Department and overall compliance with this permit is good. There are no major changes being proposed to this permit.

COVER PAGE

The cover page of the WPCF permit identifies that the permittee is allowed to dispose of all process wastewater and storm water by recirculation, evaporation, and/or controlled seepage with no discharge to surface waters. The permit will expire approximately five years from the date of issuance. *Schedule C – Compliance Conditions* and *Schedule E – Pretreatment* were omitted from the previous permit because these schedules are not applicable to this permit. *Schedule C* refers to compliance conditions that require reports or plans to be submitted within certain timeframes; the WPCF 1000 has no such requirements. *Schedule E* refers to federal requirements that certain municipalities must integrate into their pretreatment programs for industrial users of their wastewater treatment facilities; the WPCF 1000 does not regulate these activities. The Department is often questioned about the absence of these schedules from the permit so to avoid future confusion, references to these schedules as “not applicable” are included in the proposed permit. In addition, language under “Permitted Activities” was updated to reflect the current standard.

PERMIT COVERAGE

The Department recently revised its general permit program rules to ensure consistency with federal requirements. One of these revisions directs the Department to specify how facilities are to apply for permit coverage and how the Department will notify facilities that permit coverage has been obtained. While federal requirements do not apply to the WPCF 1000, the Department believes that this information will be useful to applicants seeking permit coverage. This “Permit Coverage” section was added to the permits to provide the description of application and notification procedures.

SCHEDULE A - WASTE DISPOSAL LIMITATIONS

Condition 4 was clarified to indicate that discharge of storm water *exposed to industrial activities or materials* and uncontaminated dewatering water *to surface waters* is not allowed under this permit.

Condition 9 was added to specify that for facilities that are adjacent to streams, mining activities and wastewater seepage must be controlled such that no visible turbidity increase occurs within the adjacent stream.

Antidegradation Review

The Department's antidegradation policy in OAR 340-041-0026 requires that a review of discharges to surface waters be conducted to determine if existing water quality will be protected and maintained. For general permits, the Department conducts such a review. The proposed renewal of the WPCF 1000 will not lower surface water quality because this permit prohibits direct discharge to surface waters and no changes in limitations are being proposed.

Siting of Gravel Mining Operations

The Department is aware of concerns surrounding the siting of gravel mining operations in floodways. While the Department does not make land use determinations, it does require that the local land use authority approve the siting of an operation as an appropriate land use prior to assigning coverage under a general permit. The local land use authority would require an engineering certification that the floodway activity does not increase the base flood evaluation. In addition, the Oregon Department of Fish and Wildlife (ODFW) reviews DOGAMI operating permits to screen for unacceptable impacts to fish and wildlife. ODFW is also consulted when concerns about fish and wildlife impacts arise in the course of routine inspections or complaint responses. As a result of this existing oversight, no changes related to this issue are proposed to the permit.

The Department does not typically regulate where an activity can take place on a site, but expects permittees to comply with permit conditions at all times. The Department's gravel mining permits, WPCF 1000 and National Pollutant Discharge Elimination System 1200-A, currently require the following:

- Process wastewater (i.e., wash water) is not allowed to discharge to surface waters.
- Settling pond spoils and other waste solids must be disposed in a manner that will prevent their entry into surface waters.
- Wastewater ponds must be maintained with a minimum freeboard of one foot.

However, the Department's permits do allow permittees to provide an "affirmative defense" to Department actions (e.g., notices of violations, civil penalties, etc.) that might be taken for noncompliance caused by upset conditions, such as flooding. It would be during this time that the Department would evaluate the noncompliance in more detail.

SCHEDULE B – MONITORING AND REPORTING REQUIREMENTS

The Department is proposing to add that monitoring is not required when the site is inaccessible due to adverse weather conditions. Adverse weather conditions must be noted in inspection records.

In response to comment received during the public notice period held from April 16 to May 24, 2002, the Department modified the proposed permit to reflect that pH monitoring only need be conducted on a weekly basis if concrete trucks are washed out into the wastewater disposal pond during that week.

SCHEDULE D - SPECIAL CONDITIONS

The Department added the following condition to clarify that DOGAMI or a local public agency may act as the Department's agent: *The Department authorizes DOGAMI and local public agencies to act as its Agent in implementing this permit. The Department's Agent may be authorized to conduct the following activities, including but not limited to: application review and approval, inspections, monitoring data review, and storm water and wastewater monitoring. Where the Department has entered into such an agreement, the Department or its Agent will notify the permittee of where to submit monitoring data and other notifications or correspondence associated with this permit.*

SCHEDULE F - GENERAL CONDITIONS

These conditions are standard to all WPCF permits; no changes are proposed.

To: Administrative File
NPDES General Permits 1200-A and 1200-Z
Water Quality Division

Date: April 12, 2002

From: Kevin Masterson, Water Quality Division
Ranei Nomura, Water Quality Division

Subject: National Pollutant Discharge Elimination System (NPDES) General Permits 1200-A and 1200-Z Renewal Fact Sheet

BACKGROUND

The NPDES General Permits 1200-A and 1200-Z for storm water discharges issued by the Department of Environmental Quality (Department) became effective in July of 1997 and expire on June 30, 2002. Table 1 on p. 2 illustrates the number of permittees covered by the 1200-A and 1200-Z permits, as well as the industrial activities covered by each of these permits. The Department is proposing renewals of these general permits that will expire in 2007. In addition, the U.S. Environmental Protection Agency (EPA) modified its rules affecting NPDES Storm Water Regulations in December 1999. These modifications are reflected in the proposed permit renewals.

The Oregon Department of Geology and Mineral Industries (DOGAMI) assists the Department in administering a majority of 1200-A permittees for mining activities that are under their jurisdiction.

PROPOSED CHANGES TO PERMITS

In renewing these storm water permits, the Department is proposing to adopt the EPA "no exposure" conditional exclusion from permitting requirements for qualified facilities. This conditional exclusion, found in 40 Code of Federal Regulation (CFR) §122.26(g) and adopted by EPA in December 1999, would be available to facilities when there is no exposure of industrial activities and materials to rain, snow, snowmelt and/or run-off. In addition, the Department has proposed making changes to permit language that will clarify and further define the specific requirements within the permit.

COVER PAGE

The cover pages of the NPDES 1200-A and 1200-Z outline the type of discharges eligible for permit. Upon issuance, the cover page will also include the expiration date that will not exceed five years from the date of issuance.

The sources covered section in the proposed 1200-A permit is identical to the existing permit. The sources covered section in the proposed 1200-Z permit references the federal regulations that outline the facilities that require NPDES storm water permits. The list of facilities is specified in 40 CFR §122.26(b)(14)(i-ix, xi). Except for the sources covered under the 1200-A permit, all other industrial storm water discharges will be permitted under the proposed 1200-Z permit. Note that SIC code 2874 *Phosphate Fertilizer Manufacturing*, SIC code 2491 *Wood Preserving*, and SIC code 2411 *Logging*, are not covered under the proposed 1200-Z general permit. The Department determined during the initial development of its general permits in 1991 that phosphate fertilizer manufacturing facilities would need individual NPDES permits to adequately address established storm water effluent guidelines found in 40 CFR §418. A similar decision was made to exclude wood preserving facilities from the general permit due to site contamination issues. The Department also determined that SIC 2411 *Logging* was a silvicultural activity exempt from NPDES permitting requirements.

Table 1: Oregon DEQ NPDES Storm Water Discharge Permits

Permit	#	Sources Covered
1200-A	188	Sand, gravel and other non-metallic mineral quarry and mining operations under SIC code 14. This also covers asphalt mix batch plants, concrete batch plants, vehicle maintenance facilities and other related activities on the site. This permit can cover multiple sites, under single ownership, of less than 10 acres each, that only conduct mining activities.
1200-Z	805	Facilities with the following primary Standard Industrial Classification codes: 10 Metal Mining 12 Coal Mining 13 Oil and Gas Extraction 21 Tobacco Products 22 Textile Mill Products 23 Apparel and Other Finished Products Made From Fabrics and Similar Material 24 Lumber and Wood Products, Except Furniture (excluding 2491 Wood Preserving and 2411 Logging) 25 Furniture and Fixtures 27 Printing, Publishing and Allied Industries 28 Chemicals and Allied Products (excluding 2874 Phosphate Fertilizer Manufacturing) 29 Petroleum Refining and Related Industries 30 Rubber and Miscellaneous Plastics Products 31 Leather and Leather Products 32 Stone, Clay, Glass, and Concrete Products 33 Primary Metal Industries 34 Fabricated Metal Products, Except Machinery and Transportation Equipment 35 Industrial and Commercial Machinery and Computer Equipment 36 Electronic and Other Electrical Equipment and Components, Except Computer Equipment 37 Transportation Equipment 38 Measuring, Analyzing, and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks 39 Miscellaneous Manufacturing Industries 4221 Farm Product Warehousing and Storage 4222 Refrigerated Warehousing and Storage 4225 General Warehousing and Storage 5015 Motor Vehicle Parts, Used 5093 Scrap and Waste Materials
		Facilities with the following primary Standard Industrial Classification codes that have vehicle maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport deicing operations: 41 Local and Suburban Transit and Interurban Highway Passenger Transportation 42 Motor Freight Transportation and Warehousing (excluding 4221 Farm Product Warehousing and Storage, 4222 Refrigerated Warehousing and Storage, and 4225 General Warehousing and Storage) 43 United States Postal Service 44 Water Transportation 45 Transportation by Air 5171 Petroleum Bulk Stations and Terminals
		Steam Electric Power Generation including coal handling sites.
		Landfills, land application sites and open dumps.
		Hazardous Waste Treatment, Storage and Disposal Facilities
SIC code 2874 Phosphate Fertilizer Manufacturing, SIC code 2491 Wood Preserving, and SIC code 2411 Logging, are not covered under the proposed 1200-Z general permit.		

PERMIT COVERAGE AND EXCLUSION COVERAGE

The Department recently revised its general permit program rules in Oregon Administrative Rule (OAR) 340-045-0033 to ensure consistency with federal requirements. One of these revisions directs the Department to specify how facilities are to apply for permit coverage and how the Department will notify facilities that permit coverage has been obtained. This "Permit Coverage and Exclusion from Coverage" section was added to the permits to provide the description of application and notification procedures.

Additionally, this section of the permit outlines the procedures and criteria for qualifying for the "no exposure" conditional exclusion provided by 40 CFR §122.26(g). If there is no exposure of industrial materials and activities to rain, snow, snowmelt, and/or runoff at a facility, the facility owner or operator may be eligible for this conditional exclusion from permitting requirements. The qualification procedures, described in the 1200-A and 1200-Z permits, include the completion and submission of a Department-approved certification form. Once the certification form is received and reviewed, the Department may conduct inspections of these facilities to verify compliance with the no exposure criteria. The Department expects to use the certification form developed by EPA.

SCHEDULE A - CONTROLS AND LIMITATIONS FOR STORM WATER DISCHARGES

ANTIDegradation REVIEW

The Department's antidegradation policy in OAR 340-041-0026 requires that a review of discharges to surface waters be conducted to determine if existing water quality will be protected and maintained. For general permits, the Department conducts such a review. The proposed renewal of the NPDES 1200-A and 1200-Z general permits do not change benchmark levels or effluent limitations for storm water discharges. Because no such changes are being proposed, the renewal of these general permits is deemed to not cause a lowering of water quality for the purpose of antidegradation review. This is similar to an individual NPDES permit renewal for the same discharge load, which is also not considered to cause a lowering of water quality.

SITING OF GRAVEL MINING OPERATIONS

The Department is aware of concerns surrounding the siting of gravel mining operations in floodways. While the Department does not make land use determinations, it does require that the local land use authority approve the siting of an operation as an appropriate land use prior to assigning coverage under a general permit. The local land use authority would require an engineering certification that the floodway activity does not increase the base flood evaluation. In addition, the Oregon Department of Fish and Wildlife (ODFW) reviews DOGAMI operating permits to screen for unacceptable impacts to fish and wildlife. ODFW is also consulted when concerns about fish and wildlife impacts arise in the course of routine inspections or complaint responses. As a result of this existing oversight, no changes related to this issue are proposed to these permits.

The Department does not typically regulate where an activity can take place on a site, but expects permittees to comply with permit conditions at all times. The Department's gravel mining permits, NPDES 1200-A and Water Pollution Control Facilities General Permit 1000, currently require the following:

- Process wastewater (i.e., wash water) is not allowed to discharge to surface waters.
- Settling pond spoils and other waste solids must be disposed in a manner that will prevent their entry into surface waters.
- Wastewater ponds must be maintained with a minimum freeboard of one foot.

However, the Department's permits do allow permittees to provide an "affirmative defense" to Department actions (e.g., notices of violations, civil penalties, etc.) that might be taken for noncompliance caused by upset conditions, such as flooding. It would be during this time that the Department would evaluate the noncompliance in more detail.

CONDITION 1 – PREPARATION AND IMPLEMENTATION OF STORM WATER POLLUTION CONTROL PLAN

Condition 1 clarifies the preparation and implementation requirements for Storm Water Pollution Control Plans (SWPCPs). Proposed changes to this condition are described in more detail in the following sections.

Condition 1(a) – Prepared by Qualified Personnel

Condition 1(a) requires that SWPCPs be prepared by a person(s) qualified in storm water management. The Department has further specified that the person preparing the SWPCP be identified in the plan. Including this name(s) in the plan allows the Department to direct questions and comments about the plan to the appropriate person(s).

Condition 1(b) – SWPCP Signature and Certification

Condition 1(b) has been modified to clarify that 40 CFR §122.22(d) requires the permittee to include a certification statement in which the signatory must acknowledge the truth and accuracy of the information contained within the SWPCP. Specific information from CFR has been provided the permits to make it easier for permittees to comply with this condition.

CONDITION 2 – STORM WATER POLLUTION CONTROL PLAN

The overall concepts in the existing permits were retained in the proposed permits. However, the formatting and wording were changed for readability and consistency. Assistance on how to prepare a SWPCP can also be found in Department Document No. WQ12538.5 titled *Guidance Document for Preparation of the NPDES Storm Water Pollution Control Plan*, reformatted May 1994. This document will be updated to address any permit revisions. The following sections discuss proposed changes to SWPCP requirements in more detail.

Condition 2(b)(iii) – Preventative Maintenance

This condition requires that permittees implement preventative maintenance programs. Additional language was added to clarify the Department's expectations for cleaning, maintenance, and repair activities. Specifically, these activities must be performed in such a manner as to prevent the discharge of pollutants.

Condition 2(b)(iv) – Employee Education

This condition has been modified to provide additional guidance to permittees regarding the frequency of employee education activities. Permittees are required to set a schedule for such education and training, but these schedules may vary widely among the universe of permittees. Such variation can be expected without guidance from the Department. As a result, the Department recommends that education and training occur on an annual basis and at the time of hire for new employees.

OREGON ADMINISTRATIVE RULE (OAR) 340-044-0050, WASTE DISPOSAL WELLS

This condition of the permit (formerly A.3) was deleted to eliminate confusion between the NPDES storm water permit program and the Underground Injection Control (UIC) program. A different type of registration is required for facilities that discharge storm water or wastewater into waste disposal wells (i.e., dry wells, underground injection well, etc.). In addition, these discharges are regulated under the state Water Pollution Control Facilities permit program. Including this condition in the 1200-A and 1200-Z permits was deemed to be more confusing than helpful as several permittees thought their disposal wells were allowed by these permits.

CONDITION 3 – OREGON ADMINISTRATIVE RULE 340-41-26(3)(A)(D), SURFACE WATER TEMPERATURE MANAGEMENT PLAN

Language was added to this condition to clarify why individual storm water discharges are not expected to cause a measurable increase in stream temperature. Specifically, because most storm water discharges occur at a time of year when ambient stream and runoff temperatures are relatively low, the impact of such discharges to stream temperature is minimal.

CONDITION 4 – 1200-Z: STORM WATER ONLY

This condition states that the proposed 1200-Z permit only regulates storm water discharges. The condition was modified to recommend that piping and drainage systems designed for discharges to floor drains and other process wastewater discharge points be separated from storm water conveyance systems. The purpose of this clarification is to state the Department’s expectation that there be no physical connection between industrial wastewater discharge systems and storm water systems unless a facility has a separate permit from the Department to discharge such wastewater.

CONDITION 5 – WATER QUALITY LIMITED STREAMS

Condition 5 was revised to make it more specific. If Total Maximum Daily Loads (TMDLs) are established and the discharge from a permitted source is determined to be a contributor for a stream that is water quality limited, the permit may be terminated and application for an individual permit or different general permit may be required that would include waste load allocations.

The facilities covered by the NPDES 1200-A and 1200-Z permits discharge to a variety of receiving streams. Most of these streams are listed as water quality limited for dissolved oxygen and temperature. While storm water discharges may contain a variety of pollutants the Department does not expect water bodies to exceed water quality standards as a result of storm water discharges from these permitted sources because their discharges are controlled through the permit requirements. Nutrient levels, that may affect dissolved oxygen in-stream, are not typically elevated in storm water and storm water discharges are not expected to cause a measurable increase in stream temperature because significant discharges occur at a time of year when ambient stream and runoff temperatures are relatively low. The permits also require pollution prevention practices to prevent exposure of storm water to hazardous materials.

CONDITION 6 – WATER QUALITY STANDARDS

No changes were proposed to this condition.

1200-Z – CONDITION 7: CODE OF FEDERAL REGULATION STORM WATER DISCHARGE LIMITATIONS

The 1200-Z permit includes limitations that are required by 40 CFR. These limitations, outlined in Table 2, have not changed.

Table 2: Code of Federal Regulations Effluent Limitations

CFR Industry Category	Parameter	Limitation	
Cement manufacturing facilities for runoff from material storage piles (40 CFR §411)	pH	6.0 - 9.0 SU	
	Total Suspended Solids (TSS)	50 mg/l	
Steam powered electric power generation facilities with coal handling and storage facilities (40 CFR §423)	TSS	50 mg/l Daily Maximum	
Manufacturing of asphalt paving and roofing emulsions (40 CFR §443)	Oil & Grease	20 mg/l, Daily Maximum	15 mg/l, 30 Day Average
	pH	6.0 - 9.0 SU	

STORM WATER DISCHARGE BENCHMARKS (1200-A – CONDITION 7 / 1200-Z – CONDITION 8)

Benchmarks are target concentrations that provide permittees with the means to measure the success of their Storm Water Pollution Control Plans. The concept of benchmarks was first developed by EPA in their *NPDES Storm Water Multi-Sector General Permit, June 1995*. Benchmarks are not limitations and cannot be enforced as such. However, the Department has provided the incentive of reduced monitoring requirements if the benchmarks are achieved. If benchmarks are not achieved, the permittee must reevaluate and update their SWPCP within 60 days of receiving sampling results. Any additional practices or measures that will further improve the quality of storm water discharges must be made in a timely manner.

The benchmark concentrations developed by the Department during the previous renewal process represent a level above which concerns for water quality could arise. They were based upon existing storm water data or existing water quality standards. Benchmarks for copper, lead and zinc were developed using the acute standards and a 5:1 dilution. The acute standards better reflect the short-term nature of storm water discharges, while the 5:1 dilution accounts for higher receiving stream flows usually found during storm events. The pH benchmark range of 5.5 to 9.0 S.U. was modified from the water quality standard of 6.0 to 9.0 S.U. to account for natural conditions where it has been demonstrated that rainfall has a pH of less than 6 S.U. The TSS benchmark was based on a best management practice approach since there is no TSS water quality standard. Available guidance on the effectiveness of storm water treatment practices indicates that when properly implemented and maintained these practices can generally reduce TSS concentrations by 80%. Using this information, the Department applied the 80% reduction to the 95th percentile of TSS data submitted by permittees (640 mg/l) during the first permit cycle. The *E. coli* benchmark of 406 counts per 100 ml was based on the water quality standard. The Oil and Grease benchmark of 10 mg/L was based on the performance of generally accepted treatment technologies.

There are no changes to the benchmark levels being proposed (see Table 3 for existing benchmarks). However, a clarification to the Oil and Grease parameter is proposed and discussed below.

Table 3: Existing Benchmarks (mg/L unless otherwise indicated)

Permit Type	Cu	Pb	Zn	pH	TSS	Oil & Grease	E. coli	Settleable Solids	Floating Solids	Oil & Grease Sheen
	0.1	0.4	0.5	5.5 - 9 SU	130	10	406 ¹	0.2 ml/L	No visible discharge	No visible sheen
1200-A				✓	✓	✓		✓		✓
1200-Z	✓	✓	✓	✓	✓	✓	✓ ²		✓	✓

¹ Colonies per 100 ml daily maximum

² Applies only to landfills, if septage or sewage biosolids is disposed at the site, and sewage treatment plants

Oil and Grease

This benchmark was modified to clearly state that the permittee must monitor for *total* oil and grease. The reason for this clarification is due to the finding that some permittees have been reporting only a portion of oil and grease results, thus providing the Department with inconsistent and misleading data.

The Department has not proposed to replace the total oil and grease parameter with a total petroleum hydrocarbon (TPH) benchmark. The reason for maintaining the total oil and grease benchmark is that it captures more than petroleum-related oils and greases. In addition, maintaining the oil and grease

benchmark parameter allows Oregon to remain consistent with EPA's storm water benchmark parameters and provides permittees with a historical picture of their site.

REVIEW OF SWPCP (1200-A – CONDITION 8 / 1200-Z – CONDITION 9)

This condition was clarified to indicate that the purpose of the SWPCP review is to investigate the source of elevated pollutant levels when benchmarks are exceeded.

SCHEDULE B – MONITORING & REPORTING REQUIREMENTS

The following changes were made to the proposed permits.

CONDITION 1 – MINIMUM MONITORING REQUIREMENTS

Condition 1(a) – Monitoring

In addition to clarifying the requirement to monitor for total oil and grease, this condition has been modified to clarify required sampling procedures. The Department expects that parameters will be analyzed on samples collected from the same storm event. Without making this requirement explicit, permittees might assume that they could analyze for various parameters by collecting samples from different storm events. This clarification eliminates this potential confusion.

1200-A – Condition 1(b): Wastewater Treatment and Disposal Facility Monitoring

The Department is proposing to exclude monitoring when the site is inaccessible due to adverse weather conditions. Adverse weather conditions must be noted in inspection records.

No Exposure [1200-A – Condition 1(f) / 1200-Z – Condition 1(e)]

This condition has been deleted because a facility will no longer be required to be under permit if no exposure can be achieved.

CONDITION 2(C) – REINSTATEMENT OF MONITORING REQUIREMENTS

A statement indicating that the Department will send notice in writing if it determines that monitoring needs to be reinstated has been added to the proposed permits.

CONDITION 3 – REPORTING REQUIREMENTS

Condition 3(a) – Monitoring Data

This condition has been modified to require permittees to include the minimum detection limit for parameters analyzed. This detection limit is useful when evaluating analytical results that are indicated as “non-detect.” For instance, if the detection limit is above the benchmark, no definitive determination can be made regarding whether the parameter in the sample is also above the benchmark. If the detection limit were above the benchmark and indicated on the monitoring report, the Department could require the permittee to conduct a more rigorous analysis of the parameter of concern.

Condition 3(b) – No Exposure

This condition has been deleted because a facility will no longer be required to be under permit if no exposure can be achieved.

Condition 3(d) – SWPCP Revision

This condition has been modified to allow the permittee to proceed immediately with implementation of the following management practices as described in Schedule A.2.b without waiting for Department comment: waste chemical and materials disposal, debris control, storm water diversion, covering activities, housekeeping, and preventative maintenance. It was not the Department's intention to delay implementation of best management practices with its 30-day review requirement. However, the Department does want to ensure that revisions to the SWPCP adequately addressed the permittee's problem.

SCHEDULE C – COMPLIANCE CONDITIONS AND SCHEDULES

This schedule lays out the timeframe for preparation and implementation of the SWPCP. The dates for defining the status of a permittee or new facility have been modified to reflect the expiration date of the previous permits. Except for storm water best management practices as developed in Schedule A, Condition 2(b)(i), all other components of the SWPCP must be completed within the timeframes specified in the following sections.

CONDITION 1 – EXISTING PERMITTEE

The existing permittee is defined as a facility with a NPDES storm water discharge permit prior to June 30, 2002.

Condition 1(a) – Updates and Implementation

The existing permittee must revise their SWPCP to meet any new permit requirements as soon as possible but no later than 90 days after receiving the permit. Storm water best management practices [Schedule A, Condition 2(b)(i)] must be implemented according to the schedule set forth in the SWPCP.

Condition 1(b) – Permittees Still Within Existing Permit Timeframe

The existing permittee operating within the timeframe set out in their previous permit may continue to follow the previous schedule (for facilities still within the initial 180 days of preparing their plan). The SWPCP must be modified to meet any new permit requirements within the initial timeframe.

CONDITION 2 – NEW PERMITTEE WITH EXISTING FACILITY

A new permittee with existing facility is a facility operating prior to June 30, 2002, without a NPDES storm water discharge permit.

Condition 2(a) – Plan Preparation and Implementation

As soon as possible but no later than 180 days after receiving this permit, the new permittee must prepare and implement their SWPCP. Storm water best management practices [Schedule A, Condition 2(b)(i)] must be implemented according to the schedule set forth in the SWPCP.

CONDITION 3 – NEW PERMITTEE WITH NEW FACILITY

A new facility is a facility beginning operation after June 30, 2002.

Condition 3(a) – Plan Preparation and Implementation

Prior to starting operations, a new permittee must prepare and implement their SWPCP. Storm water best management practices [Schedule A, Condition 2(b)(i)] must be implemented according to the schedule set forth in the SWPCP.

CONDITION 4 - NEW PERMITTEE DISCHARGING TO CLACKAMAS RIVER, MCKENZIE RIVER ABOVE HAYDEN BRIDGE (RIVER MILE 15) OR NORTH SANTIAM RIVER

Pursuant to OAR 340-041-0470(1)(b), new permittees are defined as potential or existing dischargers that did not have a permit prior to January 28, 1994, as well as those existing dischargers that have a permit but request an increased load limitation. This definition was clarified in the renewed 1200-A and Z permits.

SCHEDULE D – SPECIAL CONDITIONS

There were no changes made to this section.

SCHEDULE F – GENERAL CONDITIONS

Schedule F includes the general conditions that are applicable to all NPDES permits and are adopted directly from 40 CFR §122. They deal with operation and maintenance, monitoring and record keeping, and reporting requirements. The Department recognizes that a majority of these conditions do not apply

to storm water discharges. Many specifically address industrial and domestic wastewater treatment facilities. However, the storm water permits are NPDES permits and these conditions are required for all such permits. Several minor revisions were made to the general conditions to update them to the most current version in use by the Department.

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** July 8, 2002
From: Mikell O'Mealy
Subject: Agenda Item H: Informational Item: Operation of Brine Reduction Area at the Umatilla Chemical Agent Disposal Facility (UMCDF)

For this informational item, the Commission will receive briefings from the Department, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), UMCDF Permittees and GASP on the issues surrounding the Brine Reduction Area at UMCDF. Attached are copies of invitation letters we sent to these parties for the meeting. Also attached is a copy of the May 7 letter CTUIR sent to the Commission on this issue. If you have questions or would like to discuss this item before the meeting, please contact Wayne Thomas at (541) 567-8297 ext. 22.





Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region
Hermiston Office
256 E Hurlburt
Hermiston, OR 97838
Phone: (541) 567-8297
FAX: (541) 567-4741
TTY: (503) 229-6993

June 28, 2002

Mr. Gary I. Burke, Chairman
Board of Trustees
Confederated Tribes of the Umatilla Indian Reservation
P.O. Box 638
Pendleton, OR 97801

Re: Invitation to Present Concerns to the
Environmental Quality Commission Regarding
Operation of the UMCDF Brine Reduction
Area and Off-Site Shipment of Brine Liquids
DEQ Item No. 02-1011 (92.05)

Dear Chairman Burke:

The Environmental Quality Commission (EQC) and Department of Environmental Quality (DEQ) are in receipt of your May 7, 2002 letter to Ms. Melinda Eden, EQC Chair. In this letter, you expressed the concerns of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Board of Trustees (BOT) over recent developments at the Umatilla Chemical Agent Disposal Facility (UMCDF) related to the operation of the Brine Reduction Area (BRA) and off-site shipment of liquid waste.

In an effort to fully respond to the concerns and questions raised in your letter, the EQC has requested that DEQ provide/coordinate an informational briefing on the status of UMCDF BRA operations and the possible shipment of liquid waste (including pollution abatement system brines) to off-site hazardous waste disposal facilities.

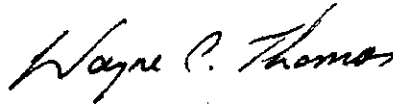
You are cordially invited to participate in this briefing and take the opportunity to present CTUIR's concerns and issues on this subject directly to the EQC. **The briefing will take place the morning of Friday, July 26 at the regularly scheduled EQC meeting in Room 3A of the DEQ Headquarters Building, 811 S.W. Sixth Avenue, Portland, Oregon.** DEQ has scheduled 15 minutes for CTUIR to make such a presentation. If you are unable to personally attend this briefing, please feel welcome to designate someone else from your organization to perform this function.

For planning purposes, we would appreciate confirmation no later than July 12, 2002 on whether or not CTUIR will be participating in this briefing.

Mr. Burke, CTUIR BOT
June 28, 2002
DEQ Item No. 02-1011 (92.05)
Page 2

If you have any questions concerning this matter, please contact me at (541) 567-8297, ext. 21.

Sincerely,



Wayne C. Thomas
Administrator
Chemical Demilitarization Program

Cf: Environmental Quality Commission
Stephanie Hallock, DEQ Director
LTC Frederick D. Pellissier, Commander, Umatilla Chemical Depot
Don E. Barclay, UMCDF Site Manager, Project Manager for Chemical Stockpile
Disposal
Ronald W. Garner, Project General Manager, Washington Demilitarization Company
Karyn Jones, GASP



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region
Hermiston Office
256 E Hurlburt
Hermiston, OR 97838
Phone: (541) 567-8297
FAX: (541) 567-4741
TTY: (503) 229-6993

June 28, 2002

Ms. Karyn Jones
GASP
P.O. Box 1693
Hermiston, OR 97838

Re: Invitation to Present Information to the
Environmental Quality Commission Regarding
Operation of the UMCDF Brine Reduction
Area
DEQ Item No. 02-1010 (92.05)

Dear Ms. Jones:

On May 8, 2002, the Environmental Quality Commission (EQC) and Department of Environmental Quality (DEQ) received a letter (DEQ Item 02-0704) addressed to Ms. Melinda Eden, EQC Chair, from Mr. Gary I. Burke, Chairman of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Board of Trustees (BOT). The letter expressed CTUIR's concerns over recent developments at the Umatilla Chemical Agent Disposal Facility (UMCDF) related to the operation of the Brine Reduction Area (BRA) and off-site shipment of liquid waste.

In an effort to fully respond to the concerns and questions raised by Mr. Burke and CTUIR, the EQC has requested that DEQ provide/coordinate an informational briefing on the status of UMCDF BRA operations and the possible shipment of liquid waste (including pollution abatement system brines) to off-site hazardous waste disposal facilities.

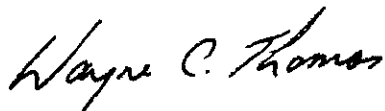
GASP has previously expressed concerns and strong opinions on this issue. Therefore, you are cordially invited to participate in this briefing and take the opportunity to present your concerns, and any relevant information on this subject, directly to the EQC. **The briefing will take place the morning of Friday, July 26 at the regularly scheduled EQC meeting in Room 3A of the DEQ Headquarters Building, 811 S.W. Sixth Avenue, Portland, Oregon.** DEQ has scheduled 15 minutes for GASP to make such a presentation. If you are unable to personally attend this briefing, please feel welcome to designate someone else from your organization to perform this function.

For planning purposes, we would appreciate confirmation no later than July 12, 2002 on whether or not GASP will be participating in this briefing.

Ms. Jones, GASP
June 28, 2002
DEQ Item No. 02-1010 (92.05)
Page 2

If you have any questions concerning this matter, please contact me at (541) 567-8297, ext. 21.

Sincerely,



Wayne C. Thomas
Administrator
Chemical Demilitarization Program

Cf: Environmental Quality Commission
Stephanie Hallock, DEQ Director
LTC Frederick D. Pellissier, Commander, Umatilla Chemical Depot
Don E. Barclay, UMCDF Site Manager, Project Manager for Chemical Stockpile
Disposal
Ronald W. Garner, Project General Manager, Washington Demilitarization Company
Gary I. Burke, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian
Reservation



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region
Hermiston Office
256 E Hurlburt
Hermiston, OR 97838
Phone: (541) 567-8297
FAX: (541) 567-4741
TTY: (503) 229-6993

June 28, 2002

Lieutenant Colonel Frederick D. Pellissier
Commander
Umatilla Chemical Depot
Attn.: SCBUL-CO
Hermiston, OR 97838

Mr. Ronald W. Garner
Project General Manager
Washington Demilitarization Company
78068 Ordnance Road
Hermiston, OR 97838

Mr. Don E. Barclay
UMCDF Site Project Manager
Project Manager for Chemical Stockpile Disposal
78072 Ordnance Road
Hermiston, OR 97838

Re: Invitation to Present Informational Briefing to
the Environmental Quality Commission
Regarding Operation of the UMCDF Brine
Reduction Area
DEQ Item No. 02-1009 (92.01)

Dear LTC Pellissier, Mr. Barclay, and Mr. Garner:

On May 8, 2002, the Environmental Quality Commission (EQC) and Department of Environmental Quality (DEQ) received a letter (DEQ Item 02-0704) addressed to Ms. Melinda Eden, EQC Chair, from Mr. Gary I. Burke, Chairman of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Board of Trustees (BOT). The letter expressed CTUIR's concerns over recent developments at the Umatilla Chemical Agent Disposal Facility (UMCDF) related to the operation of the Brine Reduction Area (BRA) and off-site shipment of liquid waste.

In an effort to fully respond to the concerns and questions by Mr. Burke and CTUIR, the EQC has requested that DEQ provide/coordinate an informational briefing on the status of UMCDF BRA operations and the possible shipment of liquid waste (including pollution abatement system brines) to off-site hazardous waste disposal facilities.

You are cordially invited to participate in this briefing and take the opportunity to provide the EQC with the current status of UMCDF's plans for operation of the BRA and off-site shipment of liquid waste. **The briefing will take place the morning of Friday, July 26 at the regularly scheduled EQC meeting in Room 3A of the DEQ Headquarters Building, 811 S.W. Sixth Avenue, Portland, Oregon.** DEQ has scheduled 15 minutes for the UMCDF Permittees to make

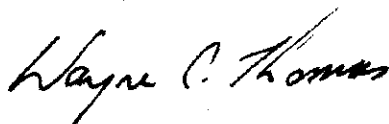
LTC Pellissier, Mr. Barclay and Mr. Garner
June 28, 2002
DEQ Item No. 02-1009 (92.05)
Page 2

such a presentation. If you are unable to personally attend this briefing, please feel welcome to designate someone else from your organization to perform this function.

For planning purposes, we would appreciate confirmation no later than July 12, 2002 on whether or not the UMCDF Permittees will be participating in this briefing.

If you have any questions concerning this matter, please contact me at (541) 567-8297, ext. 21.

Sincerely,

A handwritten signature in black ink that reads "Wayne C. Thomas". The signature is written in a cursive style with a large, sweeping initial 'W'.

Wayne C. Thomas
Administrator
Chemical Demilitarization Program

Cf: Environmental Quality Commission
Stephanie Hallock, Director, DEQ
Gary I. Burke, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian
Reservation
Karyn Jones, GASP



GENERAL COUNCIL
and
BOARD OF TRUSTEES

CONFEDERATED TRIBES
of the

02-0704

Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
Area Code 541 Phone 276-3165 FAX 276-3095

7 May 2002

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAY 08 2002

Ms. Melinda Eden
Chair, Environmental Quality Commission
c/o Department of Environmental Quality
811 SW 6th Ave.
Portland, OR 97204

HERMISTON OFFICE

Dear Madam Chair;

I am writing to express my grave concern over a recent development at the Umatilla Chemical Agent Disposal Facility (UMCDF). It has come to my attention that the United States Army is now contemplating not operating the brine reduction area (BRA) at the UMCDF. This fact was confirmed by Mr. Wayne Thomas, director of the Department of Environmental Quality (DEQ) Hermiston office, at a 1 May 2002 public meeting in Hermiston, Oregon. It appears that the Army is now pursuing off-site shipment of brine liquids for treatment and disposal. In fact, a representative of the Washington Demilitarization Company stated candidly to one of our staff members after the May 1st public meeting that no operating the BRA was an option since off-site shipment of liquid waste was not explicitly prohibited in the facility's Hazardous Waste Treatment and Storage Permit (HW Permit). Mr. Wayne Thomas has confirmed the fact that the HW Permit does not explicitly prohibit off-site shipment of liquid brine in a letter to the UMCDF Permittees dated 1 February 2002.

Sadly, a policy of no off-site shipment of liquid waste has been verbally stated numerous times to our Board of Trustees (BOT) by both the Army and by the DEQ. In fact, the DEQ has been so strong on this issue that it was our understanding that the permit had enforceable language to ensure this policy was followed. It should be noted that no off-site shipment of liquid waste, along with the Army's commitment to not leaving legacy waste at the site, were two important policies that have allowed the BOT to support the incineration project. The former issue is important to our people since there is a high probability that waste will travel through our

(Continued)

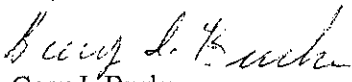
TREATY JUNE 9, 1855 ♦ CAYUSE, UMATILLA AND WALLA WALLA TRIBES

reservation and so represents a risk to our homeland. Clearly the risk of environmental contamination is increased if liquid waste, rather than solid waste, is accidentally spilled. The importance of the later issue arises from our desire to make use of the lands for traditional purposes once the base is closed.

I would remind you that the Confederated Tribes represent a culture where the spoken word is as important as the written word. Our history, our heritage, our way of life is preserved and taught in the spoken word. Hence, it is very disturbing to us when we are misled by the words of others. It raises serious doubts in our minds of the Army's ability to accurately represent their intentions. Does this move by the Army indicate that they will also renege on their agreement to not leave legacy waste at the site? Will the Army not pursue full closure and restoration of the UMCDF site at the end of the demilitarization campaign? These are questions that the BOT and the EQC must now consider as policy makers for our peoples.

In closing, I am requesting a response from your office on what actions the EQC is taking, or intends to take, to ensure the Army holds to their word on not shipping liquid wastes off-site, particularly the liquids from the pollution abatement system.

Sincerely;



Gary I. Burke
Chairman, CTUIR Board of Trustees

Cc:

Armand Minthorn, Member, CTUIR-BOT
Richard Gay, Acting Manager, CTUIR-ESTP
Rod Skeen, Chemical Engineer, CTUIR-ESTP
Wayne Thomas, Oregon DEQ
File



Department of Environmental Quality

Chemical Demilitarization Program

Operation of the Brine Reduction Area at the Umatilla Chemical Agent Disposal Facility

Environmental Quality Commission
July 26, 2002

Presented by:

DEQ Chemical Demilitarization Program
(Wayne Thomas, Sue Oliver, Tom Beam)



Today's Presentations

Chemical Demilitarization Program

- Purpose and description of Brine Reduction Area
- Invited Speakers (Confederated Tribes of the Umatilla Indian Reservation, G.A.S.P., and UMCDF Permittees)
- Status of the Brine Reduction Area (BRA) at other Chemical Demilitarization Facilities, operational history at Tooele, and amounts of liquid waste
- Army commitments concerning off-site shipments and recent discussions
- Department authority to regulate off-site shipment of liquid wastes from UMCDF
- Summary
- Questions & Discussion



Purpose of the Brine Reduction Area

Chemical Demilitarization Program

- The BRA collects and processes brines from:
 - scrubber towers on each furnace pollution abatement system;
 - BRA sump pumps; and
 - regeneration wastewater from the water treatment system.
- Brines are heated to drive off water and reduce the brine solution to a dry salt product.
- The dried salts are shipped off-site to a hazardous waste disposal facility.



Description of Brine Reduction Area

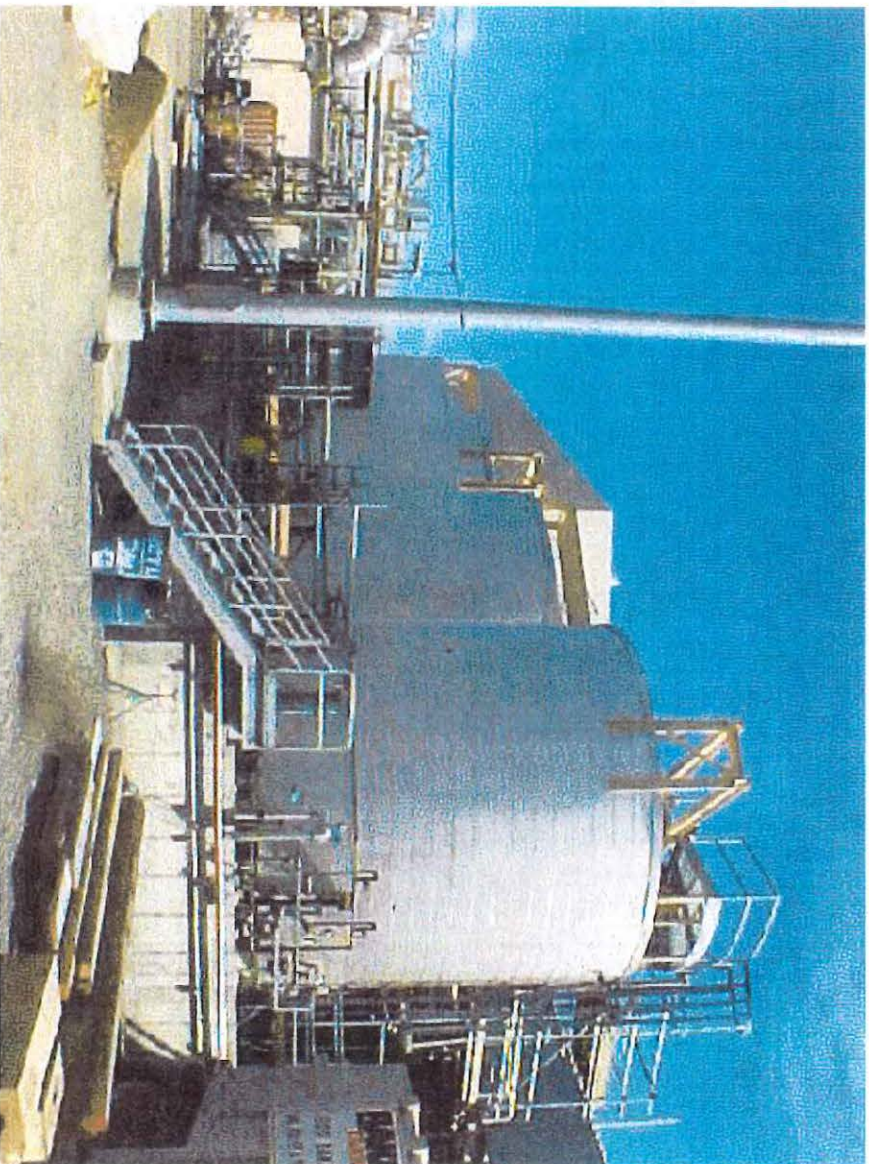
Chemical Demilitarization Program

- Four 40,000 gallon capacity brine storage tanks (brines must be “agent-free” prior to processing).
- Two “Flash Evaporators” to reduce water content and concentrate brine.
- Three “Drum Dryers” for final moisture removal.
- Pollution abatement system consisting of a “knockout box” (to remove large particulate), a burner to raise the gas temperature (to prevent condensation) and a baghouse to remove remaining particulate.



Brine Storage Tanks

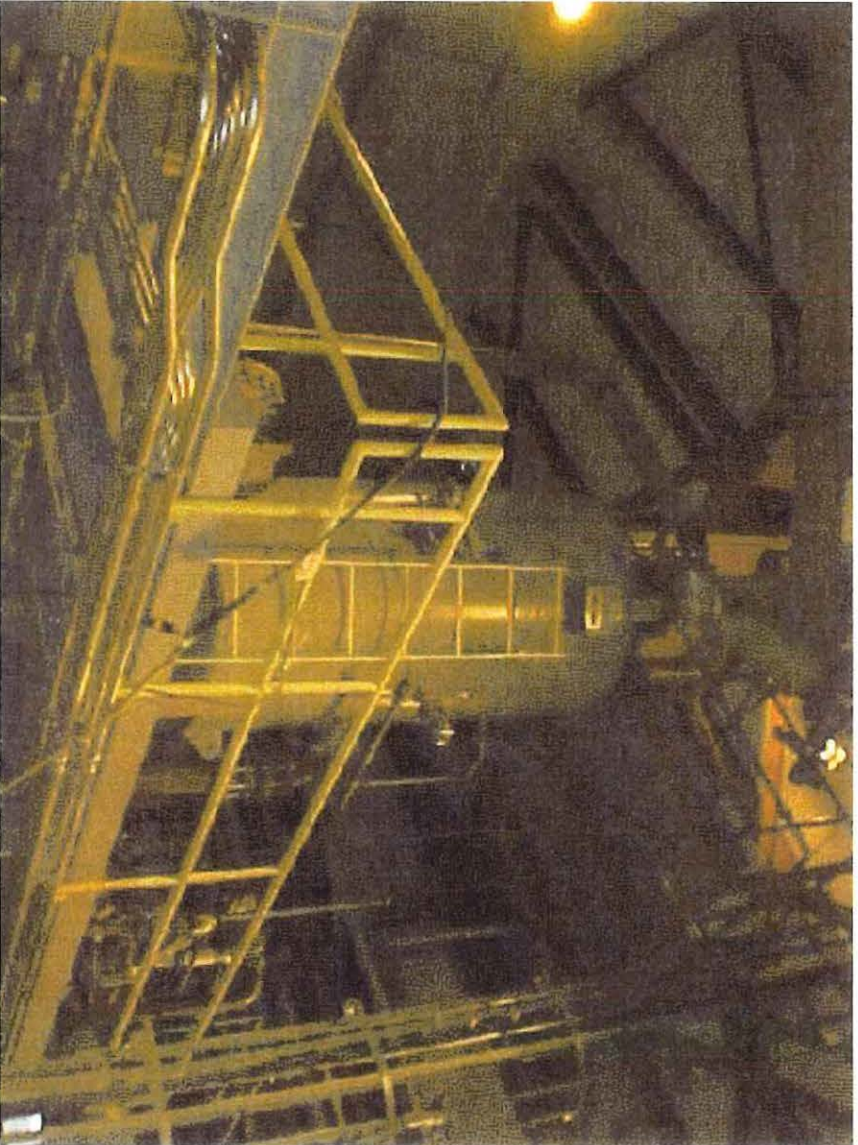
Chemical Demilitarization Program





Flash Evaporator

Chemical Demilitarization Program





Drum Dryers

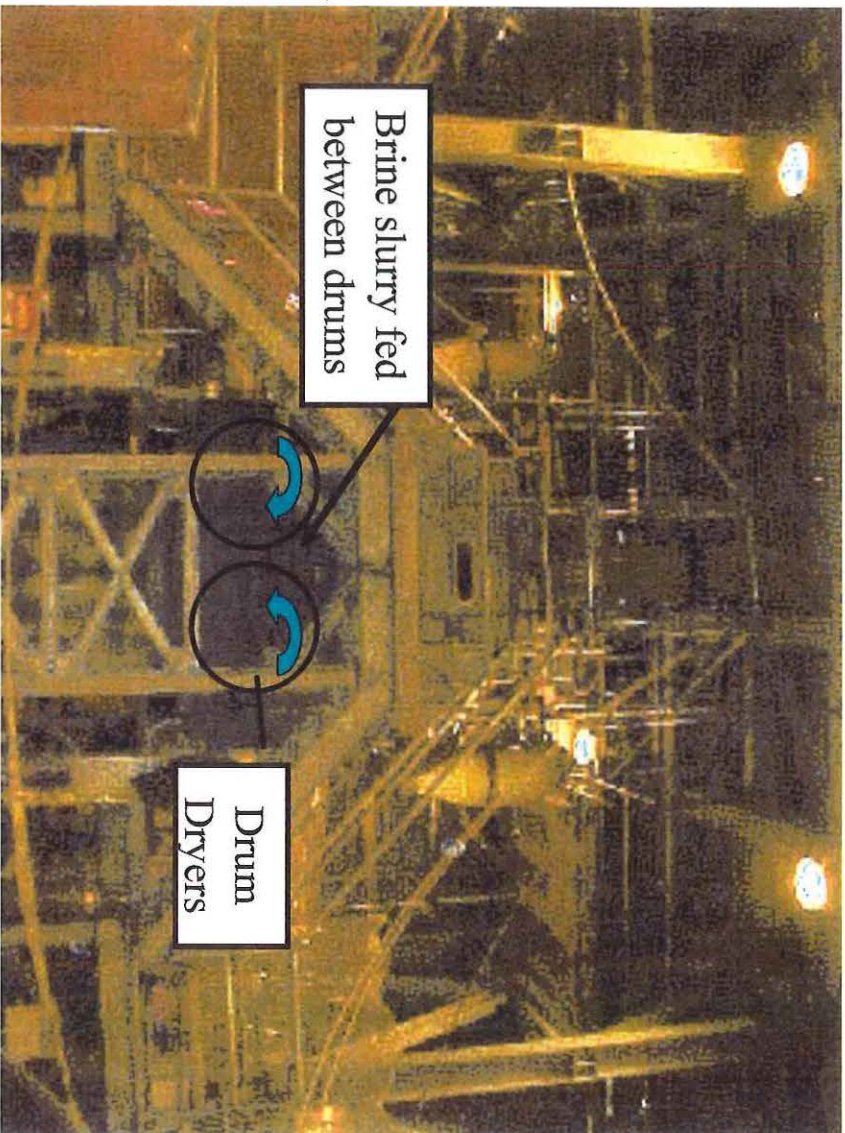
Chemical Demilitarization Program

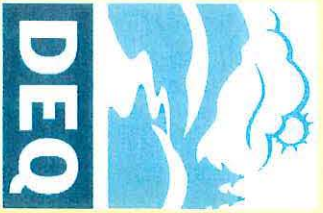
- Two drums (horizontal, side by side) are rotated and the liquid brine slurry is held between them.
- Steam flows through the interior of the drums and transferred heat causes a film of dried salt to form on the outside of the drums.
- Knife blades on the outside of the drums scrape off the salt film and drop it to a conveyor belt.
- The dried salt is conveyed to a waste container.



Drum Dryers

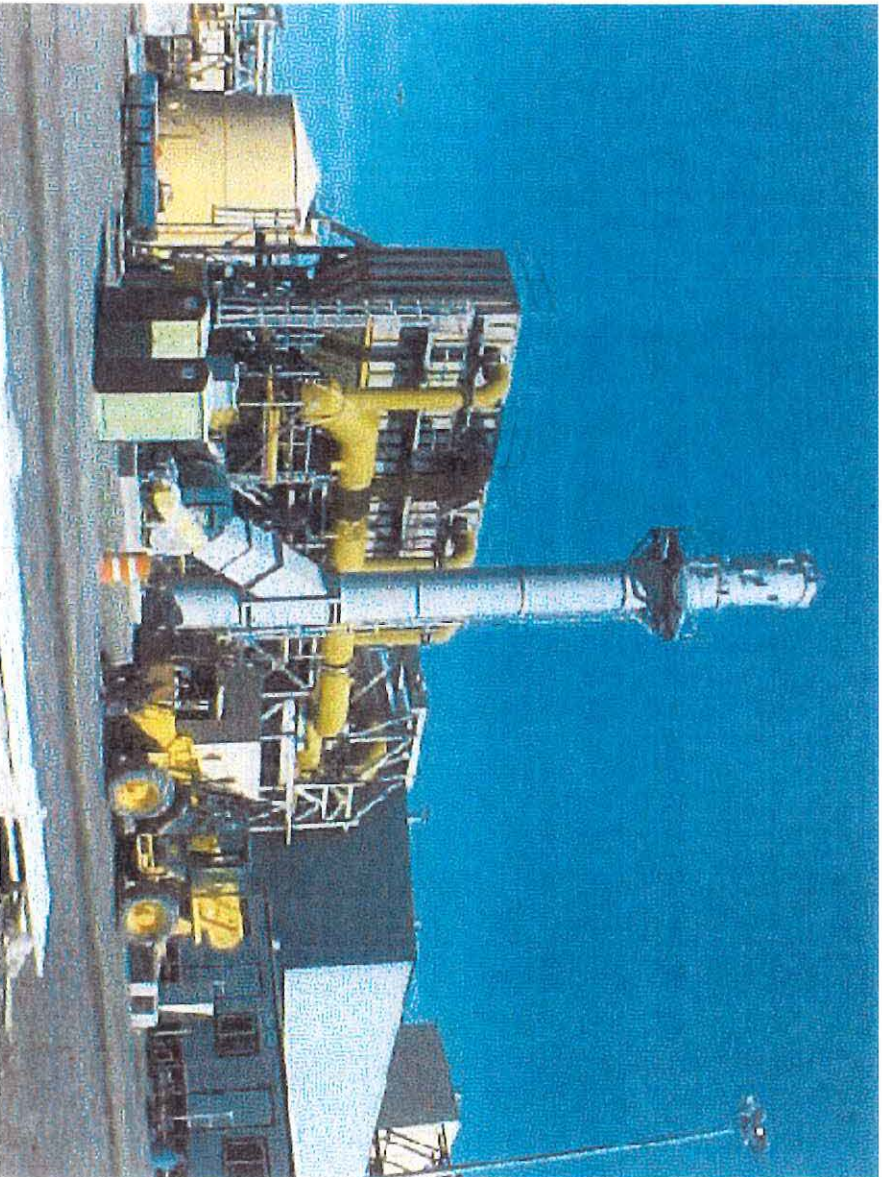
Chemical Demilitarization Program





BRA Pollution Abatement System

Chemical Demilitarization Program





Presentations by Invited Speakers

Chemical Demilitarization Program

- Confederated Tribes of the Umatilla Indian Reservation
- Oregon Wildlife Federation (on behalf of G.A.S.P.)
- UMCDF Permittees



Status of the Brine Reduction Area (BRA) at other Chemical Demilitarization Facilities

Chemical Demilitarization Program

- The BRA was successfully operated at JACADS.
- The BRA is not operating at Anniston (Alabama) or Tooele (Utah) and is not expected to operate at Pine Bluff (Arkansas).
- Anniston transfers brine to a hazardous waste facility that mixes it with sludges and cement kiln dust for waste stabilization operations.
- Tooele ships brine off-site for deep well injection or wastewater treatment.



Operational History of the BRA

Chemical Demilitarization Program

- The BRA was successfully operated at JACADS through agent disposal operations.
- The BRA was sporadically operated at TOCDF (Tooele) from 1994 through early 1998.
- At TOCDF a failed run during a compliance test revealed that the filter bags in the baghouse were failing.
- TOCDF decided it was more economical to ship brines off-site for disposal than to repair the baghouse.



Quantities of Liquid Wastes

Chemical Demilitarization Program

- Anniston expects to ship two to three 4000-gallon tankers off-site per day when two furnaces are operating.
- During one four-month period of GB agent operations Tooele shipped an average of 318,000 gallons of brines per month (about 14,500 gallons/day for a five-day work week)
- UMCDF is permitted to process 1,080 gallons per hour through the BRA drum dryers. Actual flows into the BRA (through the evaporators) will be greater.



Army Commitments Concerning Off-Site Shipments of Liquid Wastes

Chemical Demilitarization Program

- Off-site shipment of liquid wastes has been the subject of many discussions with the Army over the last five years.
- The Army has repeatedly stated that no liquid wastes will be shipped off-site, consistent with:
 - Environmental Impact Statement
 - RCRA Part B Permit Application
 - Recent BRA permit modification requests
 - Public statements at civic presentations, permit meetings, media



Recent Discussions

- In January 2002 the Army informed the Department that it had decided to pursue off-site shipment of liquid wastes until the start of chemical agent operations.
- In February 2002 the Department issued correspondence documenting historical commitments by the Army to not ship liquid wastes off-site.
- The Army's response in March stated that "We are systemizing and preparing the BRA to support brine treatment during agent operations."



Department Authority to Regulate Off-Site Shipments of Liquid Wastes from UMCDF

Chemical Demilitarization Program

- Residues of chemical demilitarization are state-only listed hazardous wastes.
- Brines and brine salts are considered demilitarization residue and must be disposed of at a permitted hazardous waste landfill.
- The UMCDF Hazardous Waste Permit does not prohibit the off-site shipment of liquid wastes, provided the waste meets “agent-free” criteria and is destined for an approved hazardous waste disposal facility.



Summary

Chemical Demilitarization Program

- The Brine Reduction Area is a permitted hazardous waste treatment unit.
- Current permit does not prohibit the off-site shipment of liquid waste from UMCDF.
- Other chemical demilitarization facilities are not operating the BRA.
- The Army has repeatedly stated that it will operate the BRA at UMCDF.



For more information...

Chemical Demilitarization Program

**Oregon Department of Environmental Quality
Chemical Demilitarization Program**

256 E. Hurlburt Ave.

Hermiston, OR 97838

Telephone: (541) 567-8297

Fax: (541) 567-4741



GENERAL COUNCIL
and
BOARD OF TRUSTEES

CONFEDERATED TRIBES **02-0704**
of the
Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
Area Code 541 Phone 276-3165 FAX 276-3095

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAY 08 2002

7 May 2002

Ms. Melinda Eden
Chair, Environmental Quality Commission
c/o Department of Environmental Quality
811 SW 6th Ave.
Portland, OR 97204

HERMISTON OFFICE

Dear Madam Chair;

I am writing to express my grave concern over a recent development at the Umatilla Chemical Agent Disposal Facility (UMCDF). It has come to my attention that the United States Army is now contemplating not operating the brine reduction area (BRA) at the UMCDF. This fact was confirmed by Mr. Wayne Thomas, director of the Department of Environmental Quality (DEQ) Hermiston office, at a 1 May 2002 public meeting in Hermiston, Oregon. It appears that the Army is now pursuing off-site shipment of brine liquids for treatment and disposal. In fact, a representative of the Washington Demilitarization Company stated candidly to one of our staff members after the May 1st public meeting that no operating the BRA was an option since off-site shipment of liquid waste was not explicitly prohibited in the facility's Hazardous Waste Treatment and Storage Permit (HW Permit). Mr. Wayne Thomas has confirmed the fact that the HW Permit does not explicitly prohibit off-site shipment of liquid brine in a letter to the UMCDF Permittees dated 1 February 2002.

Sadly, a policy of no off-site shipment of liquid waste has been verbally stated numerous times to our Board of Trustees (BOT) by both the Army and by the DEQ. In fact, the DEQ has been so strong on this issue that it was our understanding that the permit had enforceable language to ensure this policy was followed. It should be noted that no off-site shipment of liquid waste, along with the Army's commitment to not leaving legacy waste at the site, were two important policies that have allowed the BOT to support the incineration project. The former issue is important to our people since there is a high probability that waste will travel through our


(Continued)

reservation and so represents a risk to our homeland. Clearly the risk of environmental contamination is increased if liquid waste, rather than solid waste, is accidentally spilled. The importance of the later issue arises from our desire to make use of the lands for traditional purposes once the base is closed.

I would remind you that the Confederated Tribes represent a culture where the spoken word is as important as the written word. Our history, our heritage, our way of life is preserved and taught in the spoken word. Hence, it is very disturbing to us when we are misled by the words of others. It raises serious doubts in our minds of the Army's ability to accurately represent their intentions. Does this move by the Army indicate that they will also renege on their agreement to not leave legacy waste at the site? Will the Army not pursue full closure and restoration of the UMCDF site at the end of the demilitarization campaign? These are questions that the BOT and the EQC must now consider as policy makers for our peoples.

In closing, I am requesting a response from your office on what actions the EQC is taking, or intends to take, to ensure the Army holds to their word on not shipping liquid wastes off-site, particularly the liquids from the pollution abatement system.

Sincerely;



Gary I. Burke
Chairman, CTUIR Board of Trustees

Cc:

Armand Minthorn, Member, CTUIR-BOT
Richard Gay, Acting Manager, CTUIR-ESTP
Rod Skeen, Chemical Engineer, CTUIR-ESTP
Wayne Thomas, Oregon DEQ
File



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region
Hermiston Office
256 E Hurlburt
Hermiston, OR 97838
Phone: (541) 567-8297
FAX: (541) 567-4741
TTY: (503) 229-6993

February 1, 2002

Lieutenant Colonel Frederick D. Pellissier
Commander
Umatilla Chemical Depot
Attn.: SCBUL-CO
Hermiston, OR 97838

Mr. Loren D. Sharp
Project Manager
Washington Demilitarization Company
78068 Ordnance Road
Hermiston, OR 97838

Mr. Don E. Barclay
UMCDF Site Project Manager
Project Manager for Chemical Stockpile Disposal
78072 Ordnance Road
Hermiston, OR 97838

Re: Off-site Shipment of PAS Liquids (Brines)
Prior to the Start of Chemical Agent
Operations
Umatilla Chemical Agent Disposal Facility
ORQ 000 009 431
DEQ Item No. 02-0165 (27.05)

Dear LTC Pellissier, Mr. Barclay, and Mr. Sharp:

The Department of Environmental Quality (Department) has reviewed the information discussed with Permittees at the January 30, 2002 meeting concerning Umatilla Chemical Agent Disposal Facility's (UMCDF's) decision to pursue off-site shipment, treatment and disposal of incinerator "pollution abatement system (PAS) liquids" until the start of chemical agent operations planned for February 2003.

The Department acknowledges that the current, existing UMCDF Hazardous Waste (HW) Treatment and Storage Permit (ID No. ORQ 000 009 431) does not specifically prohibit the Permittees from managing these wastes using the described approach. The Department is also unaware at this time of any specific federal Resource Conservation and Recovery Act (RCRA) hazardous waste regulations (40 CFR Parts 260-266, 268, 270-273, 279-282, 148, and 124), or Oregon hazardous waste rules (OAR 340-100 through 340-120) that prohibit this approach.

However, this waste management approach is not preferred, and directly contradicts the implied approach presented by the U.S. Army and its contractors to the Department and Oregon's citizens since the beginning of the UMCDF environmental permitting process. "PAS liquids" have always been consistently referred to as "brines," and slated for treatment in the Brine Reduction

Area (BRA), regardless of whether they are generated during systemization activities, surrogate operations or chemical agent operations. The introduction to Module V of the HW Permit even identifies one of the primary treatment objectives of the BRA as that of reducing the brines and wastewaters (i.e. "liquids") from the PAS by at least 80% by weight. HW Permit Condition V.A.1.i. provides additional reference to planned processing of brines during both surrogate and chemical agent operations.

The inconsistency exhibited by this decision is further reinforced by the following examples:

- The U.S. Army's Revised Final Environmental Impact Statement "*Disposal of Chemical Agents and Munitions Stored at Umatilla Depot Activity, Oregon*" (November 1996) includes language (Section 2.2.3.3) indicating that 1) "The hazardous wastes would consist mainly of ash residue from the furnace systems and dried salts from process and PAS liquids"; 2) "No liquid hazardous process waste would be generated by or shipped from the proposed disposal facility"; and 3) "The only liquid discharge from the facility would be domestic sewage...".
- The March 1996 UMCDP RCRA Part B Hazardous Waste Permit Application (used by the Department to develop the initial UMCDP HW Permit issued in February 1997) contains language (Section D-9) which describes other wastewater streams (e.g. boiler blowdown, water softener regeneration, separator condensate) as "brines" that will be processed in the BRA.
- The current Permit Application includes language in Section D-9 that was proposed by the Permittees in the Class 2 Permit Modification Request UMCDP-99-018-BRA(2) [approved 10/19/99], and which states that both hazardous [waste] and non-hazardous [waste] brines will be generated in three distinct phases (prior to surrogate trial burns, during surrogate trial burns and during chemical agent operations), and that these brines will be processed through the BRA. This same information was presented during the required public information meeting held by the Permittees. These "brines" represent the same "PAS liquids" identified in the Permittees' current planned approach.
- On December 13, 2001 and January 8, 2002, the Department met with UMCDP staff to discuss alternate BRA operational approaches that maintained compliance with the HW Permit and applicable regulations, while accommodating UMCDP's need to process quantities of brine generated during systemization activities and surrogate operations. The Permittees' desire to hold these discussions indicates that within the last month, UMCDP still planned to process and treat all these "PAS liquids" in the BRA.

Finally, the Permittees are reminded that HW Permit Condition II.I.1.ii. requires submittal to the Department of annual waste minimization/pollution prevention certifications (in accordance with 40 CFR §264.73) that proposed treatment, storage or disposal methods are the most practicable ones available to minimize threats to human health and the environment.

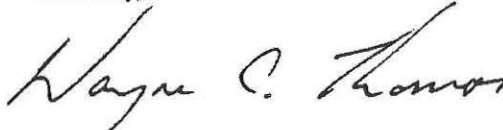
The Department is extremely concerned that this type of change represents a shift in priorities for the U. S. Army and its contractors. It appears that the Permittees place a larger emphasis on

LTC Pellissier, Mr. Barclay and Mr. Sharp
February 1, 2002
DEQ Item No. 02-0165 (27.05)
Page 3

attempting to maintain the current planned operational schedule than on fulfilling commitments made previously to the State of Oregon and its citizens.

If you have any questions concerning this matter, please contact me at (541) 567-8297, ext. 21.

Sincerely,



Wayne C. Thomas
Administrator
Chemical Demilitarization Program

Cf: Environmental Quality Commission
Thomas Beam, DEQ Hermiston
Mark Daugherty, UMCD
Stephanie Hallock, Director-DEQ Portland
Catherine Massimino, USEPA Region X
Dave Nylander, WDC
Sue Oliver, DEQ Hermiston
Wendell Wrzesinski, PMCS



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
PROGRAM MANAGER FOR CHEMICAL DEMILITARIZATION
UMATILLA CHEMICAL AGENT DISPOSAL FACILITY
78072 ORDNANCE ROAD
HERMISTON, OREGON 97838

02-0324

MAR - 5 2002

Project Manager
for Chemical Stockpile Disposal

ENV-02-0034

SUBJECT: Umatilla Chemical Agent Disposal Facility (UMCDF) Hazardous Waste Permit
(ORQ 000 009 431) – Off-Site Shipment of Pollution Abatement System (PAS) Wastewater

Wayne C. Thomas, Program Administrator
Chemical Demilitarization Program
Oregon Department of Environmental Quality
256 East Hurlburt Avenue, Suite 105
Hermiston, Oregon 97838

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
HERMISTON
MAR 05 2002

Dear Mr. Thomas:

HERMISTON OFFICE

References:

Letter, Department of Environmental Quality (DEQ), DEQ Item No. 02-0165(27.05),
dated February 1, 2002, subject: Off-site Shipment of PAS Liquids (Brines) Prior to the Start of
Chemical Agent Operations.

The Permittees sincerely appreciate the opportunity to discuss this important matter with
you on January 30, 2002. We feel the open discussion led to a mutually agreed upon
management approach in regards to the Brine Reduction Area (BRA). In addition, we appreciate
the regulatory analysis recognizing our management approach is supported by regulation and the
Permit. We are writing this letter in response to the issues identified in the letter referenced
above.

We are systemizing and preparing the Brine Reduction Area (BRA) to support brine
treatment during agent operations. Processing PAS liquids on site that are generated prior to
agent operations would delay agent operations startup and increase the risk associated with
continued agent storage. We recognize the option of shipping PAS liquids off-site is not your
preferred approach, but for wastes generated prior to the commencement of agent destruction it
is a prudent course of action that will avoid what is now projected to be a four-month delay of
agent operations startup


In reference to your concern that we are changing our priorities. Our priority was and
remains maximum protection to the public. In this context, we provide maximum protection to
the public by ensuring agent destruction operations are our focus and are not delayed by issues
presenting little to no public risk.

We will safely and expeditiously destroy the chemical warfare munitions stored at the Umatilla Chemical Depot in an environmentally sound manner. Our top priority is to eliminate the risk of chemical weapons storage to the citizens of Oregon. Our concern regarding the maintenance of an aggressive schedule is evidence we are committed to fulfilling our commitment to the community that wants the chemical weapons stockpile expeditiously destroyed. Our efforts to date reflect our commitment to maintaining schedule along with maintaining excellence in safety and environmental compliance. We share your commitment to move the Umatilla project forward in partnership and look forward to the Department's continued cooperation and commitment to work through the regulatory process.

A copy of this letter is being provided to the members of the Environmental Quality Commission, 811 SW Sixth Avenue, Portland Oregon, 97204; and Ms. Stephanie Hallock, Director, Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland Oregon, 97204.

If you have any questions, please call our technical point of contact, Mr. Wendell Wrzesinski, (541) 564-7053.

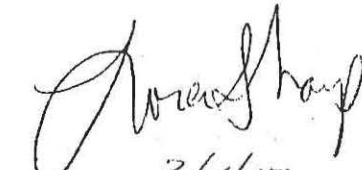
Sincerely,


Date of Signature: 5 MAR 02

Frederick D. Pellissier
Lieutenant Colonel, USA
Commander
*CERTIFICATION STATEMENT


Date of Signature: 5 Mar 02

Don E. Barclay
UMCDF Site
Project Manager
*CERTIFICATION STATEMENT


Date of Signature: 3/5/02

Loren D. Sharp
Washington Demilitarization Company
Project Manager
*CERTIFICATION STATEMENT

Enclosures

*I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION ACCORDING TO A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHER AND EVALUATE THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.

7/10/02 EAC Meeting, Item H. Handout

Brine Production and Treatment

Rodney Skeen, CTUIR-ESTP

**Presented To:
Environmental Quality Commission
26 July 2002**

Questions addressed

- **How toxic is the liquid brine?**
- **How much brine will be generated at the UMCDF per day?**
- **Can the current BRA handle the anticipated brine production?**

QUESTION: How toxic is the liquid brine?

Comparison to Drinking Water Standard

Constituent	Maximum Measured Level (mg/L)	Total Mass in a 7000 gallon tanker (lbs)	Drinking Water Standard (mg/L)	Conc'n after dilution at High flow (mg/L)	Conc'n after dilution at Low flow (mg/L)
Aluminum	67	3.91E+00	5.00E-02	2.51E-02	1.57E+00
Antimony	3.2	1.87E-01	6.00E-03	1.20E-03	7.49E-02
Arsenic	23	1.34E+00	5.00E-02	8.61E-03	5.38E-01
Barium	1.7	9.91E-02	2.40E-02	6.36E-04	3.98E-02
Beryllium	0.011	6.41E-04	4.00E-03	4.12E-06	2.57E-04
Boron	350	2.04E+01		1.31E-01	8.19E+00
Cadmium	11	6.41E-01	5.00E-03	4.12E-03	2.57E-01
Chromium	120	6.99E+00	1.00E-01	4.49E-02	2.81E+00
Cobalt	0.3	1.75E-02	8.96E+01	1.12E-04	7.02E-03
Copper	20	1.17E+00	1.30E+00	7.49E-03	4.68E-01
Lead	12	6.99E-01	1.50E-02	4.49E-03	2.81E-01
Manganese	5.5	3.21E-01		2.06E-03	1.29E-01
Mercury	0.015	8.74E-04	2.00E-03	5.61E-06	3.51E-04
Nickel	2.3	1.34E-01		8.61E-04	5.38E-02
Phosphorus (P)	180000	1.05E+04		6.74E+01	4.21E+03
Selenium	0.52	3.03E-02	5.00E-02	1.95E-04	1.22E-02
Silver	1.9	1.11E-01	4.00E-03	7.11E-04	4.44E-02
Thallium	0.031	1.81E-03	2.00E-03	1.16E-05	7.25E-04
Tin	2.3	1.34E-01		8.61E-04	5.38E-02
Vanadium	0.28	1.63E-02		1.05E-04	6.55E-03
Zinc	46	2.68E+00	5.00E+00	1.72E-02	1.08E+00

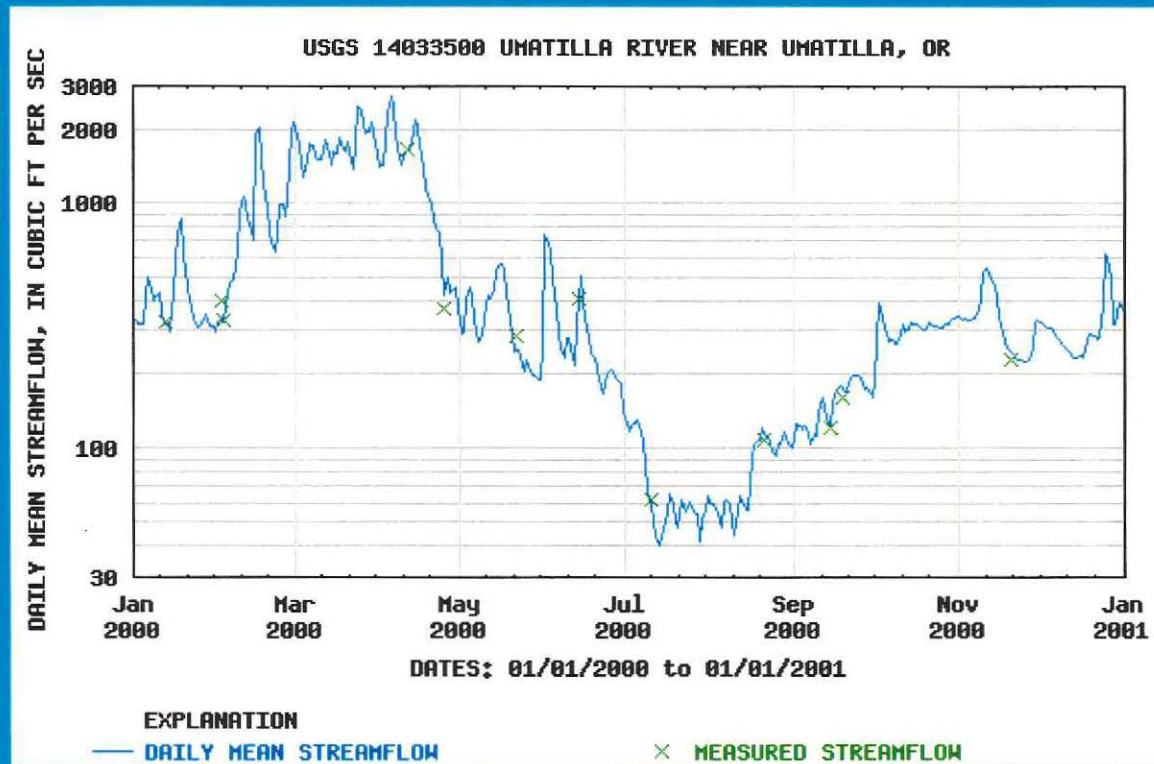
Last two columns represent diluted concentration immediately after one tanker truck of brine is spilled in the Umatilla River

NOTE: No organics were detected in JACADS brines.

Red values indicate items above the drinking water standard.

Orange values are Oregon secondary contaminant levels.

Umatilla River Stream Flow



NOTE: Large variation in stream flow rate during the year.

QUESTION: How toxic is the liquid brine (continued...)?

Comparison to UMCDF Air Emissions

Constituent	Maximum Measured Level (mg/L)	Total Mass in a 7000 gallon tanker (lbs)	Worst Case for Total Mass in Bine (lb/day)	Worst Case UMCDF Permitted Air Emissions (lb/day)
Aluminum	67	3.91E+00	8.02E+01	No RCRA limit
Antimony	3.2	1.87E-01	3.83E+00	2.91E+01
Arsenic	23	1.34E+00	2.75E+01	3.93E+01
Barium	1.7	9.91E-02	2.03E+00	4.67E+01
Beryllium	0.011	6.41E-04	1.32E-02	1.02E+01
Boron	350	2.04E+01	4.19E+02	1.16E+03
Cadmium	11	6.41E-01	1.32E+01	1.33E+01
Chromium	120	6.99E+00	1.44E+02	1.57E+01
Cobalt	0.3	1.75E-02	3.59E-01	1.54E+01
Copper	20	1.17E+00	2.39E+01	1.80E+01
Lead	12	6.99E-01	1.44E+01	8.28E+01
Manganese	5.5	3.21E-01	6.58E+00	1.71E+03
Mercury	0.015	8.74E-04	1.80E-02	1.19E+01
Nickel	2.3	1.34E-01	2.75E+00	6.46E+01
Phosphorus (P)	180000	1.05E+04	2.15E+05	7.14E+02
Selenium	0.52	3.03E-02	6.22E-01	2.02E+01
Silver	1.9	1.11E-01	2.27E+00	2.73E+01
Thallium	0.031	1.81E-03	3.71E-02	8.22E+01
Tin	2.3	1.34E-01	2.75E+00	8.31E+01
Vanadium	0.28	1.63E-02	3.35E-01	1.68E+01
Zinc	46	2.68E+00	5.51E+01	3.37E+02

Red values indicate items above permitted air emissions rate.

Worst case brine production rates are for HD ton container processing.

Worst case air emissions assume all furnaces are emitting at the permit limit.

Question: How much brine will be generated per day?

- Maximum requirement (HD ton containers):
Generates 52,267 lb/hr.
 - At a density of 1.05 g/ml (65.28 lb/ft³) this translates to 5,990 gallons/hr (143,750 gal/day).
 - 20-25 tankers trucks per day.
- Minimum requirement (M55 VX): Generates 3387 lb/hr.
 - 2 tankers per day.
- Comparison: Average of 50 train cars per day of hazardous materials shipped daily through Umatilla county.

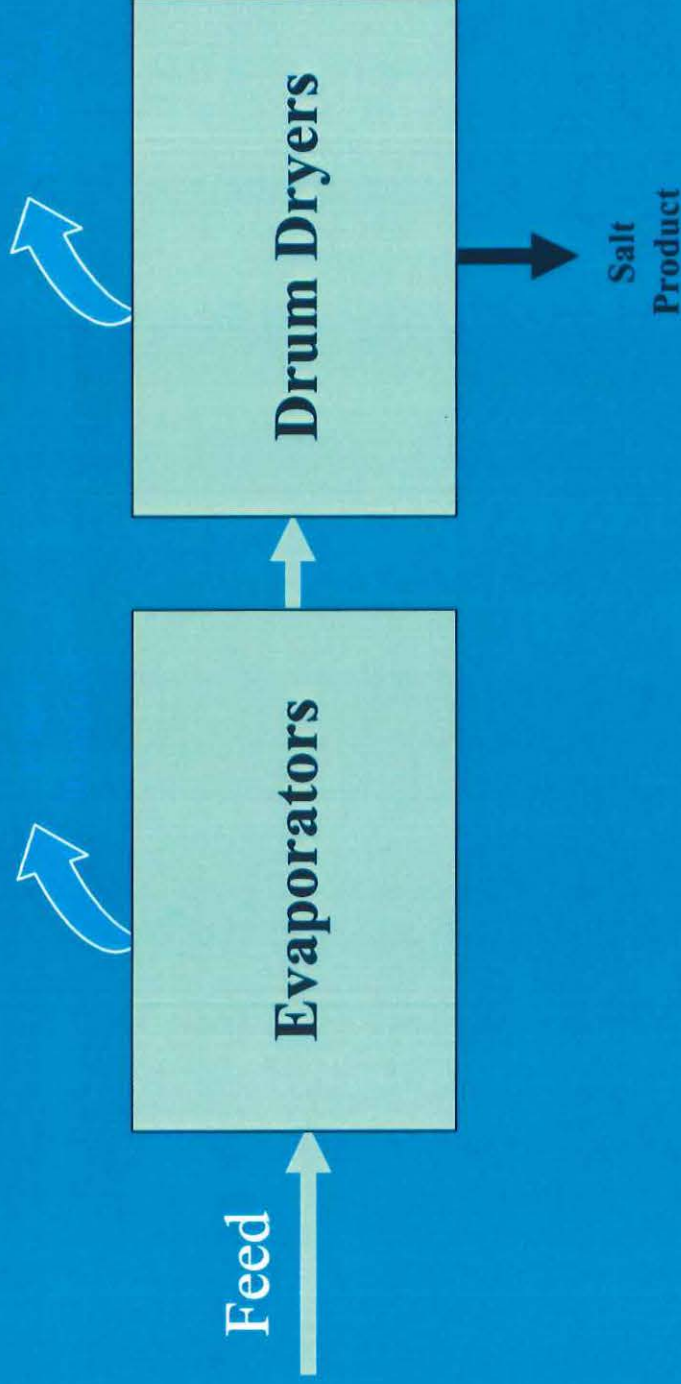
The Question:

- **Can the current BRA handle the anticipated brine production?**
 - **Estimate design capacity for BRA.**
 - **Estimate brine production rates (per munition type).**

Approximate Design Capacity of the BRA

- All PAS brines (LIC1, LIC2, MPF, and DFS) feed to 4 47,000 gallon brine storage tanks.
- Storage tanks feed 2 evaporators which concentrate the brine.
- Concentrated brine is fed to 3 drum dryers.
- Capacity of BRA was estimated by the quantity of water that can be removed in the evaporators and drum dryers.

Approximate Design Capacity of the BRA (Continued...)



$$\text{BRA Feed} = \text{Water Removed} + \text{Salt Product Produced}$$

Approximate BRA Capacity

- Single evaporator water removal rate - 2640 SCFM [RCRA Design Drawing UM-2-F501/502].
 - Total water removal rate for evaporators - **15,840 lb/hr.**
- Single drum dryer water removal rate - 9040 SCFM [RCRA Design Drawing UM-2-F501/502].
 - Total water removal rate for drum dryers - **7836 lb/hr.**
- Single drum dryer salt product generation rate - 796 lb/hr [RCRA Design Drawing UM-2-F501/502].
 - Total salt production rate - **2388 lb/hr.**

BRA Capacity = 26,064 lb/hr

Comparison with JACADS

- JACADS BRA had on evaporator and two drum dryers.
- Our analysis would suggest a total JACADS brine processing capacity of approximately **11,328 lb/hr.**
- JACADS data indicate maximum processing rate of **8,917 lb/hr.**

CONCLUSION: Our analysis appears to produce reasonable processing rates.

Brine Production Rates

- **Evaluated brine generation rates from RCRA M&E balances.**
- **Included processing requirements for all munitions components.**
- **Assumed brine generation rate will scale linearly with feed rates.**
- **Minimum brine generation rate set equal to idle rate.**

Brine Production Rates

Munition	Agent Type	LIC Brine Production (lb/hr)	MPF Brine Production (lb/hr)	DFS Brine Production (lb/hr)	Total Brine (lb/hr)	% of BRA Capacity
M55 Rocket	GB	6432.3507	0	1280.9728	7713.3235	0.2960741
M55 Rocket	VX	2643.2515	0	743.85374	3387.1052	0.1300133
M23 Mines	VX	4146.3004	0	620.2	4766.5004	0.182961
155-mm Projectile	GB	13261.828	1982.6756	620.2	15864.703	0.608963
155-mm Projectile	VX	5382.6212	1018.6331	620.2	7021.4543	0.2695169
8-in Projectiles	GB	11595.902	2134.929	620.2	14351.031	0.550861
8-in Projectiles	VX	5098.6719	1191.829	620.2	6910.7009	0.2652657
500-lb Bomb	GB	12138.944	1450.6946	0	13589.639	0.5216351
750-lb Bomb	GB	24727.479	3287.1754	0	28014.654	1.075336
Spray Tank	VX	9449.3837	784.61379	0	10233.998	0.3928296
Ton Containers	HD	51129.855	1137.3495	0	52267.205	2.0062646

Conclusion: With the indicated exceptions, the current BRA may be able to handle all brines generated from munitions processing.

Brine Production Rates With Continuous MPF Operation

Munition	Agent Type	LIC Brine Production n (lb/hr)	MPF Brine Production (lb/hr)	DFS Brine Production n (lb/hr)	Total Brine (lb/hr)	% of BRA Capacity Needed
M55 Rocket	GB	6432.3507	10675.5	1280.9728	18389	0.705851
M55 Rocket	VX	2643.2515	10675.5	743.85374	14063	0.53979
M23 Mines	VX	4146.3004	10675.5	620.2	15442	0.592738
155-mm Projectiles	GB	13261.828	10675.5	620.2	24558	0.942635
155-mm Projectiles	VX	5382.6212	10675.5	620.2	16678	0.640194
8-in Projectiles	GB	11595.902	10675.5	620.2	22892	0.878689
8-in Projectiles	VX	5098.6719	10675.5	620.2	16394	0.629294
500-lb Bomb	GB	12138.944	10675.5	0	22814	0.875727
750-lb Bomb	GB	24727.479	10675.5	0	35403	1.358935
Spray Tank	VX	9449.3837	10675.5	0	20125	0.772489
Ton Containers	HD	51129.855	10675.5	0	61805	2.372384

Conclusion: With the indicated exceptions, the current BRA may be able to handle all brines generated from munitions processing and continuous MPF operation.

Conclusions:

- **How toxic is the liquid brine?**
 - Above the drinking water standard.
 - Less metals in brine than in permitted air emissions.
 - Less hazardous than many materials currently being shipped through Umatilla county.
- **How much brine will be generated at the UMCDF?**
 - Between 2 and 25 tanker trucks per day.
- **Can the current BRA handle the anticipated brine production?**
 - Based on the RCRA design data it appears the current BRA can handle all brines.

7/26/02 EOC Meeting, Item H. Handout

UMATILLA CHEMICAL AGENT DISPOSAL FACILITY (UMCDF)



UMATILLA
chemical agent disposal facility

26 July 2002

**Presented to:
Environmental Quality Commission**

**Presented by:
Don E. Barclay
UMCDF Site Project Manager**

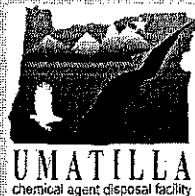
**Dave Nylander
WDC Environmental Manager**



PURPOSE



- **Update EQC on project status**
- **Update EQC on Brine Reduction Area status**
- **Acknowledge contributions by EQC and Oregon citizens in achieving the critical milestone of Surrogate Trial Burns**



PROJECT STATUS



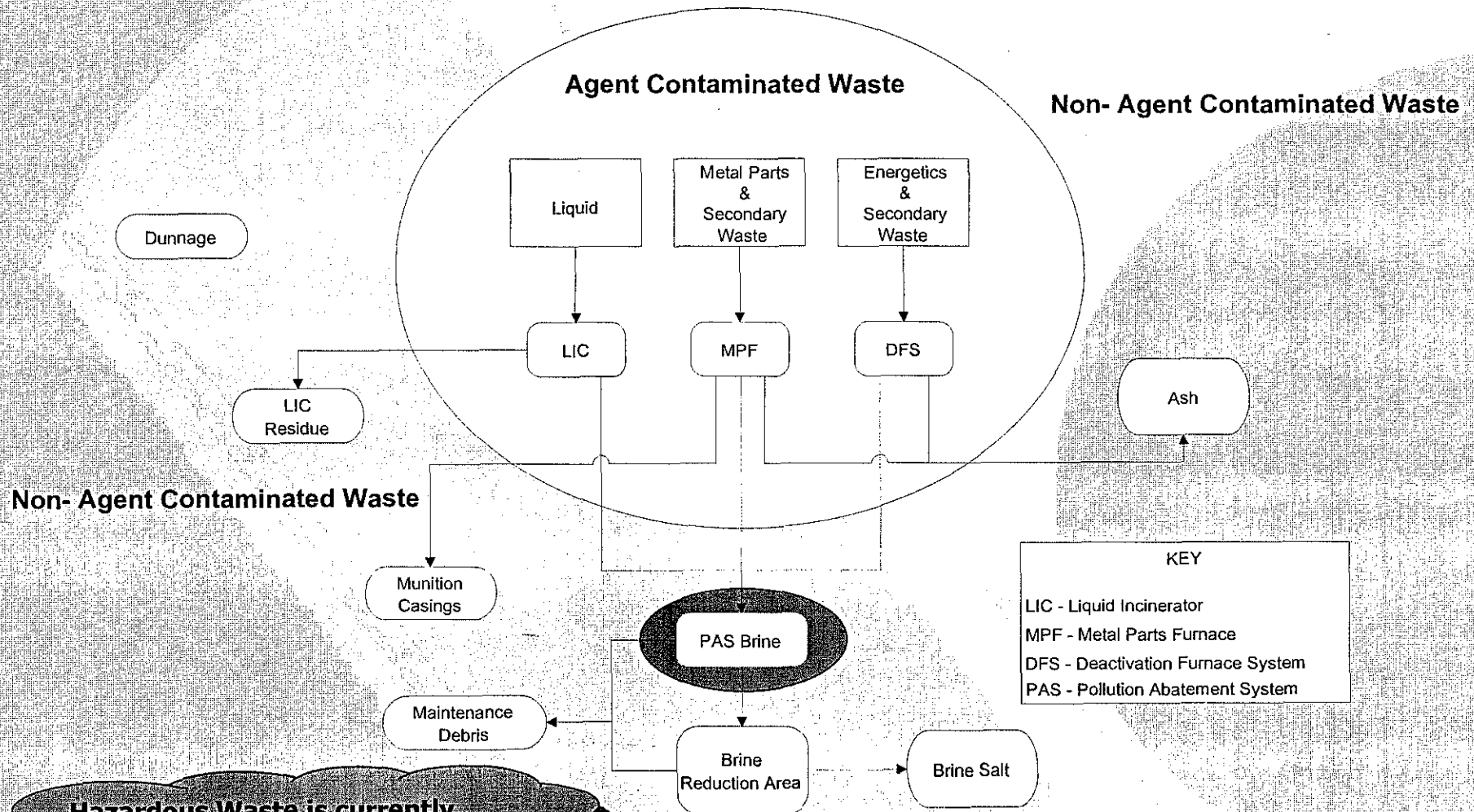
- **Schedule Management**
 - **Maintaining progress on Surrogate Trial Burns**

- **Safety**
 - **Expediently moving toward reducing risk to the public**

- **Environmental Stewardship**
 - **Effectively managing hazardous wastes**

- **Public Acceptance**
 - **Communicating project issues**

WASTE MANAGEMENT



Hazardous Waste is currently disposed offsite and onsite



BRINE REDUCTION AREA STATUS



- **During Systemization**
 - **Testing under way**
 - **Pollution Abatement System liquids shipped off-site for disposal in accordance with permit conditions and regulations**

- **During Agent Operations**
 - **Will be operational and we plan to use it**

Safe and Expeditious Agent Disposal



SUMMARY



- **Achieving the critical milestone of Surrogate Trial Burns has been well-received by citizens, media and other stakeholders**
- **Stakeholders play an essential role in keeping us moving safely towards expeditiously disposing of chemical weapons**

7/24/02 EQC Meeting Item H Testimony

STATEMENT BY JOSEPH KEATING ON BEHALF OF GASP
to the Environmental Quality Commission
July 26, 2002
Portland, OR

Speaking on behalf of GASP, Oregon Wildlife Federation, Karyn Jones, and others, we agree with the Umatilla Tribe's concern about the Army plan to eliminate the brine reduction area and the transport of liquid wastes. The malfunctions in the brine reduction area are one of the issues you failed to address in our original comments during the permitting process, and during our request for revocation. We sought to redress all of our concerns in this forum, and finding none, we now are seeking relief through our collective court actions to stop this dangerous State sanctioned plan.

We have in fact warned you (meaning the DEQ and the EQC) in numerous communications that the Army never intended to construct and operate the incinerators, and their related systems, as proposed and permitted in February 1997. The dunnage incinerator (DUN) and the brine reduction area (BRA) are perfect examples. Both of these systems were central to resolving the secondary waste problems at Umatilla, which would help Oregon avoid the "Hanford Syndrome" where liquid wastes remain homeless for generations, where the threat continues despite ongoing promises.

The Army has known about dunnage incinerator and brine reduction area problems since their discovery during testing and operation at the Johnston Atoll and Tooele, Utah incinerators. Yet they assured us that Umatilla burners are third or fourth generation, an integrated state-of-the-art, lessons-learned facility that would not be a dangerous neighbor. This is simply not true because hundreds of major modifications have been

made to the facility, including those where the installed modifications don't match the drawings in the files.

Based on Army assurances and staff recommendations, you found incineration as a best available technology. This determination, you said, is because *"the proposed facility uses engineering controls and state of the art pollution abatement systems which will undergo extensive testing before operations commence."* We can only hope that you now see this is simply not true. Answer these questions: Is off-site shipment now best available technology? Is neutralization for mustard agent best available technology? Are carbon filters the best available control technology? The bottom line is this: What you permitted in 1997 significantly differs from what was built, from how it will operate, and ultimately, from what Oregon is left with after the Army abandons the bunkers.

There is no excuse for the Army's efforts to mislead the public about functions of major components and systems for the Umatilla facility. What is shameful, however, is the State of Oregon's complacency with these actions.

If the DEQ and EQC do not reassess the Umatilla facility with all changes finally laid out on the table, then the public process for issuing the permit and the best available technology determination will have been a complete sham. Allowing the Army to so manipulate the process and substantially recreate the facility without re-permitting and without a new best available technology analysis is a violation of both federal and state law. Furthermore, it's an outrage for those in a leadership position to continue to cajole us into believing in a magic rainbow called incineration. The public's right to review and

have hearings, including a contested case hearing, on the "real" Umatilla facility must not be cavalierly tossed aside.

When thinking of the manipulations perpetrated by the Army and condoned by the DEQ, I cannot help but think of the television program "What's My Line": **Will the real Umatilla facility please stand up.** We ask that you reopen the permit along with the best available technology analysis and allow the public to see and comment for the first time on the "real" Umatilla facility.

In closing, we appreciate the invitation to present testimony and we only hope that this courtesy will continue when we bring our concerns to your attention.

Thank you.

State of Oregon
Department of Environmental Quality
Memorandum

Date: July 8, 2002
To: Environmental Quality Commission
From: Stephanie Hallock, Director. *S. Hallock*
Subject: Agenda Item I, Informational Item: The Proposed Oregon Air Toxics Program
July 25-26 EQC Meeting

Purpose of Item The purpose of this item is to update the Commission on the Department's progress in developing a state air toxics program.

Air toxics are generally defined as air pollutants known or suspected to cause serious health problems, including cancer, birth defects, lung and nerve damage. U.S. Environmental Protection Agency (EPA) analyses repeatedly show that air emissions of toxic chemicals pose significant threats to public health. In a recent study, the EPA has estimated that there are sixteen toxic air pollutants in Oregon's air at concentrations above generally acceptable health risk levels. Six of the pollutants exceed these levels more than ten times. The highest risks from air toxics are estimated to occur in urban areas where the combined emissions from mobile sources, such as cars, and small area-wide sources, such as gas stations and home heating with wood, are greatest. However, residents in rural areas are also exposed to elevated levels of air toxics from various forms of burning.

Since the federal Clean Air Act was amended in 1990, the EPA has adopted a number of regulations primarily aimed at reducing releases from various large industrial sources. The Department has implemented these federal technology-based emission regulations within Oregon. While effective, these emission reductions address only part of the air toxics problem. After more than ten years, much remains to be done to reduce the harmful health effects of toxic air pollution. After analyzing the areas not addressed by the federal air toxics program, the Department remained most concerned about its inability to scientifically assess air toxics problems, reduce potentially high pollutant levels in urban areas or hot spots, and resolve known health risks from air toxics

statewide. The draft air toxics program proposes an innovative approach to reduce Oregonian's exposure to air toxics through community-based planning. The draft rules establish a framework for adopting concentrations of concern or benchmarks, identifying geographic areas with the highest risk from air toxics, and developing and implementing emission reduction plans. The draft rules also provide criteria for developing strategies for categories of similar sources, as well as a Safety Net Program to address rare cases of individual industrial sources of toxic air emissions that are otherwise not addressed by the program but have the potential to cause harm to public health.

The draft rules set a general risk reduction goal for geographic areas. To the extent feasible, local emission reduction plans are to reduce individual pollutants to levels at or below one in a million excess cancer risk, or the levels that cause adverse non-cancer effects, in ten years after plan approval. Progress in achieving local air toxics reduction goals will be reviewed by the Department every three years, based on monitoring, modeling and emission inventory data.

**Stakeholders
Involved**

The Department briefed the Commission on air toxics problems in the fall of 1999, after receiving policy recommendations from its first advisory committee, the HAP Consensus Group (HCG). The Department recently completed work with its second advisory committee, the Air Toxics Advisory Committee (ATAC), tasked with developing draft rule language for the HCG recommendations. See Attachment A for HCG and ATAC membership.

Key Issues

1. Until a program is established to address air toxics problems on a geographic basis, stakeholders may continue to focus on the industrial point source permitting program, instead of strategies to reduce much greater emissions from area and mobile sources.
2. Ambient benchmark concentrations will be established at one in a million excess cancer risk or a non-cancer hazard quotient of one. These concentrations will serve as overarching air quality goals for local planning and for measuring program progress. Because benchmarks will drive key elements of the program, their adoption will be a significant undertaking,

- requiring the aid of a toxicologist.
3. Because air toxics concentrations exceed one in a million excess cancer risk in all parts of the state, the Department will prioritize the highest risk areas for geographic reduction planning. Areas exceeding ten in a million excess cancer risk or the non-cancer hazard quotient of one with serious and irreversible effects will be identified and addressed before lower risk areas. The Portland metropolitan area will be addressed first under prioritization criteria. The Department estimates that it will take 12 to 15 years to complete emission reduction plans for the nine priority areas initially identified in Oregon.
 4. Where a group of similar sources contribute to air toxics concerns in multiple geographic areas, the Department may propose categorical approaches to apply statewide. Effectively integrating the geographic and categorical approaches will be key to achieving timely and efficient reduction in air toxics risks.
 5. Proposed rules include deadlines to ensure progress in setting benchmarks and identifying geographic areas. Other accountability measures include evaluation of local emission reduction efforts every three years and review of benchmark levels every two years.
 6. The Safety Net Program applies only to exceptional cases of existing sources where the Department has sufficient monitoring information to show that the source is responsible for exposure to air toxic concentrations above benchmarks.
 7. A year after emission reduction measures are placed into its permit, a Safety Net Source unable to reduce excess cancer risk below 100 in a million and very serious non-cancer health effects levels, will be required to cease the operations causing these risks.

Next Steps

This information item is timely because the Department will be asking for public comment on draft state air toxics program rules in August 2002, and plans to bring the rules to the Commission for adoption in December 2002. Because the rules outline a new program, introducing them as an information item now will provide

background for proposed adoption later this year. In fall 1999, members of the Commission expressed interest in an update after the rules had been drafted.

**EQC
Involvement**

The Department plans to bring draft state air toxics program rules to the Commission for adoption in December 2002. After program rules are adopted, the Department plans to propose air toxics benchmarks for adoption in a separate rulemaking action. These benchmarks will be developed in consultation with the Air Toxics Science Advisory Committee established by the proposed rules. Once a community has developed a local emission reduction plan, it must be approved by the Commission if it contains proposed administrative rules. Approval of local emission reduction plans that do not contain administrative rules may be delegated to the Director. Any source category strategies proposed as administrative rules will also require action by the Commission.

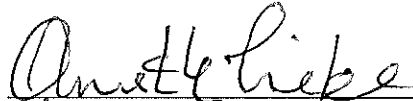
Attachments

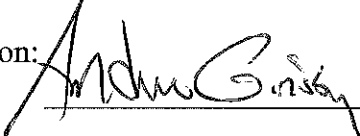
Attachment A: Advisory Committee Membership Lists

**Available Upon
Request**

1. Air Toxics Advisory Committee Report
2. Proposed Air Toxics Rule Implementation Plan
3. Draft Oregon Air Toxics Program Rules

Approved:

Section: 

Division: 

Report Prepared By: Sarah Armitage
Phone: (503) 229-5186

ATTACHMENT A

HAP Consensus Group and Air Toxics Advisory Committee Membership Lists

HAP Consensus Group

Agency

Barbara Cole
Lane Regional Air Pollution Authority

Ron Hall
Oregon Health Division

Tom Bispham
Port of Portland

Lynn Beaton
Oregon Economic Development
Department

George Davis
Department of Environmental Quality

Monica Kirk
EPA Oregon Operations Office

Public Interest
George Feldman
Physicians for Social Responsibility

Paul Engelking
University of Oregon

Jim Bennett
Swan Island Airshed Committee

Dana McCullough
Interested Citizen

Sarah Doll
Oregon Environmental Council

Bob Amundson

Interested Citizen

Business
Susan Mulholland
Associated Oregon Industries

Mark Morford
Stoel Rives LLP

Rich Barrett
Willamette Industries

Lowell Miles
Miles Fiberglass

Dan Riley
Western States Petroleum Association

Dana Zanone
Myers Container Corporation

Facilitator
Paul Morris
McKeever/Morris, Inc.

Air Toxics Advisory Committee

Chair

Peter S. Spencer, PhD.
Director
Center for Research on Occupational
and Environmental Toxicology
Oregon Health Sciences University

Government

John A. Dougherty, PhD.
Program Design and Evaluation
Multnomah Co. Health Division

Theodora Tsongas, PhD.
Env. & Occupational Epidemiology
Oregon Health Division

Brian Jennison, PhD.
Director,
Lane Regional Air Pollution Authority

Willie Tiffany
League of Oregon Cities

Public Interest

Bob Amundson, PhD.
Oregon Toxics Coalition

Sarah Doll
Oregon Environmental Council

George Feldman, MD.
Physicians for Social Responsibility

Jeri Sundvall/ Linda George
Environmental Justice Action Group

Gregory R. McClarren
Chair, Bend Clean Air Committee

Business

JR Carlson
Lukas Autobody & Repair, Inc.

Mike Sherlock/Nicoletta Endres
Oregon Gas Dealers Association

David Bartz, Esq.
Associated Oregon Industries
Schwabe Williamson Wyatt

Mark Morford, Esq.
Stoel Rives LLP

Wayne Lei, PhD.
Director of Environmental Affairs
Portland General Electric

AIR QUALITY PROGRAM: STATUTORY OVERVIEW

	Federal Lead	Federal Delegated	EPA Approved State Efforts	State Initiative
Ambient Standards	<ul style="list-style-type: none"> National Ambient Air Quality Standards (CAA §109) National Engine and Fuel Standards (CAA Title II) 	<ul style="list-style-type: none"> New Source Performance Standards (CAA §111; ORS 468A.025) 	<ul style="list-style-type: none"> Attainment and maintenance Plan SIPs (CAA §110 & Title I, Part D; ORS 468A.035) SIP Control Strategies (CAA §110), e.g.: <ul style="list-style-type: none"> Air Contaminant Discharge Permit (ACDP) (ORS 468A.040-060) Major New Source Review (ORS 468A.025) Vehicle Inspection Program (ORS 468A.350-455) Employee Commute Options (ORS 468A.363) Woodstove Curtailment (ORS 468A.460-520) Reasonably Available Control Technology (ORS 468A.025) 	<ul style="list-style-type: none"> Oregon Ambient Air Quality Standards (Particle fallout, Calcium Oxide, Sulfur Dioxide) (ORS 468A.025) Growth allowances (ORS 468A.035)
Increments and Visibility	<ul style="list-style-type: none"> Class I & II increments (CAA Title I, Part C) National Engine and Fuel Standards (CAA Title II) 	<ul style="list-style-type: none"> New Source Performance Standards (NSPS) (CAA §111; ORS 468A.025) 	<ul style="list-style-type: none"> Visibility and Regional Haze SIPs (CAA Title I, Part C) SIP Control Strategies (CAA §110) e.g.: <ul style="list-style-type: none"> Smoke Management, Field Burning, Open Burning (ORS 468A.550-620) Major New Source Review/PSD (ORS 468A.025) Air Contaminant Discharge Permit (ACDP) (ORS 468A.040-060) Emission Guidelines (CAA §111d; ORS 468A.025) Federal Operating Permit (CAA Title V; ORS 468A.300-330) 	<ul style="list-style-type: none"> Prevention Plans (ORS 468A.035) Columbia River Gorge Air Quality Protection (ORS 468A.025) Nuisance, Odors, Best Work Practices Agreement (ORS 468A.025)
Air Toxics	<ul style="list-style-type: none"> List of HAPs (CAA §112b) and source categories (CAA §112c) Accidental Releases (CAA §112f) National Fuel Standards (CAA Title II) 	<ul style="list-style-type: none"> National Emission Standards for Hazardous Air Pollutants (NESHAP) (CAA §112d; ORS 468A.025) 	<ul style="list-style-type: none"> Urban Air Toxics (CAA §112k; ORS 468A.025) Federal Operating Permit (CAA Title V; ORS 468A.300-330) Air Contaminant Discharge Permit (ORS 468A.040-060) 	<div style="border: 1px solid black; padding: 5px;"> <ul style="list-style-type: none"> State Air Toxics Program (ORS 468A.025) Clean Diesel Initiative </div>
Asbestos		<ul style="list-style-type: none"> Asbestos NESHAP (CAA §112; ORS 468A.025 & 468A.700-760) 		<ul style="list-style-type: none"> Asbestos Abatement (ORS 468A.700-760)
Acid Rain	<ul style="list-style-type: none"> Emission trading (CAA Title IV) 		<ul style="list-style-type: none"> Federal Operating Permit (CAA Title V; ORS 468A.300-330) 	
Stratospheric Ozone	<ul style="list-style-type: none"> Chlorofluorocarbon phase-out (CAA Title VI) 		<ul style="list-style-type: none"> Federal Operating Permit (CAA Title V; ORS 468A.300-330) 	<ul style="list-style-type: none"> Chlorofluorocarbon, Halon and Aerosol Control (ORS 468A.625-645)
Climate Change	<ul style="list-style-type: none"> Energy Star/voluntary programs 			<ul style="list-style-type: none"> Oregon Office of Energy STAPPA/ALAPCO Harmonizing Air Quality and Climate Protection

Date: July 16, 2002
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item J, Action Item: Response to Oregon Environmental Council Petition for Air Quality Rulemaking, July 26, 2002 EQC Meeting

Introduction This document responds to the Oregon Environmental Council (OEC) Petition for Permanent Rulemaking to Amend OAR 340-200 and 340-222 (Petition). Procedures related to rulemaking petitions are specified in OAR 340-011-0046 and 137-001-0070.

Petition Request The OEC has petitioned the Environmental Quality Commission (EQC, Commission) to “direct the Department to use its existing authority under OAR 340-212-0120 to require monitoring for mercury emissions and commence permanent rulemaking establishing air emission limitations for mercury in Oregon.”¹ The Petition also asks the EQC to “direct the Department to initiate Permanent Rulemaking to amend OAR 340-222 and OAR 340-200 to establish Plant Site Emission Limits (“PSELs”) for mercury for any facility that discharges more than one pound of mercury per year.”²

DEQ Recommendations in Response to Petition The Department recommends that the Commission deny the Petition and direct the Department to continue to address mercury through current initiatives.

Because of the human health risks created by numerous sources releasing mercury to the air, land and water, the Department believes it is necessary to take a holistic approach to removing mercury from our environment. Accordingly, the Department established a cross-media team to develop a comprehensive mercury reduction strategy. Initially, the team is focusing on characterizing the nature and extent of mercury discharges from all sources of mercury. This information will establish baseline conditions and enable the Department to develop cost-effective strategies to reduce mercury releases

¹ See point 24 in OEC petition.
² See point 28 in OEC petition.

and remove mercury contamination from the environment. The team is also coordinating with other agency efforts that address mercury, such as the development of Total Maximum Daily Loads for water bodies, identification and preliminary assessments of abandoned mines, and the adoption of new air toxics rules. The Department believes that this comprehensive approach will be most successful in reducing health risks from mercury.

Addressing mercury emissions to the air

The Department intends to address air pollution sources of mercury through a new state air toxics program that was developed over the past several years with the help of two advisory committees. This program, which will be proposed for adoption shortly, represents a broad consensus on the best way to approach toxic air pollution. The new program provides a scientific basis for selecting pollutants, sources and geographic areas of concern. The program has three methods to address identified concerns, including a geographic approach (to address the cumulative impacts of multiple sources of a toxic air pollutant in one area), a categorical approach (to address emissions from a group of similar sources throughout the state), and a safety-net approach (to address any monitored health-risks not otherwise addressed by federal or state requirements). These rules will provide the Air Program with the tools needed to implement emission reduction strategies for mercury and other toxic chemicals.

A central feature of the new air toxics program is the use of sound science to guide emissions reduction planning. The Department recently completed its second inventory of air toxics emissions in Oregon, including emissions from point, area and mobile sources of mercury. This information will support both the categorical and geographic approaches under the new air toxics program. Because of the Department's mercury initiative, the Air Program is currently reviewing the mercury emission inventory to identify areas where further testing, monitoring or other studies would be valuable in improving the information, again, to identify cost-effective strategies for mercury reduction. The Department will use its existing authority under OAR 340-212-0120 as needed to collect this information.

The Department also intends to include mercury in the first round of benchmarks to be proposed after adoption of the new air toxics program. Benchmarks support the geographic and safety-net approaches of the new program, and also provide the yardstick to measure progress in improving

air quality. Mercury represents a particular challenge, because the benchmark needs to take into account deposition and bioaccumulation, and that science is still emerging.

After selecting point, area or mobile source categories of mercury emissions to be addressed under the program, a variety of regulatory and voluntary approaches can be used. The Department intends to develop these approaches on a category-specific basis, considering approaches used in other states and input from the public. The Department does not believe that Plant Site Emission Limits (PSELs) are the appropriate regulatory tool to address mercury or other air toxics, because their primary purpose is to allow for more efficient compliance with other existing emission standards, rather than to set new emission standards. Therefore, again, the Department recommends that the Commission deny the Petition.

Prepared by:

Greg Fande

Approved:

Section:

Daniel Kellum for Ameliche

Division:

Andrew Ginsberg

Mercury Activities By Key Goals

Activities Underway

New Activities

Activities Underway	New Activities
<p>1. Improve Mercury Data</p> <p><u>Air Quality</u> Place high priority on improving mercury emission factors and activity levels used to estimate air emissions</p> <p><u>Land Quality (Cleanup)</u> Participate in interagency Dept of Geology-chaired task force to prioritize former mine sites</p> <p>Give priority to assessment of mine sites because many sites have known or suspected mercury</p> <p><u>Land Quality (Solid Waste)</u> Evaluate data related to mercury-containing products as part of a landfill waste composition study</p>	<p>1. Improve Mercury Data</p> <p><u>Air Quality</u> Review approx 20 HAP Title V permits for mercury information to verify if any mercury info has been updated since original application (source test data, change in emission factor)</p> <p><u>Land Quality (Solid Waste)</u> Develop list of top mercury-containing products</p> <p><u>Lab</u> Update LASARFACE (tool to extract data from lab Dbase) with mercury data. Data includes fish, sediment, water samples.</p> <p><u>All (all divisions)</u> Characterize mercury sources, activities that generate mercury, estimate emissions</p> <p>Analyze literature for emission estimates and state, national, international data on mercury reduction strategies</p> <p>Review permits for sources with cross program discharges</p>
<p>2. Prevent Mercury Releases</p> <p><u>Land Quality (Hazardous Waste)</u> Co-sponsor switching mercury switches out of vehicles with auto repair shops</p> <p>Develop auto mercury switch removal factsheet as required by HB 3007</p> <p>Collect mercury from school labs</p> <p><u>Land Quality (Solid Waste)</u> Provide technical assistance and funding to county CEG/HHW planning efforts focusing on mercury-containing wastes</p> <p>Fund counties building permanent CEG/HHW collection facilities</p> <p>Fund grant that promotes recycling of fluorescent tubes in commercial buildings</p> <p>Conduct HHW collection events with mercury thermometer collection.</p> <p>Sponsor mercury collection at Southern Oregon mining conference in July, 2002</p> <p><u>Water Quality</u> Complete mercury TMDL for Willamette River</p> <p>Include toxic prevention and remediation for toxics (not limited to mercury) into funding for nonpoint source grants under Clean Water Act Section 319 grants distrib by DEQ</p>	<p>2. Prevent Mercury Releases</p> <p><u>Air Quality/Land Quality (Solid Waste)</u> Partner with Municipal Waste Combustors and garbage haulers that service combustors to explore feasibility of product waste separation to reduce (toxic, not just mercury) releases</p> <p><u>Lab</u> For labs DEQ accredits, recommend the labs use test methods that do not contain mercury</p> <p><u>Water Quality</u> Conduct representative study of suspected mercury point sources to quantify the nature of ongoing mercury discharges.</p> <p><u>All (divisions)</u> Meet with DEQ staff statewide to explore how to incorporate toxics activities in ongoing work</p> <p>Explore grant opportunities to fund toxics work</p>
<p>3. Cleanup Mercury</p> <p><u>Land Quality (Cleanup)</u> Develop agreements with Federal Land Managers on investigation and cleanup of former mines (includes mercury-related mines)</p>	<p>3. Cleanup Mercury</p> <p><u>Land Quality (Cleanup)</u> Submit legislative proposal to expand state statutes defining how Orphan Site Account monies may be used for possible cleanup partnerships with landowners and others interested in mine cleanups. Focus Orphan Site Account work in next biennium primarily on abandoned and inactive mines.</p>
<p>4. Promote Public Awareness</p>	<p>4. Promote Public Awareness</p> <p>All (divisions)</p>

Protecting Human Health, Environment from Toxics

Background

This fact sheet summarizes actions the Oregon Department of Environmental Quality (DEQ) is taking to protect human health and the environment from toxic substances.

In September 1999, the Governor signed Executive Order EO-99-13, which directs DEQ to deal with the problem of persistent bioaccumulative toxics (PBTs) in the environment. Specifically, the Executive Order directs DEQ to:

- Outline a range of approaches that might be undertaken in Oregon to identify, track and eliminate the release of PBTs into the environment by the year 2020
- Evaluate state, national and international efforts to eliminate PBTs
- Use available information to identify which PBTs are generated in Oregon, determine what activities generate PBTs, estimate the amounts being generated, and identify missing data
- Identify ways to utilize education, technical assistance, pollution prevention, economic incentives, government procurement policies, compliance, and permitting activities to eliminate PBT releases

Actions taken by DEQ to address toxics

DEQ is carrying out the goal of the Executive Order in a variety of ways. DEQ has formed an agency-wide toxics work group to identify strategies for reducing toxics. The work group is developing strategies to reduce toxic releases to air, water and land, focusing on toxics that pose the greatest hazard and have the longest-lasting impact on the environment and human health. This effort will focus initially on mercury.

Actions DEQ is currently taking include:

- Funding and co-sponsoring efforts to remove and properly manage products containing mercury and other toxics, including:
 - Local collection centers to help small businesses and households properly manage toxics
 - Current work with the auto recycling industry, car crushers and steel mills to remove mercury car switches before crushing cars

- Promotion of fluorescent lamp recycling to commercial and industrial facilities
- Removal of mercury from school laboratories
- Mercury thermometer collection events
- Identifying sources of mercury pollution in the Willamette River, and developing a plan to reduce these sources
- Developing proposed legislation to improve Oregon's ability to clean up mercury contamination from abandoned and inactive mine sites

Other toxics-related activities include:

- Developing water quality standards for 250 toxic pollutants. Once adopted by the Oregon Environmental Quality Commission, DEQ will use these water quality standards to restrict pollutant discharges into Oregon's waters
- Developing a community-based program to reduce people's exposure to toxic air pollution

What's next

DEQ is committed to work collaboratively with industries, government agencies, citizens and environmental organizations to identify Oregon's biggest toxics problems, and develop cost-effective solutions.

DEQ's toxics work is being carried out under existing authorities such as the federal Clean Air Act, federal Clean Water Act, and Oregon's Toxic Use Reduction Law. DEQ's current emphasis is to develop and implement a range of approaches to significantly cut toxic releases. As DEQ outlines the range of approaches that it might take in Oregon to identify, track and eliminate the release of PBTs into the environment by the year 2020, the agency may identify the need for additional statutory authorities and additional resources, for DEQ and for other agencies or entities.

For more information:

For more information, contact Keith Johnson, DEQ Land Quality Division, Portland, at (503) 229-6431. Alternative formats of this document can be made available by contacting DEQ's Office of Communications & Outreach, Portland, at (503) 229-5696.



State of Oregon
Department of
Environmental
Quality

Land Quality Division,
Headquarters,
811 SW 6th Ave.
Portland, OR 97204
Phone: (503) 229-6431
(800) 452-4011
Fax: (503) 229-6977
Contact: Keith Johnson
www.deq.state.or.us

EXECUTIVE ORDER NO. EO - 99 - 13

ELIMINATION OF PERSISTENT, BIOACCUMULATIVE, AND TOXIC POLLUTANTS

WHEREAS, the quality of Oregon's environment today is the result of many years of combined efforts by the public, government agencies, and industry.;

WHEREAS, recent international studies have concluded that contaminants that are persistent, bioaccumulative, and toxic present the greatest risk to human health and the environment, and are not adequately addressed;

WHEREAS, these persistent, bioaccumulative, and toxic pollutants (PBTs) are associated with a broad range of adverse human health impacts such as cancer, effects on the nervous system, reproductive and development problems and hormonal disruption;

WHEREAS, PBTs accumulate in the tissues of plants and animals and become increasingly concentrated as they move up the food chain;

WHEREAS, PBTs remain an environmental and health concern long after they are used, generated as waste, or released into the environment;

THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

- 1) In order to address the presence of the most threatening chemical substances in Oregon's environment, the Oregon Department of Environmental Quality shall lead a state-wide effort to eliminate the releases of PBTs into the environment.
- 2) Oregon's initial goals in this effort shall be to:
 - Outline a range of approaches that might be undertaken in Oregon to identify, track and eliminate the release of PBTs into the environment by the year 2020;
 - Evaluate state, national, and international efforts to eliminate PBTs;
 - Use available information to identify which PBTs are generated in Oregon, determine what activities generate PBTs, estimate the amounts being generated, and identify missing data; and
 - Identify ways to utilize education, technical assistance, pollution prevention, economic incentives, government procurement policies, compliance, and permitting activities to eliminate PBT releases.

EXECUTIVE ORDER NO. EO - 99 - 13

Page Two

- 3) All Oregon citizens, businesses, and governments are encouraged to participate in efforts to implement this Executive Order.

Done at Salem, Oregon, this 24 day of September, 1999.

/S/

John A. Kitzhaber, M.D.

GOVERNOR

ATTEST:

/S/

Phil Keisling

SECRETARY OF STATE

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** April 22, 2002
From: Stephanie Hallock, Director
Subject: Questions and Answers on the Governor's Executive Order on Persistent, Bioaccumulative, and Toxic Pollutants

1. What is the Governor's Executive Order on Persistent, Bioaccumulative and Toxic Pollutants (PBTs)?

The Governor's 1999 Executive Order calls on DEQ to:

- "Outline a range of approaches that might be undertaken in Oregon to identify, track and eliminate the release of PBTs into the environment by the year 2020;
- "Evaluate state, national and international efforts to eliminate PBTs;
- "Use available information to identify which PBTs are generated in Oregon, determine what activities generate PBTs, estimate the amounts being generated, and identify missing data; and
- "Identify ways to utilize education, technical assistance, pollution prevention, economic incentives, government procurement policies, compliance, and permitting activities to eliminate PBT releases."

2. What actions is DEQ taking to protect human health and the environment from persistent toxics?

Protecting human health and the environment from toxics is one of DEQ's Strategic Directions. DEQ formed a cross-agency toxics workgroup to identify strategies for reducing toxics. The workgroup provides the agency a centralized mechanism to stay focused on the key priority of protection from toxics. DEQ is currently:

- Identifying sources of mercury pollution in the Willamette River, and developing a plan to clean up or reduce those sources (i.e., the Willamette TMDL and water quality improvement plan).
- Developing proposed legislation to improve Oregon's ability to clean up mercury contamination from abandoned and inactive mine sites.

Attachment
Questions and Answers on the Governor's Executive Order

- Developing water quality standards for 250 toxic pollutants. Once adopted by the Environmental Quality Commission, DEQ will use these standards to restrict toxic pollutant discharges into Oregon's waters.
- Developing a community-based program to reduce people's exposure to toxic air pollution.
- Funding and co-sponsoring efforts to remove and properly manage products containing mercury and other toxics, including:
 - Local collection centers to help small businesses and households properly manage toxics
 - Work with the auto recycling industry, car crushers and steel mills to remove mercury car switches before car crushing
 - Promotion of fluorescent lamp recycling to commercial and industrial facilities
 - Removal of mercury from school laboratories
 - Mercury thermometer collection events
- Developing strategies to reduce toxic releases to air, water and land, focusing on toxics that pose the greatest hazard and have the longest lasting impact on the environment and human health. This effort will focus initially on mercury.
- Adopting rules for labeling mercury-containing thermostats to help homeowners and building contractors dispose of thermostats correctly.

3. Why isn't DEQ banning or phasing out PBT discharges ("zero discharge")?

It is appropriate to set a long-term goal to eliminate the release of PBTs. DEQ is committed to working collaboratively with industries, government agencies, citizens and environmental organizations to identify Oregon's biggest toxics problems, and develop cost-effective solutions.

DEQ's toxics work is being carried out under existing authorities such as the Federal Clean Air Act, Federal Clean Water Act and Oregon's Toxics Use Reduction Law. DEQ's current emphasis is to develop and implement a range of approaches to significantly cut toxic releases. As we outline the range of approaches that might be undertaken in Oregon to identify, track and eliminate the release of PBTs into the environment by the year 2020, we may identify the need for additional statutory authorities and additional resources, for DEQ or for other agencies or entities.

Clean air
Clean water
Clear thinking



Oregon Environmental Council

July 10, 2002

Environmental Quality Commission
C/o Stephanie Hallock
Oregon Department of Environmental Quality
811 SW Sixth Ave
Portland, OR 97204

Dear Commissioners:

The Oregon Environmental Council, a not-for-profit environmental organization, is extremely concerned about the discharge of persistent, bioaccumulative and toxic (PBT) chemicals in Oregon. Today we are filing a petition for permanent rulemaking to address one aspect of this problem – the on-going, yet largely unregulated discharge of mercury to the air. In addition to filing the attached petition, we would like to take this opportunity to urge the Commission to take three additional steps to address this serious problem.

Background

As you know, mercury and other persistent, bioaccumulative and toxic pollutants are of special concern because they persist for decades in the environment and build up in the food supply of humans and wildlife. They are linked to a number of health problems, including cancer, birth defects, disruption of the hormone system, and neurological damage.

Even in small quantities, mercury and other PBTs can cause significant health and ecological problems. More specifically, mercury is a potent neurotoxin that can affect the brain and nervous system, leading to learning disabilities, lowered intelligence, impaired hearing or poor coordination. Unborn and young children are the most vulnerable to the toxic effects of mercury.

Governor Kitzhaber signed an Executive Order in September 1999 requiring DEQ to lead a state-wide effort to eliminate the releases of PBTs into the environment by the year 2020. OEC has met Director Hallock, several Division Administrators, and others multiple times over the past three years and we have outlined several specific action steps to reduce and ultimately eliminate the discharge of PBTs.

Unfortunately, we have seen little progress from DEQ despite the Executive Order and the Department's strategic plan focus on protecting human health and the environment from toxics. In fact, in the last three years, the only progress we have seen is the agency's approval of a "Short Term Mercury Activities" Plan, which focuses almost entirely on compiling data. At this rate, we fail to see how DEQ will ensure that we get to zero discharge of mercury, much less other PBTs, by the year 2020.

520 SW 6th Avenue, Suite 940
Portland, Oregon 97204-1535
Voice (503) 222-1963 Fax (503) 222-1405
oec@orcouncil.org www.orcouncil.org

BOARD OF DIRECTORS

President

Jesse Reeder
Lake Oswego

Vice President

James Whitty
Portland

Treasurer

Carl Lamb
Klamath Falls

Secretary

Dorothy Fisher Atwood
Lake Oswego

Peter D. Bloome
Corvallis

Nik Blosser
Portland

Angus Duncan
Portland

David Engels
Aurora

Steve Greenwood
Eugene

Jerome Lidz
Eugene

Steve Novick
Portland

Gary Oxman
Portland

Amy Patton
Ashland

Susan Reid
Ashland

Martin Winch
Bend

Executive Director
Jeff Allen

In Oregon, several major facilities that would be expected to discharge PBTs into the air or water are not regulated for that chemical discharge. This means that not only is there no permit limit on how much they discharge, but that there is also no permit requirement for monitoring these chemical(s) of concern.

Petition for Rulemaking

The attached Rulemaking Petition to the EQC focuses on one aspect of the regulatory gap concerning PBTs. Specifically, the petition urges that the Commission direct DEQ use its existing authority to require facilities to monitor for mercury emissions, and proposes rule amendments to establish emission limits for mercury for any facility that discharges more than one pound of mercury in a year. This petition is necessary because mercury is a persistent and toxic pollutant, and the public and environment are unprotected from potential impacts from mercury air emissions.

OEC Urges the EQC to Take Additional Steps

In addition to granting the attached petition, OEC would like to take this opportunity to urge the Commission to take the following additional specific steps to address the on-going discharge of persistent pollutants in Oregon:

1. **Adopt Specific Mercury Reduction Goals as a Matter of State Policy.** Late last year, the Oregon Mercury Solution Team, a broad-based stakeholder group convened by OEC endorsed the following benchmarks for mercury reduction:

- By 2006, reduce all mercury releases 50% from 2001 levels
- By 2011, reduce all mercury releases 75% from 2001 levels
- By 2020, achieve 100% reduction.

We urge the Commission to adopt these same reduction goals as a matter of state policy, which will help guide the state's efforts to reduce mercury emissions from all sources of mercury and all media, including air, water and land. With these reduction goals established, DEQ will be able to develop a longer-term strategy. If the endpoint we are striving for is zero discharge by 2020, it is crucial to identify the steps we will need to take to get there.

2. **Deny DEQ's Request for Commission Approval of the New Stormwater Rules, and Direct DEQ Staff to Revise the Rules to Address the Discharge of PBTs.** Many PBTs are washed into the environment when it rains. Nonetheless, DEQ has failed to use its stormwater authority to address some key contaminants of concern, such as mercury and dioxin. Ignoring potential mercury discharges via stormwater in the Willamette Basin is particularly problematic since the entire mainstem of the Willamette is water quality limited for mercury under the Clean Water Act. Unfortunately, DEQ's proposed stormwater rules (which are to be under consideration by the Commission at its July meeting) do not require monitoring or best management practices to address the runoff of mercury or other PBTs in stormwater. OEC provided

written comments on DEQ's proposed stormwater rules urging the agency to address these shortfalls.

Under a law passed by the 2001 Legislature, DEQ has the express authority to require auto wrecking yards, which are a likely source of mercury pollution due to the use of mercury in automotive switches, to remove mercury switches before cars are crushed. Removing these switches should be a best management practice required of these facilities via stormwater permits.

Therefore, we strongly urge the Commission to force DEQ to adopt a stormwater rule that will:

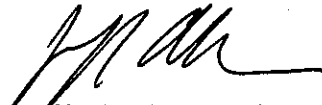
- 1) Require the identification of industry sources that would be expected to release mercury and other PBTs, and
 - 2) Include monitoring requirements and best management practices for those facilities that would be expected to release mercury and other PBTs.
3. **Eliminate Mixing Zones for PBTs.** DEQ should pass a rule to phase out existing mixing zones for PBTs and prohibit new mixing zones for PBTs. Using a mixing zone to "dilute" PBT discharges is not appropriate because the effects of these chemicals are not mitigated by dilution. PBTs, due to their persistent and bioaccumulative nature, are simply not compatible with mixing zones.

Several Midwestern states and the U.S. EPA have already taken this important step in the Great Lakes. For example, the EPA rule for the Great Lakes prohibits mixing zones for most existing discharges of PBTs after November 15, 2010.

The EQC has a key role to play in reducing mercury discharges in Oregon. Therefore, we strongly urge the Commission to take a leadership role and take the steps we have outlined above. Passage of the Mercury Reduction Act by the 2001 Legislature was a step in the right direction, and OEC is currently developing a legislative package for the 2003 Legislature that will address mercury in products, mercury from point sources, and mercury from abandoned mines. In the meantime, we hope the Commission will take action to ensure Oregon is moving down the path toward zero discharge of mercury and other PBTs by the year 2020.

We look forward to continuing to work with the EQC and the DEQ to ensure that Oregon eliminates the discharge of mercury and other PBTs by 2020.

Sincerely,



Jeff Allen, Executive Director
Oregon Environmental Council

Cc: Governor John Kitzhaber

1 BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

2 STATE OF OREGON

3)
4 IN THE MATTER OF) PETITION FOR PERMANENT
5 OAR 340-200, 340-222 and 340-244) RULEMAKING TO
6 REGULATING MERCURY FROM) AMEND OAR 340-200 and 340-222
AIR SOURCES)

7 TO: ENVIRONMENTAL QUALITY COMMISSION
8 c/o Stephanie Hallock, Director
9 Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204

- 10 1. Petitioner Oregon Environmental Council (OEC) is a not-for profit organization
11 with approximately 2000 members and is located at 520 SW 6th Ave, Suite 940,
12 Portland, Oregon 97204. For issues concerning this Petition for Rulemaking,
13 OEC may be contacted via its attorney, Christopher W. Rich, at 601 SW 2nd
14 Avenue, Suite 1940, Portland, Oregon, 97204, or via OEC Program Director
15 Laura Weiss at the address above.
- 16 2. OEC and its members work on a wide range of environmental issues affecting
17 human and environmental health, including air toxics, mercury, and pesticides.
18 One of the issues of immediate concern to OEC is the on-going discharge of
19 mercury, a naturally-occurring metal which does not break down in the
20 environment.
- 21 3. Mercury is a “persistent bioaccumulative toxin” (“PBT”) that exists in several
22 forms and can move easily between air, water and soil. Once in the
23 environment, mercury increases in concentration as it moves up the food chain.
24 Because it is an element, it never breaks down.
- 25 4. When mercury is released to the air, it is ultimately deposited into a lake or river
26 by rain, snow or dry deposition, where bacterial processes convert much of it to

1 methylmercury, the most toxic form of mercury. Methylmercury is readily
2 absorbed by living things. Fish absorb methylmercury from their food and from
3 water as it passes over their gills. Mercury is toxic to aquatic wildlife, and can
4 cause reproductive damage in fish-eating birds and mammals.

5 5. Even small quantities of mercury released to the air can cause significant fish
6 contamination. For example, officials from the State of Minnesota found that
7 about a gram of mercury deposited in a 20 acre lake is enough to contaminate
8 the lake so the fish are unsafe to eat.

9 6. Mercury can pass to humans through a number of pathways, including air
10 inhalation, contaminated soil, and by consuming contaminated fish tissue. The
11 primary human exposure pathway to mercury is via fish consumption.

12 7. It is well established and scientifically defensible that mercury is toxic to the
13 human nervous system. Moreover, the incomplete and rapidly growing nervous
14 systems of the fetus, infants, and young children are especially vulnerable to
15 mercury. Mercury is a potent neurotoxin that can cause irreversible damage to
16 the nervous system and can retard development resulting in delayed walking,
17 impaired language skills, impaired memory, and deficient brain function.

18 8. The U.S. Environmental Protection Agency (EPA) identifies pregnant women,
19 children, and women of child-bearing age as high risk populations. The U.S.
20 Food and Drug Administration has advised pregnant women, and women of
21 childbearing age who may become pregnant, not to eat certain fish that may
22 contain methylmercury.

23 9. Forty-one states, including Oregon, have issued fish advisories that warn certain
24 individuals to restrict or avoid consuming fish from bodies of water
25 contaminated with mercury. The Oregon Health Division has issued fish
26 advisories due to mercury pollution for 11 lakes and rivers in Oregon, including

- 1 the entire main-stem of the Willamette River.
- 2 10. Under the Clean Water Act, the Willamette River is considered to be 303(d)
3 limited for mercury. As a result, DEQ is developing a Total Maximum Daily
4 Load (TMDL) for mercury in the Willamette River.
- 5 11. Mercury has been targeted by the U.S. Environmental Protection Agency,
6 Environment Canada, the International Joint Commission for Environmental
7 Cooperation, and many state and provincial governments, as one of the most
8 critical pollutants for elimination or reduction.
- 9 12. Based on the above, mercury is injurious to both public health and the
10 environment.
- 11 13. In September 1999, Governor John Kitzhaber signed Executive Order #99-13
12 that requires the Oregon Department of Environmental Quality to lead a
13 statewide effort to eliminate the release of persistent, bioaccumulative and toxic
14 pollutants, including mercury, into the environment by the year 2020.
- 15 14. DEQ previously identified protecting human health and the environment from
16 toxics as one of the agency's four priority "Strategic Directions."
- 17 15. Under the Federal Clean Air Act ("CAA"), mercury and mercury compounds are
18 listed as Hazardous Air Pollutants ("HAPs"). CAA §112(b).
- 19 16. Several other states have instituted rules and regulations to control the discharge
20 of mercury to the air from facilities that are not regulated for mercury by the
21 U.S. EPA . For example, the State of Michigan has established emission limits
22 for mercury for a scrap metal shredder facility and requires the permittee to
23 remove and properly dispose of all mercury-containing devices from vehicles,
24 appliances and industrial machinery prior to shredding.
- 25 17. Several industrial facilities in Oregon reported releasing mercury to the air on
26 their 2000 Toxics Release Inventory report. For example, in 2000, Ash Grove

1 Cement in Durkee reported total mercury air emissions of 195 pounds, Portland
2 General Electric's Boardman Plant reported total mercury air emissions of 202
3 pounds, and Georgia-Pacific West in Toledo reported total mercury air
4 emissions of 50 pounds per year.

5 18. In addition to the facilities listed above, data from other states indicates that
6 likely, on-going sources of airborne mercury also include municipal solid waste
7 incinerators, crematoriums, commercial and industrial boilers and steel
8 manufacturing facilities. Each of these types of facilities exists in Oregon.

9 19. Despite the well established environmental and human health concerns
10 associated with mercury, with the exception of some permit limits for Municipal
11 Solid Waste Incinerators, no industrial facility in Oregon is currently required to
12 monitor their mercury emissions in any air contaminant discharge permit
13 ("ACDP") or Title V permit, and no industrial air permits in Oregon include any
14 limits whatsoever for mercury emissions. Moreover, Oregon has not required
15 monitoring or established emission limits for most other HAPs listed in OAR
16 340-244-0040.

17 20. DEQ has recognized the regulatory gap in the State's air toxics program, and is
18 currently developing some new rules as a result of the "HAP Consensus Group"
19 and the "Air Toxics Advisory Committee," which evaluated the air toxics
20 program and made recommendations to DEQ on how to address the gaps.
21 Petitioner was an active member of these two advisory groups. The approach
22 that DEQ is currently considering, however, will only recommend benchmarks
23 for air toxics of concern which DEQ may later adopt by rule. This process is
24 expected to take several years, and may or may not address mercury.

25 21. The HAP Consensus Group recommended that DEQ consider adoption of state
26 categorical air toxics emission reduction strategies when there is a need to

1 reduce emissions from a particular category of sources that pose a problem
2 statewide.

3 22. The Policy and Purpose language in Division 244 states that it “shall be the
4 policy of the Commission that no person may cause, allow or permit emissions
5 into the ambient air of any hazardous substance in such quantity, concentration
6 or duration determined by the Commission to be injurious to public health or the
7 environment.”

8 23. DEQ has the authority under OAR 340-212-0120 to require the owner or
9 operator of a stationary source to determine the type, quantity and duration of
10 emissions from any air contamination source. Under this rule, DEQ may also
11 require continuous monitoring of a specified air contaminant.

12 24. Based on the apparent consensus that air toxics (and specifically mercury) need
13 to be regulated, OEC contends that the time to commence such regulation is
14 *now*. Accordingly, OEC asks the Commission to direct the Department to use
15 its existing authority under OAR 340-212-0120 to require monitoring for
16 mercury emissions and commence permanent rulemaking establishing air
17 emission limitations for mercury in Oregon.

18 25. Although air is certainly not the only media of concern for mercury emissions
19 (or that requires further regulation), airborne mercury from industrial facilities is
20 a particular concern as it may impact downwind residents and is ultimately
21 deposited in soils, sediments and surface waters. Mercury from a single source
22 can impact a wide geographic area.

23 26. Permanent rulemaking is necessary because DEQ currently lacks clear rules
24 requiring monitoring of mercury discharges, and DEQ rules do not provide any
25 emission limits for mercury (except as provided in Division 230 for Municipal
26 Solid Waste Incinerators) in ACDPs. Without any monitoring or emission

1 limits, the public and DEQ have no way of determining where *actual* and
2 ongoing sources of mercury emissions exist. Any such sources continue to emit
3 virtually unchecked. It is untenable that the public is without the protection of
4 DEQ oversight and without any enforceable standards concerning mercury
5 emissions from industrial facilities.

6 27. Pursuant to ORS 468A.025, the EQC has broad authority to prescribe the degree
7 of air pollution and establish air purity standards. Pursuant to ORS 468A.040,
8 the EQC may require air contamination permits for types of air contaminants
9 and sources of air contaminants. ORS 468A.050 authorizes the EQC to classify
10 air contamination sources according to levels and types of emissions and may
11 require reporting from such sources. Pursuant to ORS 468A.310(2), the EQC
12 may take actions beyond those required by the U.S.EPA if there is a
13 scientifically defensible need for additional actions necessary to protect the
14 public health or environment.

15 28. Pursuant to ORS 183.390 and OAR 137-001-0070, the authorities cited herein,
16 and in light of the above considerations, OEC petitions the Environmental
17 Quality Commission to direct the Department to initiate Permanent Rulemaking
18 to amend OAR 340-222 and OAR 340-200 to establish Plant Site Emission
19 Limits (“PSELs”) for mercury for any facility that discharges more than one
20 pound of mercury per year.

21 29. The effects of the proposed rule amendment will be to increase DEQ’s
22 knowledge of mercury discharges and to regulate such emissions to protect the
23 public health and the environment. Without the proposed rule amendment,
24 potentially impacted persons and the state will continue to have no way of
25 knowing if an unreasonable risk of mercury contamination exists. Moreover, the
26 proposed rule amendment may serve environmental justice goals if mercury

- 1 discharges disproportionately impact certain sectors of the community.
- 2 30. The proposed rulemaking will fill a regulatory gap in the air toxics program by
3 providing clear rules for mercury monitoring and by establishing emission limits
4 for mercury in Oregon.
- 5 31. The current lack of DEQ oversight of mercury air discharges places the public at
6 a potential health risk. The public has a right to have DEQ regulation and
7 standards to address valid and well-established risks associated with mercury.
- 8 32. In consideration of the above, the proposed Permanent Rulemaking Petition is
9 necessary, in the public interest, and OEC respectfully requests the Commission
10 grant the petition and direct the Department to initiate rulemaking proceedings.
- 11 33. The proposed rule amendments are attached hereto as Attachment "A."
- 12 34. Persons known to be interested in this rule are listed in Attachment "B."

13

14 DATED: July 10, 2002

15

16

17



Jeff Allen, Executive Director, Oregon
Environmental Council

18

19

20

21

22

23

24

25

26

Attachment A

(Note: Additions to this rule are marked in **bold and underline** and deletions are marked by *[italics and in brackets]*)

DIVISION 222 STATIONARY SOURCE PLANT SITE EMISSION LIMITS

340-222-0010

Policy

The Commission recognizes the need to establish a more definitive method for regulating increases and decreases in air emissions of permit holders. However, except as needed to protect ambient air quality standards, prevention of significant deterioration increments and visibility, the Commission does not intend to: limit the use of existing production capacity of any air quality permittee; cause any undue hardship or expense to any permittee who wishes to use existing unused productive capacity; or create inequity within any class of permittees subject to specific industrial standards that are based on emissions related to production.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0300; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1000; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-222-0020

Applicability

(1) Plant Site Emission Limits (PSELs) will be included in all Air Contaminant Discharge Permits (ACDP) and Oregon Title V Operating Permits, except as provided in section (3), as a means of managing airshed capacity by regulating increases and decreases in air emissions. Except as provided in OAR 340-222-0060 or 340-222-0070, all ACDP and Title V sources are subject to PSELs for all regulated pollutants. The Department will incorporate PSELs into permits when issuing a new permit or renewing or modifying an existing permit.

(2) The emissions limits established by PSELs provide the basis for:

- (a) Assuring reasonable further progress toward attaining compliance with ambient air standards;
- (b) Assuring compliance with ambient air standards and Prevention of Significant Deterioration increments;
- (c) Administering offset and banking programs; and

(d) Establishing the baseline for tracking the consumption of Prevention of Significant Deterioration Increments.

(3) PSEs are not required for:

(a) Pollutants that will be emitted at less than the de minimis emission level listed in OAR 340-200-0020 from the entire source,

(b) Short Term Activity and Basic ACDPs; or

[(c) Hazardous air pollutants as listed in OAR 340-244-0040 Table 1.]

(4) Generic PSEs may be used for any category of ACDP or Title V permit.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.040

Stats. Implemented: ORS 468.020, ORS 468.065 & ORS 468A.025

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0301; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1010; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-222-0030

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99

Criteria for Establishing Plant Site Emission Limits

340-222-0040

Generic Annual PSEL

(1) Sources with capacity less than the Significant Emission Rate (SER) will receive a Generic PSEL unless they have a netting basis and request a source specific PSEL under 340-222-0041.

(2) A Generic PSEL may be used for any pollutant that will be emitted at less than the SER. The netting basis for a source with a generic PSEL is zero.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0310; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1020; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-222-0041

Source Specific Annual PSEL

- (1) For sources with potential to emit less than the SER, that request a source specific PSEL, an initial source specific PSEL will be set equal to the Generic PSEL.
- (2) For sources with potential to emit greater than or equal to the SER, an initial source specific PSEL will be set equal to the source's potential to emit or netting basis, whichever is less.
- (3) If an applicant wants an annual PSEL at a rate greater than the netting basis, the applicant must:
 - (a) Demonstrate that the requested increase over the netting basis is less than the SER; or
 - (b) For increases equal to or greater than the SER over the netting basis, but not subject to New Source Review (OAR 340 division 224):
 - (A) If located within an area designated as nonattainment in OAR 340-204-0030, obtain offsets and demonstrate a net air quality benefit in accordance with OAR 340-225-0090.
 - (B) If located within an area designated as maintenance in OAR 340-204-0040, either
 - (i) Obtain offsets and demonstrate a net air quality benefit in accordance with OAR 340-225-0090;
 - (ii) Obtain an allocation from an available growth allowance in accordance with the applicable maintenance plan; or
 - (iii) For carbon monoxide, demonstrate that the source or modification will not cause or contribute to an air quality impact equal to or greater than 0.5 mg/m³ (8 hour average) and 2 mg/m³ (1-hour average).
 - (C) If located within an attainment or unclassifiable area, conduct an air quality analysis, in accordance with OAR 340-225-0050(1) through (3) and 340-225-0060.
 - (D) For federal major sources demonstrate compliance with AQRV protection in accordance with OAR 340-225-0070.
 - (c) For increases equal to or greater than the SER over the netting basis and subject to New Source Review, demonstrate that the applicable New Source Review requirements have been satisfied.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

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

340-222-0042

Short Term PSEL

(1) For sources located in areas with established short term SER (OAR 340-200-0020 Table 3), PSELs are required on a short term basis for those pollutants that have a short term SER. The short term averaging period is daily, unless emissions cannot be monitored on a daily basis. The averaging period for short term PSELs can never be greater than monthly.

(a) For existing sources, the initial short term PSEL will be set as:

(A) the lesser of the short term capacity or the current permit's short term PSEL, if each is greater than or equal to the short term SER; or

(B) the generic PSEL, if either the short term capacity or the current short term PSEL is less than the short term SER.

(b) For new sources, the initial short term PSEL will be zero.

(2) If an applicant wants a short term PSEL at a rate greater than the initial short term PSEL, the applicant must:

(a) Demonstrate that the requested increase over the initial short term PSEL is less than the significant emission rate (Note: In this case new sources would get a generic PSEL); or

(b) For increases equal to or greater than the SER over the initial short term PSEL:

(A) Obtain offsets and demonstrate a net air quality benefit in accordance with OAR 340-225-0090;

(B) Obtain an allocation from an available growth allowance in accordance with the applicable maintenance plan; or

(C) For carbon monoxide, demonstrate that the source or modification will not cause or contribute to an air quality impact equal to or greater than 0.5 mg/m³ (8 hour average) and 2 mg/m³ (1 hour average).

(D) For federal major sources, demonstrate compliance with air quality related values (AQRV) protection in accordance with OAR 340-225-0070.

(3) Once the short term PSEL is increased pursuant to section (2) of this rule, the increased level becomes the initial short term PSEL for future evaluations.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

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

340-222-0043

General Requirements for All PSEL

(1) No PSEL may allow emissions in excess of those allowed by any applicable federal or state regulation or by any specific permit conditions unless the source meets the specific provisions of OAR 340-226-0400 (Alternative Emission Controls).

(2) Source specific PSEs may be changed pursuant to the Department's rules for permit modifications when:

- (a) Errors are found or better data is available for calculating PSEs
- (b) More stringent control is required by a rule adopted by the Commission; or
- (c) The Department modifies a permit pursuant to OAR 340-216-0084, Modification of a Permit, or OAR 340-218-0200, Reopenings.

(3) Annual PSEs are established on a rolling 12 consecutive month basis and will limit the source's potential to emit.

(4) In order to maintain the netting basis, permittees must maintain either a Standard ACDP or an Oregon Title V Operating Permit. A request by a permittee to be assigned any other type of an ACDP sets the netting basis at zero upon issuance of the other type of permit.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

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

340-222-0045

Unassigned Emissions

(1) Purpose. The purpose of unassigned emissions is to track and manage the difference in the quantity of emissions between the netting basis and what the source could emit based on the facility's current physical and operational design.

(2) Establishing unassigned emissions.

(a) Unassigned emissions equal the netting basis minus the source's current PTE, minus any banked emission reduction credits. Unassigned emissions are zero if this result is negative.

(b) Unused capacity created after the effective date of this rule due to reduced potential to emit that is not banked or expired emission reduction credits (OAR 340-268-0030), increase unassigned emissions on a ton for ton basis.

(3) Maximum unassigned emissions.

(a) Except as provided in paragraph (c) of this section, unassigned emissions will be reduced to not more than the SER (OAR 340-200-0020 Table 2) on July 1, 2007 and at each permit renewal following this date.

(b) The netting basis is reduced by the amount that unassigned emissions are reduced.

(c) In an AQMA where the EPA requires an attainment demonstration based on dispersion modeling, unassigned emissions are not subject to reduction under this rule.

(4) Using unassigned emissions.

(a) Unassigned emissions may be used for internal netting to allow an emission increase at the existing source in accordance with the permit.

(b) Unassigned emissions may not be banked or transferred to another source.

(c) Emissions that are removed from the netting basis are unavailable for netting in any future permit actions.

(5) Upon renewal, modification or other reopening of a permit after July 1, 2002 the unassigned emissions will be established with an expiration date of July 1, 2007 for all unassigned emissions in excess of the SER. Each time the permit is renewed after July 1, 2007 the unassigned emissions will be established again and reduced upon the following permit renewal to no more than the SER for each pollutant in OAR 340-200-0020 Table 2.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

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

340-222-0060

Plant Site Emission Limits for Sources of Hazardous Air Pollutants

(1) The Department may establish PSELs for hazardous air pollutants (HAPs) if an owner or operator:

(a) Elects to establish a PSEL for combined HAPs emitted for purposes of determining emission fees as prescribed in OAR 340 division 220; or

(b) Asks the Department to create an enforceable PTE limit.

(2) PSELs *[will may]* be set *[only]* for individual or combined HAPs *[and will not list HAPs by name]*. The PSEL will be set on a rolling 12 month basis. *[and will be either:*

(a) The generic PSEL if the permittee proposes a limit less than that level; or

(b) The level the permittee establishes necessary for the source if greater than the generic PSEL.]

(3) The Alternative Emissions Controls (Bubble) provisions of OAR 340-226-0400 do not apply to emissions of HAPs.

(4) The Department may establish a PSEL for specific HAPs listed in OAR 340-244-0040 Table 1.

(5) The Department shall establish a PSEL for mercury when mercury will be emitted at more than the de minimis emission level listed in OAR 340-200-0020 from the entire source.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1050; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-222-0070

Plant Site Emission Limits for Insignificant Activities

- (1) For purposes of establishing PSEs, emissions from categorically insignificant activities listed in OAR 340-200-0020 are not considered under OAR 340-222-0020, except as provided in section (3) of this rule.
- (2) For purposes of establishing PSEs, emissions from aggregate insignificant emissions listed in OAR 340-200-0020 are considered under OAR 340-222-0020.
- (3) For purposes of determining New Source Review or Prevention of Significant Deterioration applicability under OAR 340 division 224, emissions from insignificant activities are considered.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020, ORS 468A.025, ORS 468A.040, & ORS 468A.045.

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 2-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1060; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-222-0080

Plant Site Emission Limit Compliance

- (1) The permittee must monitor pollutant emissions or other parameters that are sufficient to produce the records necessary for demonstrating compliance with the PSEL.
- (2) The frequency of the monitoring and associated averaging periods must be as short as possible and consistent with that used in the compliance method.
- (3)(a) For annual PSEs, the permittee must monitor appropriate parameters and maintain all records necessary for demonstrating compliance with the annual PSEL at least monthly and be able to determine emissions on a rolling 12 consecutive month basis.
- (b) For short term PSEs, the permittee must monitor appropriate parameters and maintain all records necessary for demonstrating compliance with any short term PSEL at least as frequently as the short term PSEL averaging period.
- (4) The applicant must specify in the permit application the method(s) for determining compliance with the PSEL. The Department will review the method(s) and approve or modify, as necessary, to assure compliance with the PSEL. The Department will include PSEL compliance monitoring methods in all permits that contain PSEs.
- (5) Depending on source operations, one or more of the following methods may be acceptable:
 - (a) Continuous emissions monitors;
 - (b) Material balance calculations;
 - (c) Emissions calculations using approved emission factors and process information;
 - (d) Alternative production or process limits; and

(e) Other methods approved by the Department.

(6) When annual reports are required, the permittee must include the emissions total for each consecutive 12 month period during the calendar year, unless otherwise specified by a permit condition.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

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

340-222-0090

Combining and Splitting Sources

(1) When two or more sources combine into one source:

(a) The sum of the netting basis for all the sources is the combined source netting basis.

(b) The combined source is regulated as one source, except:

(A) the simple act of combining sources, without an increase over the combined PSEL, does not subject the combined source to New Source Review.

(B) If the combined source PSEL, without a requested increase over the existing combined PSEL, exceeds the combined netting basis plus the SER, the source may continue operating at the existing combined source PSEL without becoming subject to New Source Review until an increase in the PSEL is requested or the source is modified. If an increase in the PSEL is requested or the source is modified, the Department will evaluate whether New Source Review applies.

(2) When one source is split into two or more separate sources:

(a) The netting basis and the SER for the original source is split amongst the new sources as requested by the original permittee.

(b) The split of netting basis and SER must either:

(A) be sufficient to avoid New Source Review for each of the newly created sources or

(B) the newly created source(s) that become subject to New Source Review must comply with the requirements of OAR 340 division 224 before beginning operation under the new arrangement.

(3) The owner of the device or emissions unit must maintain records of physical changes and changes in operation occurring since the baseline period.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

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

Table from OAR 340-200-0020(31):

Pollutant	De minimis (tons/year, except as noted)
CO	1
NO _x	1
SO ₂	1
VOC	1
PM	1
PM ₁₀ (except Medford AQMA)	1
PM ₁₀ (Medford AQMA)	0.5 [5.0 lbs/day]
Lead	0.1
Mercury	0.0005
Fluorides	0.3
Sulfuric Acid Mist	0.7
Hydrogen Sulfide	1
Total Reduced Sulfur (including hydrogen sulfide)	1
Reduced Sulfur	1
Municipal waste combustor organics (Dioxin and furans)	0.0000005
Municipal waste combustor metals	1
Municipal waste combustor acid gases	1
Municipal solid waste landfill gases	1
Single HAP	1
Combined HAP (aggregate)	1

Attachment B

List of Persons Known to be Interested in Petition for Rule-Making

Portland General Electric
121 SW Salmon Street
Portland, OR 97204

Oregon Steel
14400 N Rivergate Blvd
Portland, OR 97203

Cascade Steel
3200 N HWY 99W
McMinnville, OR 97128

Ash Grove Cement
33060 Shirttail Creek Rd
Durkee, OR

Georgia Pacific West, Inc
1 Butler Bridge Rd
Toledo, OR

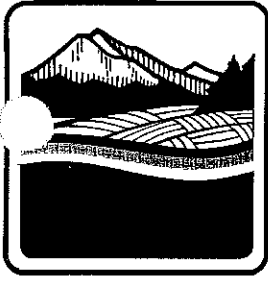
Rhett Lawrence
OSPIRG
1536 11th Avenue
Portland, OR 97214

David Monk
Oregon Toxics Alliance
1192 Lawrence Street
Eugene, OR 97740

Travis Williams
Willamette Riverkeeper
380 SE Spokane Street
Suite 305
Portland, OR 97202

Representative Bill Witt
13197 NW Helen Lane
Portland, OR 97229

Representative Jeff Merkley
P.O. Box 33162
Portland, OR 97292



Marion County

OREGON

PUBLIC WORKS

BOARD OF COMMISSIONERS

Randall Franke
Patti Milne
Mike Ryan

DIRECTOR

James V. Sears, P.E.

ADMINISTRATION & ENGINEERING

COUNTY SURVEYOR

OPERATIONS

EMERGENCY MANAGEMENT

PARKS

ENVIRONMENTAL SERVICES

WATER CONTROL

July 22, 2002

Environmental Quality Commission
c/o Mikell O'Mealy
Oregon Department of Environmental Quality
811 SW Sixth Ave
Portland, OR 97204

Dear Commissioners:

I am writing to urge your support of the Oregon Environmental Council's (OEC) petition for permanent rule-making to regulate the discharge of mercury from point sources in Oregon.

I was a member of the Mercury Solution Team, a stakeholder group convened by the Oregon Environmental Council. The Team looked at all the sources of mercury in the state and recommended 26 different steps to reduce mercury pollution in Oregon. One of the top five action items the Team identified was the need to fill gaps in regulations and permits to ensure that the state is adequately monitoring and controlling industrial facilities that discharge mercury.

Despite the health and environmental threats posed by mercury, the only type of industrial facility in Oregon that has a permit limit for mercury and is required to monitor mercury emissions are the two municipal solid waste incinerators, one of which is here in Marion County. Clearly, this represents a major gap in the state's regulatory program.

The OEC petition addresses this problem, and is consistent with the recommendations of the Solution Team. Monitoring is a necessary first step to give us a better sense of the scope of the problem, as well as provide a more equitable regulator approach to industrial facilities, and permit limits will provide a regulatory mechanism to control these emissions.

I am concerned about mercury pollution and its effect on our health and the environment. We know that small quantities of mercury released to the environment can have a significant impact to our fish population. Therefore, we would like the State of Oregon to do more to reduce the discharge of mercury into the environment. I urge you to take a leadership role in reducing mercury pollution in Oregon by supporting OEC's petition. Thank you.

Sincerely,

James V. Sears, P.E.

JVS:jrp

c: Governor John Kitzhaber, State of Oregon
Marion County Board of Commissioners
Laura Weiss, Oregon Environmental Council

G:\TYPING\Sears\DEQ_MercuryLtr.doc

TONY CORCORAN
State Senator
Democratic Whip
DISTRICT 22
SOUTH LANE & NORTH
DOUGLAS COUNTIES



Committees:
Member:
Revenue
Business, Labor and
Economic Development

REPLY TO ADDRESS INDICATED:

- 900 Court St NE S-305
Salem, OR 97301
- District: 34475 Kizer Creek Rd.
Cottage Grove, OR 97424

OREGON STATE SENATE
SALEM, OREGON
97301

July 22, 2002

Environmental Quality Commission
%Stephanie Hallock, Oregon DEQ
811 SW Sixth Avenue
Portland, OR 97204

Dear Commissioners:

Having seen the impact of mercury poisoning on the recreation opportunities at Cottage Grove Lake, I'm writing to urge you to support the Oregon Environmental Council's position for permanent rule-making to regulate the discharge of mercury from point sources in Oregon.

As a State Legislator, I'm concerned about mercury pollution in Oregon and its impact on our health (especially the health of our children). There are currently fish advisories due to mercury pollution on 11 lakes and rivers in Oregon, including the entire main-stem of the Willamette River.

I believe the State of Oregon must do more to reduce the discharge of mercury to the environment so fish will be safe to eat in the future. Last session I voted for legislation to reduce mercury pollution by phasing out the use of mercury in certain consumer products. While this legislation will help to reduce mercury pollution in the state, it is not enough. I support efforts to reduce mercury pollution from other sources of mercury such as abandoned mines and industrial activities.

Despite the serious health and environmental threats posed by mercury, no industrial facility in Oregon (with one exception) is currently required to monitor their mercury emissions in any air emissions. This is simply an untenable situation and must be addressed immediately.

Sincerely,



Oregon State Public Interest Research Group
1536 SE 11th Avenue, Portland, OR 97214 (503) 231-4181
fax (503) 231-4007 • www.ospirg.org

State of Oregon
Department of Environmental Quality

Received
JUL 22 2002

July 17, 2002

Environmental Quality Commission
Oregon Department of Environmental Quality
811 SW Sixth Ave
Portland, OR 97204

RE: Support for Petition for Permanent Rulemaking to Amend OAR 340-200 and 340-222

Dear Commissioners:

We write you on behalf of the Oregon State Public Interest Research Group (OSPIRG), a non-profit, non-partisan public interest advocacy organization with more than 33,000 members across the state of Oregon. We are writing you in support of the petition filed by the Oregon Environmental Council (OEC) regarding rulemaking on the discharge of mercury in Oregon.


As you are well aware, mercury and other persistent bioaccumulative toxic chemicals (PBTs) persist for decades in the environment and accumulate in the food supply of humans and wildlife. Additionally, PBTs are linked to a number of health problems, including cancer, birth defects, hormonal disruptions, and neurological damage, and they can cause significant health and ecological problems even in tiny amounts.

Recognizing the gravity of this matter, Governor Kitzhaber signed an Executive Order in September 1999 requiring DEQ to coordinate efforts to eliminate the releases of PBTs in Oregon by 2020. However, to date, there seems to have been little progress on this effort from DEQ, notwithstanding claims from the Department that they are working on it.

Oregonians are concerned about these dangerous chemicals and the health and quality of life impacts they pose. There was strong public support for Governor Kitzhaber's Executive Order, and full implementation of that order is in the public interest.

OSPIRG shares the concerns set out in OEC's petition and we urge the Commission to be responsive to OEC's requests. Carrying out the Governor's Executive Order is a critical step toward providing a safe environmental future for all Oregonians and the EQC can help to make that happen. We thus ask the Commission to give strong consideration to OEC's Petition and we look forward to continuing to work with the EQC and the DEQ to ensure that Oregon eliminates the discharge of mercury and other PBTs by 2020.

Sincerely,


Maureen Kirk
Executive Director


Rhett Lawrence
Environmental Advocate

State Representative Steve March
Oregon House District 46
516 SE Morrison # 206
Portland, Oregon 97214

July 23, 2002

Environmental Quality Commission
Attn: Mikell O'Mealy
811 SW Sixth Avenue
Portland, OR 97204

Dear Commissioners:

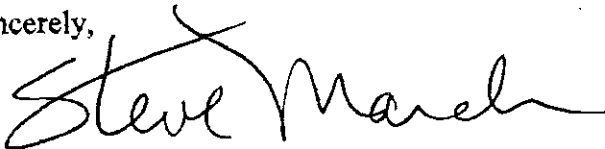
I am writing in support of the concept and petition offered by the Oregon Environmental Council for administrative rules regulating the point source discharge of mercury.

During the 2001 legislative session we took steps to reduce the prevalence of mercury in Oregon. The scientific data is clear; Mercury is a threat to the health of Oregonians if it is released into our environment.

Oregon needs to take the steps necessary to identify and reduce, if not eliminate, the release of mercury into the environment. It falls to the Environmental Quality Commission to promulgate the administrative rules to do just that, and I urge you to do so. This step would enhance and compliment other steps being taken by the Department of Environmental Quality to limit air toxics.

I appreciate the difficulty in developing these rules but feel that the Oregon Environmental Council has taken a good first step in identifying a direction for the Commission. Thank you for your consideration. I look forward to your progress on this issue.

Sincerely,



Steve March
State Representative

503-233-4157



HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

July 23, 2002

Environmental Quality Commission
C/o Mikell O'Mealy
Oregon Department of Environmental Quality
811 SW Sixth Ave
Portland, OR 97204

Dear Commissioners:

As a State Legislator, I am very concerned about mercury pollution in Oregon and its impacts to our health and the environment. As you probably know, even small quantities of mercury can cause significant contamination. Currently there are 11 fish advisories in Oregon lakes and rivers due to mercury pollution.

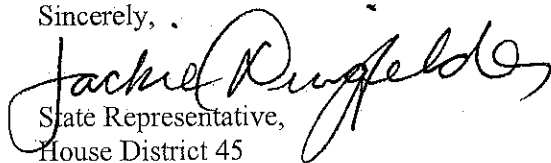
I believe we must do more to reduce the discharge of mercury into our environment. Last session I supported and helped pass legislation to reduce mercury pollution by phasing out the use of mercury in certain consumer products. While this legislation will help to reduce mercury pollution in the state, it is not enough. I support efforts to reduce mercury pollution from other sources of mercury such as abandoned mines and industrial activities.

Despite the serious health and environmental threats posed by mercury, only one facility in Oregon is currently required in its permit to monitor mercury emissions. No industrial air permits in Oregon include limits for mercury emissions. This is an untenable situation that must be corrected.

I understand that DEQ is finalizing rules to establish a new air toxics program. I am writing to urge that the commission adopt rules that would require monitoring and the setting of permit limits for mercury, as outlined in the OEC petition. Not only would this be a good move for the state, but it would also be in keeping with the legislature's intent when it passed House Bill 3007. I would like to see these complimentary rules be adopted, as they will help set and guide our long-term strategy in addressing a range of other air toxics. Monitoring is a first and necessary step that will give us a better sense of the scope of the problem and permit limits will provide a regulatory mechanism to control these emissions.

Again, as you consider new rules, I urge you to take a leadership role in reducing mercury and other pollutants in Oregon.

Sincerely,


State Representative,
House District 45

Cc: Governor John Kitzhaber

Office: State Capitol, Salem, OR 97310



Clean air
Clean water
Clear thinking

Oregon Environmental Council

July 24, 2002

Environmental Quality Commission
c/o Mikel O'Meally
Oregon DEQ
811 SW 6th Ave
Portland, OR 97204

Dear Commissioners:

Attached you will find a memo from Oregon Environmental Council (OEC) staff that addresses DEQ's response to our petition for rulemaking to the EQC. Thank you for considering this additional information in your deliberations over our petition.

We would also like to take this opportunity to provide you with a broader perspective on OEC's mercury petition. OEC has taken a leadership role in Oregon to reduce mercury pollution, and we have been working to reduce mercury from ALL sources in the state – from consumer products to point sources to abandoned mines. Therefore, this petition should be considered in that context.

Two years ago, OEC convened a multi-stakeholder "Mercury Solution Team" with 16 representatives from business, government and environmental groups. Over the course of a year, the Solution Team developed a 26-point, long-term strategy to eliminate the discharge of mercury by the year 2020. This strategy is described in detail in the report we have shared with you entitled "Mercury: On the Road to Zero." The recommendations in this report have helped to inform much of OEC's work on mercury.

In fact, among the Solution Team's top five priority actions was a recommendation to fill gaps in regulations and permits to ensure that the state is adequately monitoring and controlling industrial facilities that discharge mercury.

The Solution Team found that the total amount of mercury released from human sources in Oregon ranges from 3,600 to 10,600 pounds per year. In terms of the relative contribution of mercury, the Team estimated the amount of mercury released in Oregon from the three major categories of mercury as follows, with the percent of the total shown in parentheses:

- Mercury in Products: 2,000 lbs/yr (19 - 55%)
- Mercury from Abandoned Mines: 670 - 6,700 lbs/yr (18 - 63%)
- Mercury from Point Sources (Air only): 800 - 1,850 lbs/yr (17 - 22%)

520 SW 6th Avenue, Suite 940
Portland, Oregon 97204-1535
Voice (503) 222-1963 Fax (503) 222-1405
oec@orcouncil.org www.orcouncil.org

BOARD OF DIRECTORS

President

Jesse Reeder
Lake Oswego

Vice President

James Whitty
Portland

Treasurer

Carl Lamb
Klamath Falls

Secretary

Dorothy Fisher Atwood
Lake Oswego

Peter D. Bloome
Corvallis

Nik Blosser
Portland

Angus Duncan
Portland

David Engels
Aurora

Steve Greenwood
Eugene

Jerome Lidz
Eugene

Steve Novick
Portland

Gary Oxman
Portland

Amy Patton
Ashland

Susan Reid
Ashland

Martin Winch
Bend

Executive Director

Jeff Allen

In the 2001 Legislature, OEC was instrumental in the passage of legislation that reduces mercury pollution by phasing out the use of mercury in certain consumer products such as thermometers, thermostats and automotive switches. We estimate that full implementation of that legislation will reduce mercury pollution by about 800 pounds a year.

Late last year, OEC launched another mercury pollution project, in cooperation with the Northwest Automotive Trades Association, DEQ, the Port of Portland, and others. That project gives Oregon drivers the opportunity to remove mercury switches from their cars via a free service provided by auto repair shops across the state. We have succeeded in replacing over a 1,000 switches to date and expect to replace a total of 10,000 switches by the end of the project.

OEC recently embarked on yet another effort to reduce mercury pollution by encouraging greater recycling of fluorescent light tubes by commercial building owners.

Lastly, OEC is currently developing legislation for the next session that will further reduce mercury pollution. We fully support DEQ's plan to increase funding for cleanup of abandoned mercury mines, and expect our legislation to support DEQ's efforts.

In summary, OEC has taken multiple steps to reduce mercury pollution from all major sources in Oregon. Given all the activity around mercury pollution prevention (by OEC, DEQ and others), we believe that it is time for DEQ to also take steps to monitor and control the air discharge of mercury from point sources in Oregon. That is why we believe our petition for rulemaking is necessary and appropriate.

Thank you.

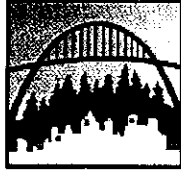
Sincerely,



Jeff Allen
Executive Director

Cc: Governor John Kitzhaber

OREGON ENVIRONMENTAL COUNCIL



*Clean air
Clean water
Clear thinking*

MEMORANDUM

July 24, 2002

TO: Environmental Quality Commission

FROM: Laura Weiss, M.P.H.
OEC Program Director

RE: Air Toxics Rule and OEC's Mercury Petition for Rulemaking

CC: DEQ Staff

DEQ has responded to OEC's petition with a recommendation that the Commission deny our petition for rulemaking. Part of the agency's rationale for recommending denial is that DEQ is planning to address mercury air emissions through its new, soon-to-be-adopted air toxics rules. We would like to address this issue directly and describe why we believe that the approach outlined in our petition not only makes sense, but actually *complements* DEQ's new air toxics rules.

OEC Supports the New Air Toxics Rules

As DEQ has described, the new air toxics program was developed over the past several years with the help of two advisory committees. In fact, OEC was a member of both committees and worked in good faith to reach consensus on the new rules. In those meetings, however, we stressed that we continued to be concerned about how the new rules would address toxics such as mercury, which although released to the air, present the greatest risk when they deposit on land and in water and increase in concentration as they move up the food chain.

Setting Permit Limits Today Will Support the Future Success of the New Air Toxics Rules

OEC respectfully disagrees with DEQ's staff report assessment that PSELs are not the correct tool for addressing mercury discharges at this time. In fact, the approach described in our petition *complements* the proposed new air toxics rules in several respects:

- Our petition lays the groundwork for future regulation and control of mercury emissions. Currently, the rules *prohibit* the agency from setting a Plant Site Emission Limit to control emissions of hazardous air pollutants such as mercury. Using PSELs to regulate the discharge of mercury is an appropriate approach that relies on an existing framework.
- Establishing emission limits in permits (even if the limits for a given source are ultimately based on current levels of emissions) will provide a regulatory mechanism to track and control these emissions as necessary – now and in the future.
- The new air toxics rules rely on sound science and good data, so if we do not have reliable data about mercury emissions, then the air toxics program cannot function properly. Monitoring is a necessary first step to give us a better sense of the scope of the problem, which is precisely why monitoring known or suspected sources of mercury from air emissions is a critical part of OEC's petition. The monitoring requirements in individual permits will provide information that will allow DEQ to quantify the mercury output from air sources compared to other sources of mercury.

The approach OEC proposes is not without precedent. DEQ has established PSELs for lead, another persistent heavy metal, for at least 10 facilities in the state (several of which are also sources of mercury emissions). Although lead is also a "criteria" pollutant, the practical result of DEQ's current rules produces a lead PSEL that is based on what the facility actually emits, not on an actual existing emission standard, as DEQ asserts in its memo is necessary to establish a PSEL.

In summary, OEC's petition serves to fill an important regulatory gap for a high priority, highly toxic pollutant. The future air toxics rules will set up a long-term strategy to address a range of air toxics, while the OEC petition seeks to address an immediate health threat in the short-term.

Why Mercury Now, and Why Mercury First?

DEQ's own toxics fact sheet states that, for all toxics, DEQ's efforts "will focus initially on mercury." That fact sheet describes the agency's current or proposed efforts to control mercury, including the Willamette River TMDL for mercury, working with auto recyclers, fluorescent lamp recycling, removal of mercury from school labs, mercury thermometer collection, and proposed legislation on mercury contamination from abandoned mine sites. DEQ has also established mercury discharge limits for municipal solid waste incinerators. Thus, it is wholly consistent with DEQ's programmatic approach to regulate air emissions of mercury from point sources.

It is also entirely equitable to ask air sources of mercury to do their part at the same time as other sources are being asked to eliminate or reduce their release of mercury. In fact, monitoring and establishing emission limits for sources is consistent with DEQ's other efforts in that it will provide a "source control" mechanism to prevent ongoing additions of mercury to the ecosystem that might hamper DEQ's other mercury reduction efforts by re-contaminating the environment.

The Benchmark Approach in the New Air Toxics Rules Is Not Designed for Pollutants Like Mercury

DEQ's proposed new air toxics rules set up a system to set "ambient benchmarks" for air toxics of concern, which are then used as a standard reference value by which air toxics problems can be identified, addressed and evaluated. This approach is designed primarily to address air toxics that present a health risk to people via inhalation (e.g., formaldehyde, benzene). Chemicals like mercury, which pose a risk to people primarily via the consumption of fish, do not fit well into this type of ambient benchmark approach because of the way they behave in the environment.

Although one of the criteria for establishing ambient benchmarks is the "potential to cause harm through persistence and bio-accumulation," it is well-recognized by DEQ and scientists across the country that the science behind this is not currently adequate nor fully developed to allow a fair and accurate assessment of this exposure pathway.

For example, in an effort to establish an ambient benchmark level for mercury, a series of difficult questions are raised, such as:

- Where exactly does mercury released to the air from a particular point source deposit? How far does it travel?
- If some of the mercury released to the air in Oregon deposits in another state, how do we take that into account?
- Since the fish in the Willamette River and other lakes and rivers in the state are already too contaminated by mercury for human consumption, can we afford to add any more to the system?

These are just some of the difficult questions that must be answered if DEQ chooses to set a benchmark for mercury. Even if we are able to find answers to these difficult questions, it will require a huge investment in resources and time, which we cannot afford, either in terms of financial resources or on-going human health risk. And ultimately, the outcome that we are all striving for is zero discharge of mercury and other PBTs by 2020, as required by the Governor's Executive Order.

Therefore, the benchmark approach is more of a "roadblock" for mercury because of the difficult technical and policy issues that must be addressed, and could easily lead to "paralysis by analysis." The agency has identified these concerns in their memo to the Commission. Our petition provides an alternate pathway for addressing these difficult issues.

By contrast, the PSEL approach is resource-efficient. By requiring sources that emit mercury above the de minimis level to have PSELs, DEQ can focus on the readily identifiable sources of mercury – which may be causing immediate health/environmental concerns -- and establish limits as appropriate. In light of limited agency resources, this approach will be much more resource-efficient compared to the difficulty involved in establishing ambient benchmarks for mercury.

7/26/02 EQC Meeting Item J Testimony



Oregon State Public Interest Research Group
1536 SE 11th Avenue, Portland, OR 97214 (503) 231-4181
fax (503) 231-4007 • www.ospirg.org

To: Environmental Quality Commission
From: Rhett Lawrence, Environmental Advocate
Date: July 26, 2002
Re: Support for Petition for Permanent Rulemaking to Amend OAR 340-200 and 340-222

Good morning, my name is Rhett Lawrence and I am the Environmental Advocate on Toxics and Clean Water Issues for the Oregon State Public Interest Research Group (OSPIRG), a non-profit, non-partisan public interest advocacy organization with more than 33,000 members across the state of Oregon. I am pleased to appear before you today in support of the petition filed by the Oregon Environmental Council (OEC) regarding rulemaking on the discharge of mercury in Oregon.

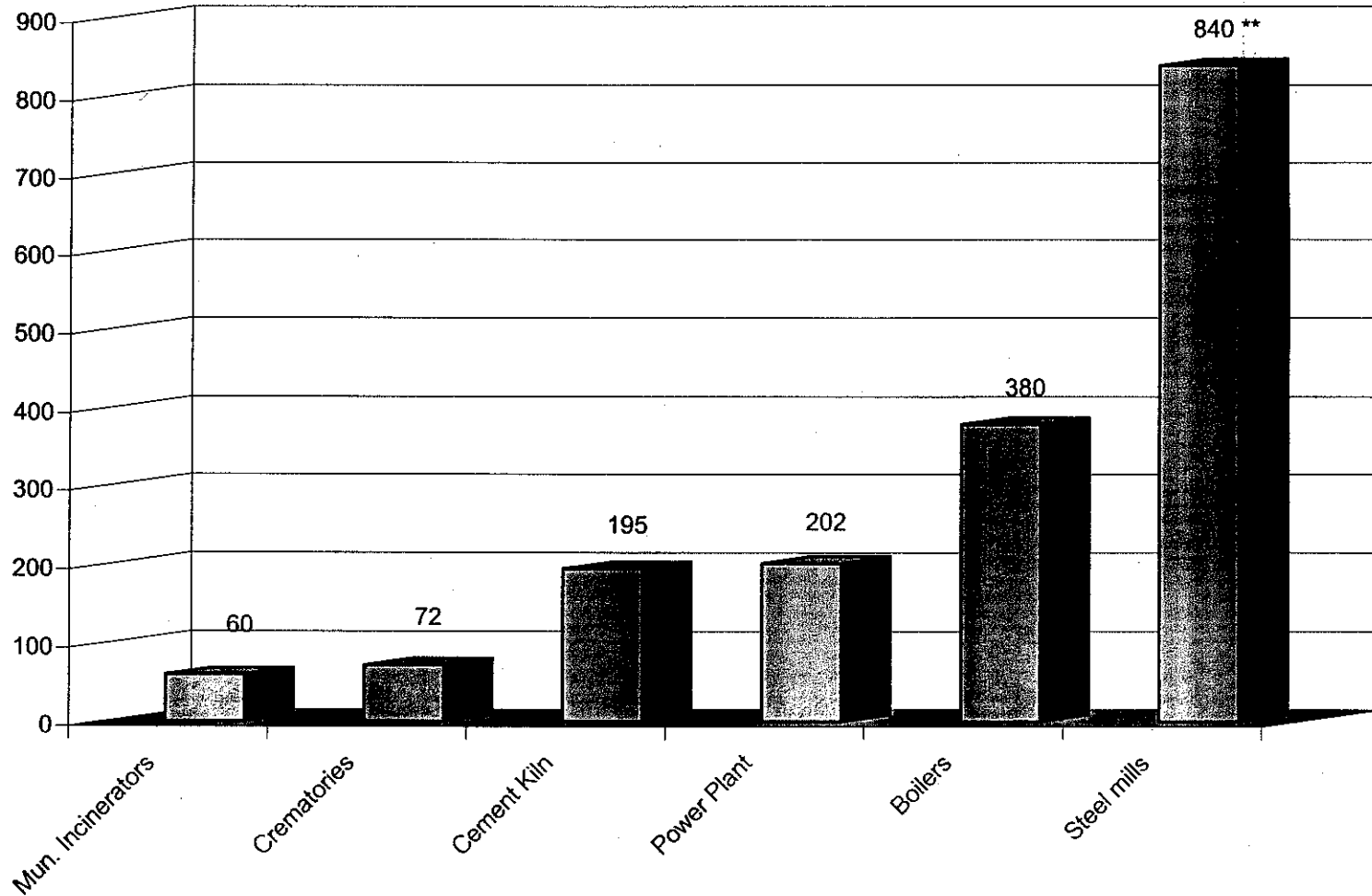
As you are well aware, mercury and other persistent bioaccumulative toxic chemicals (PBTs) persist indefinitely in the environment and accumulate in the food supply of humans and wildlife. Additionally, PBTs have been linked to a number of health problems, including cancer, birth defects, hormonal disruptions, and neurological damage, and they can cause significant health and ecological problems even in tiny amounts.

Recognizing the gravity of this matter, Governor Kitzhaber signed an Executive Order in September 1999 requiring DEQ to coordinate efforts to eliminate the releases of PBTs in Oregon by 2020. However, to date, there seems to have been little progress on this effort from DEQ. Along with OEC and other organizations, we have met several times with Director Hallock and others to share our concerns. Our groups have suggested several specific action steps to reduce and ultimately eliminate the discharge of PBTs.

Oregonians are concerned about these dangerous chemicals and the health and quality of life impacts they pose. There was strong public support for Governor Kitzhaber's Executive Order, and full implementation of that order is in the public interest. At OSPIRG, we have been working hard on efforts to clean up the Willamette River, which as you all know has become a toxic mess. Getting a handle on the discharge of PBTs will go a long way toward restoring the river to its former glory.

OSPIRG shares the concerns set out in OEC's petition and we urge the Commission to be responsive to OEC's requests. Carrying out the Governor's Executive Order is a critical step toward providing a safe environmental future for all Oregonians and the EQC can help to make that happen. We thus ask the Commission to grant OEC's Petition and we look forward to continuing to work with the EQC and the DEQ to ensure that Oregon eliminates the discharge of mercury and other PBTs by 2020. Thank you for your consideration of this matter.

Point Sources of Mercury to the Air in Oregon (in pounds of mercury/year)



** The estimate of 840 pounds from the steel mills is based on an average emissions factor reported by the Clean Car Campaign; however, given the range of emissions factors reported, the steel mill emissions could be as low as 10 and as high as 1,070 pounds per year. The other emission estimates presented here are from data reported on the Toxics Release Inventory or from estimates presented in the Mercury Solution Team report titled: "Mercury: On the Road to Zero."

Hydro-Elec Meeting
Jan F Handout

Tuna and pregnancy don't mix, scientists say

Concerns about mercury affecting fetuses drives a call to advise women not to eat too much of the fish

By **LAURAN NEERGAARD**
THE ASSOCIATED PRESS

BELTSVILLE, Md. — The government should tell pregnant women to limit their consumption of tuna because of concern that eating lots of the fish could expose a fetus's developing brain to possibly harmful mercury levels, scientific advisers recommended Thursday.

It is not clear how much tuna women should eat, the advisers said — perhaps two 6-ounce cans a week if that is the only fish they eat, or a single can if other seafood, which also can contain mercury, is on their diet.

The panel urged the Food and Drug Administration to quickly study what proportion of the mercury in a woman's diet comes from tuna so more precise advice can be given. In the interim, extra care was suggested.

"Nobody wants to tell people to stop eating tuna fish," said the panel chairman, Sanford Miller of Virginia Tech University. "We're trying to balance the very positive virtues of fish, including tuna fish, with the harms. It's a very hard balance to make."

Industry representatives testified that few pregnant women eat enough fish, much less tuna, to absorb worrisome mercury levels. They think the FDA's advice last year about avoiding certain fish and watching how much seafood they eat is sufficient, based on the available scientific research.

"We always believe it's appropriate for the FDA to look at as much evidence as possible," said Randi Thomas of the U.S. Tuna Foundation. "We will always support looking into this, doing the research and gathering the information."

Telling a pregnant woman not to eat her daily tuna sandwich might mean she goes for higher-fat bologna instead, which is not a great choice, said panelist Joseph Hotchkiss, a Cornell University food scientist.

FDA food safety chief Joseph Levitt could not say how quickly the agency would issue new consumer advice, but he said it was a priority.

Fish is very nutritious, with certain types containing high levels of heart-healthy fats, plus fats important for fetal brain development.

But some species also harbor different amounts of mercury, a toxic metal that contaminates seafood and is thought to be most harmful to the growing brains of fetuses and young children. Typically, the largest fish contain the most mercury.

About 8 percent of U.S. women of childbearing age have enough mercury in their blood to be at risk. The National Academy of Sciences estimates that 60,000 newborns a year could be at risk of learning disabilities because of mercury their mothers absorbed during pregnancy.

So the FDA last year advised pregnant women and those who could become pregnant not to eat four types of fish: shark, swordfish, king mackerel and tilefish, also called golden or white snapper.

The agency said those women could safely eat up to 12 ounces a week of other cooked fish, including canned tuna, shellfish and smaller ocean fish.

But critics said tuna, the nation's most eaten seafood, also should be limited. Large tuna steaks contain somewhat less mercury than swordfish, and numerous consumer advocacy groups urge pregnant women not eat to eat those.

While canned tuna fish is made from smaller fish that typically contain less mercury, consumer groups — and some state governments — also advise pregnant women to limit their consumption. Wisconsin, for example, recommends one meal a week of canned tuna and one meal of another fish, or two tuna meals if the women eat no other fish.

The FDA brought together its scientific advisers to decide if the

agency erred and should issue more precautions.

Pregnant women would have to eat more than two cans of tuna a day for weeks to pass a very conservative safety threshold, FDA food scientist Michael Bolger told the panel.

Some advisers questioned his estimate, but ultimately they could not say what amount of tuna was safer.

The panel urged the FDA to

quickly research some crucial questions — such as how much of a women's mercury exposure comes from eating tuna — while also telling women to eat tuna in moderation, much like Wisconsin recommends.

That message is for young children, too, the committee said.

The FDA panel's advice is not as strict as guidance from some consumer advocates, but they called it a victory.

NW R
10,000 RUGS
\$99 TO \$249

Wilsonville (503)
Jantzen Beach (503)
Tigard (503)
Tanahoune (503)

www.nwrug.com

Paper Co. Meeting Item J. Handout.

Fires near giant sequoias raise questions on managing forests

THE MAPLE GROVE

1,249 sq. ft.
Shown with options and more

New Design

Summer Sizzler Sale

MSRP \$41,193 **SUMMER SIZZLER SALE: \$31,718**

Viceroy's newest addition is a spacious open concept three bedroom model at an unbeatable Summer Sale price! Check out our Special Deep Discount on select models with Summer Sale pricing on all Viceroy homes! Ask our sales representatives how you can save even more! **Call or visit today!**

HIGH QUALITY PRE-PAID

1/20/02 Exec Meeting Item J. Handout



from the June 18, 2002 edition - <http://www.csmonitor.com/2002/0618/p03s01-sten.html>

Mercury rises as latest environmental worry

By **Ron Scherer** | Staff writer of The Christian Science Monitor

MAMARONECK, N.Y. - Blood Brothers Auto Wreckers is getting a 1988 Buick Century ready for its final ride - into the giant maw of a crusher that will flatten it like a crumpled soda can. But first, the company has to remove something dangerous from the stripped-down sedan: the small light switch that automatically comes on when the hood is opened. The switch, about the size of a pencil eraser, contains one gram of mercury, a toxin.

"We just rip it out, and the car will go in the crusher after that," says Dorian Totis, one of the owners at Blood Brothers.

In the past, wreckers and junkyards didn't worry about these small amounts of mercury. But the prospect of the silvery-colored metallic element accumulating in riverbeds, lakes, and oceans has alarmed everyone from lawmakers to businesspeople to environmentalists.

Seven states have passed some form of legislation on disposing of the substance, labeling it, or phasing it out, and there are 50 bills pending in 20 more states. Last month, Maine became the first state to require car companies to take financial responsibility for the mercury in their cars. And two weeks ago, Westchester County in New York State required wreckers like Blood Brothers to remove the mercury light switches.

Moreover, the White House has agreed to form an interagency task force "to develop and improve sound science-based policies to address mercury." Even the American Dental Association, which has long defended the use of mercury in fillings, is reassessing the effectiveness of technology to capture it after patients are treated in dentist offices. And by this September, the United Nations hopes to have completed a global assessment of mercury.

"What we are seeing is a combination of public awareness and policy actions by decisionmakers to address a solvable problem," says Michael Bender of the Mercury Policy Institute in Montpelier, Vt.

In fact, businesses have been making huge strides to reduce their use of mercury. In the 1960s, they annually consumed 3,000 tons of the toxic substance. Now, the Department of the Interior estimates that annual consumption is down to 200 tons.

Despite the reduction, a problem of significant size remains. In 1997, the Environmental Protection Agency estimated that 158 tons of mercury was emitted into the air, but environmentalists say that number is too low. Cars on the road may contain as much as 200 metric tons total in light switches, antilock brakes, high-intensity headlights, and the new navigational systems, estimates the Clean Car Campaign, a national initiative coordinated by various environmental groups. Mercury is still used in everything from switches in gas stoves to bilge pumps on boats.

Some of that mercury ends up in wastewater and rivers and lakes. For example, the Blood Brothers' wrecking yard is not far from the Sheldrake River, which drains into Long Island Sound.

"What happens is when you crush cars and the mercury goes on the ground, it gets washed into the aquifers. It affects a great deal, especially as it accumulates," says Andrew Spano, the Westchester County executive who signed the new law mandating switch removals. "It takes less than a teaspoon of mercury to contaminate a lake and result in health warnings about eating fish caught there."

As a result of the mercury accumulation, 41 states have issued a fish advisory, either warning pregnant women and children not to eat certain species or suggesting only limited monthly consumption of some fish.

Last year, the Food and Drug Administration advised pregnant women and those of child-bearing age who might become pregnant to avoid shark, swordfish, king mackerel, and tilefish. The FDA, which before this had not made its plans public, says it will expand its mercury testing to include more fish. "In a number of species, we have enough information, and in others, we don't have enough information," says Michael Bolger, a scientist with the FDA.

Unfortunately, there is no easy way to get rid of the mercury. "If we stopped using mercury today, it would take 15 to 50 years until the levels are down so species of fish are safe to eat," says Mr. Bender.

Environmentalists who have allied themselves with some business groups would like to see federal legislation to deal with the issue comprehensively. "We'd like to see a national solution in the interest of consistency," says Robin Wiener of the Institute of Scrap Recycling Industries, which is a partner with environmentalist groups. "But in the absence of that – and we know Congress has a very full agenda – we'll do it on a state-by-state basis."

The states with legislation started their control efforts with the products that are easy to corral. For example, many states, and even some cities such as Boston and San Francisco, now ban fever thermometers that use mercury. "We have found they do break frequently," says Terri Goldberg of the Northeast Waste Management Officials' Association in Boston.

In 1997, Vermont passed legislation requiring that products from thermostats to lamps warn consumers if mercury is used. "The intent of the law was to cover as many consumer products as possible and make sure they don't get thrown into the waste treatment but get recycled instead," says Ron Shems, a former assistant attorney general in Vermont.

The National Electrical Manufacturers Association sued the state over the law, maintaining its members couldn't label products just for Vermont. Lower courts ruled in favor of the state, and last week, the US Supreme Court refused to hear the appeal, in essence validating the law.

The Alliance of Automobile Manufacturers is now considering options including litigation to try to stop Maine's new law. The legislation is "requiring us to set up a business we are not involved in: waste handling," says Greg Dana, vice president for environmental affairs at the alliance.

Mr. Dana notes that automobile companies are almost through phasing out the use of mercury switches. Only two models, the GM G-Van and an older Jeep, still use them.

The difference in cost between mercury and an alternative is minuscule, he admits. But, he says, the companies don't have any responsibility to take care of the mercury. "It's part of the car at the end of its life. That's the responsibility of the people who dismantle it."

7/26/02 EAC Meeting Item J Testimony

1149 Court Street NE
Salem, OR 97301-4030

Telephone:
Salem 503/588-0050
Portland 503/227-5636
Oregon 800/452-7862
FAX 503/588-0052
E-mail: aoi@aoi.org
Web page: http://www.aoi.org



OFFICERS

Chairman of the Board
DONALD W. DAUTERMAN
Durametal Corporation

First Vice-Chairman of the Board
RAYMOND G. GUENTHER
Intel Corporation

President
RICHARD M. BUTTRICK

Treasurer
STEVEN D. PRATT
ESCO Corporation

Secretary
BEN C. FETHERSTON, JR.
Clark, Lindauer, Fetherston,
Edmonds & Lippold LLP

Immediate Past Chairman
BRUCE O'NEIL
Elite Sports Promotions, Inc.

EXECUTIVE COMMITTEE

RICHARD D. BOYD
Boyd Coffee Company

JERRY E. BUTLER
NORPAC Foods, Inc.

*CHARLES N. COOK
A-dec, Inc.

CECIL W. DRINKWARD
Hoffman Corporation

LAWRENCE C. ELLIS
Bank of America Oregon

DOUGLAS H. FLATT
Mid-Columbia Bus Co., Inc.

*ROBERT T. FRERES, JR.
Freres Lumber Co., Inc.

*JOCK GIBSON
Lochmead Dairy, Inc.

DENISE L. HONZEL
Kaiser Permanente

JAMES T. HUBLER
Freightliner Corporation

VIRGINIA W. LANG
Qwest Communications

RONALD C. PARKER
Hampton Affiliates

*RICHARD J. PINE
O'Neill Pine Company

JACK B. SCHWARTZ
Newcomb Sabin Schwartz
& Landsverk, LLP

*DANIEL C. THORNDIKE
Medford Fabrication

DONALD R. VANLUVANEE
Electro Scientific Industries

GREGORY P. WALDEN
Columbia Gorge Broadcasters, Inc.

*District Vice-Chairmen

PUBLIC POLICY COUNCILS

Employment Practices
Environment & Natural Resources
Health Care
Retail Council
Revenue & Taxation
Technology & Education

July 26, 2002

Environmental Quality Commission
Portland, Oregon

Dear Commissioners:

Thank you for allowing Associated Oregon Industries (AOI) to comment on the July 10, 2002 Oregon Environmental Council (OEC) Petition for Rulemaking. AOI is the largest and oldest statewide business association in Oregon. We represent businesses of every type and size and are the single largest and most effective advocate for the private sector in Oregon. Approximately one in three employees in the private sector work for an AOI member company.

AOI supports DEQ Director Stephanie Hallock's recommendations regarding the petition. We do so for the following reasons.

1. DEQ Good Faith

The DEQ has taken pains to involve stakeholders in collaborative processes. These range from methane standards to air toxics. AOI supports this approach. While we often join these workgroups with some trepidation and we sometimes do not like the outcome, we agree that it is the best way to make progress. The increasing tendency to "hedge your bets" by unilateral action, such as legal actions against the Department or EPA or, in this case, asking for a rulemaking, makes entering such processes problematical at best. In short, granting this petition makes DEQ's good faith efforts to accommodate all parties in a rational and logical fashion a waste of time.

2. HAPs Rules

Contrary to claims by OEC, the proposed HAPs rules specifically and purposely deal with persistent bioaccumulative toxics. This language was included by the workgroup (on which both we and OEC sit) to appease OEC. *Nonetheless, the petition before you was neither endorsed nor approved by the HAPs group.* As a member of the workgroup, we view it as acting in less than good faith. AOI could have likewise attempted to circumvent the process by going to the legislature, but did not; and we have no such proposals in the works.

3. TMDLs

The department is under legal obligation to address the single mercury problem in Oregon, fish in the Willamette River. The source of the metal is conceded to be mines and leeching which the agency is beginning to address. AOI supports these efforts.

4. Scientific

There has been no evidence presented, to AOI's knowledge, that ambient air levels of mercury in Oregon cause any problems whatsoever. If they do, they will be handled

through the DEQ HAPs program. This does not mean that mercury shouldn't be minimized, but we believe that a fair process will be put in place by the agency to do so along with other HAPs.

The amount the OEC wishes to regulate equates to 2.2 *tablespoons* per year. Preliminary calculations indicate this is about the amount emitted from an everyday hogged fuel boiler (as an element, mercury is present in wood - taken up from the soil). This would present new and costly requirements for no good reason whatsoever during a disastrous recession. As an editorial, there is a lot of bad science here which is personally offensive to me as a past regulatory administrator and biologist. From the OEC press release:

"Even just a gram of mercury - which is about 450 times smaller than a pound - - released into the air can ultimately contaminate a 20 acre lake so the fish are unsafe to eat, said Weiss" OEC Press Release

One gram of mercury is about 1.5 one-hundredths of a teaspoon - approaching wood stove levels. That 1.5 one-hundredths of a teaspoon discharged out a stack, dispersed into the atmosphere, diluted throughout the atmosphere, possibly a fraction disposed on a lake, diluted through the entire mass of water in the lake, a small fraction taken up and divided into all the fish in the lake, would cause all the fish to exceed federal standards is, on its face, bizarre.

If this statement bore any semblance to reality, every lake in Oregon would look like tin foil. This type of hyperbole is damaging to the proponent's credibility and is not in the public's best interest. It does not help advance Oregon's efforts to improve our environment or economy and embarrasses those who sign onto the petition not knowing any better. Many environmental and business groups have been working diligently to avoid just this kind of rhetoric - it's now being seen as counterproductive. It is, frankly, an embarrassment and the sort of thing many environmental groups have been working to avoid.

5. Resources

The DEQ has critical mandated actions to address TMDLs, air MACT standards, and is developing its own HAPs program. It has lost several million general fund dollars, some of it in air and water programs, and fees paid by industrial sources are not likely to increase since many facilities are closing. The prospect for new funding is dismal. The agency should focus its efforts on critical and mandated programs.

6. Cooperation

AOI is a strong and vocal supporter of DEQ's core programs in the legislature. We believe that credible agency programs assure the public they are protected and assure the business community that they are not wasting money. We have advocated for the reinstatement of positions proposed to be cut and sit on innumerable workgroups and advisory committees. This is predicated on the heretofore-justifiable belief that the agency will use science and law as the basis for regulation, not political or social whimsy. We wish to continue this relationship.

7. Commission Concerns

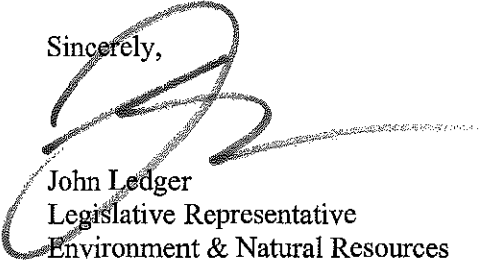
Traditionally, the EQC has received few petitions for rulemaking and granted fewer. If the EQC agrees to this petition it encourages a new pathway for circumventing the agency's efforts for collaboration. Although AOI finds DEQ staff personally amiable and collegial, we certainly have issues we would

consider bringing to the EQC as opposed to spending countless hours in workgroups and advisory committees. I have several in mind and would be happy to discuss.

Regarding the claim the mercury is somehow "different": every pollutant is "different" and, should you endorse this rulemaking, many pollutants will become the pollutant *de jour* requiring your special attention.

In summary, the business community supports Director Hallock's recommendation and pledges to continue to work closely and cooperatively with the department to address HAPs in a fair and effective matter.

Sincerely,



John Ledger
Legislative Representative
Environment & Natural Resources

7/26/02 EAC Meeting, Item J Handout

Testimony of Michael McCally MD, PhD
To the Environmental Quality Commission
Portland, Oregon. Friday July 26, 2002

1. I am Michael McCally. I am a public health physician and Professor of Public Health and Preventive Medicine in the School of Medicine at the Oregon Health and Sciences University where I direct the Center for Environmental Health Policy.
2. I want to speak in favor of the petition of the Oregon Environmental Council concerning unregulated discharge of mercury into the air. I want to remind the Commission that mercury is a ubiquitous and very potent environmental neurotoxin of great concern to the public health and environmental communities nationally; and further remind you of the particular vulnerabilities of children to the effects of mercury. (The science and public health issues regarding mercury exposure are summarized a recent report of the National Academy of Science.)
3. 40 states including Oregon warn residents to restrict their consumption of certain fish due to mercury contamination. According to the U.S. Environmental Protection Agency, about 7 million women and children are eating mercury-contaminated fish at or above the levels it considers safe.
4. The OEC petition is an important step in the effort to reduce mercury exposure for pregnant women and infants. As the petition states, mercury is a persistent, bioaccumulative toxin that exists in several chemical forms and which can move easily between air, soil and water. Human exposure to methyl mercury, the most toxic form of mercury and the one of public health concern, is primarily through food, chiefly freshwater and marine fish. Mercury directly damaged nerve cells, or neurons. The mechanisms of its actions are well understood from studies of occupational and other poisonings like 1955 Minamata Bay disaster in Japan. Even modest levels of exposure as experienced for example by dentists have been associated with measurable declines in tests of motor speed, visual scanning, verbal and visual memory and eye-hand coordination.
5. Of greatest concern on a global population scale is the sensitivity of the fetal and infant nervous system to mercury at very low levels of exposure. Recent research from the Faroe Islands has demonstrated that exposure of pregnant women to mercury-containing fish in their diet is associated with decrements of motor function, language, memory in their offspring. Organic mercury including methyl mercury readily crosses the placenta and appears in breast milk. The rapidly developing nervous systems of newborn children are critically susceptible to very low doses of mercury. This is exactly the reason that women are advised not to eat fish from the Willamette River.

6. Tuna and Pregnancy Don't Mix is the headline of a piece in today's Oregonian reporting that an FDA panel has urged the US government to warn pregnant women and young children, because of mercury contamination, to limit their intake of canned tuna. The recommendation is two six-ounce tins, one if they eat other mercury containing seafood. Ten states currently have such advisories. Last year the FDA advised pregnant women and those who might become pregnant not to eat shark, swordfish, king mackerel and tilefish. The FDA is also being urged to increase its program of mercury monitoring in fish and other foods.
7. The ultimate goal in Oregon and nationally is the zero discharge of mercury into the environment. Every sector and operation that releases mercury will finally need to address the challenge of zero discharge.
8. The health care sector in which I work is a significant source of mercury pollution. According to the EPA, hospitals and other health care facilities in the mid 1990's were responsible for up to 10% of total national mercury emissions. In response to this fact and moved by efforts of nurses, hospital engineering departments, administrators and physicians many hospitals have dramatically reduced their mercury releases. Many are essentially mercury free. Almost all hospital-based medical waste incinerators have been closed. Alternatives have been found to mercury containing medical devices, lighting, and lab equipment. Major national health care systems, like Kaiser and Catholic Health Care West, have taken action such actions and are proud of their positive results.
9. With the passage last year of a mercury bill effective this month Oregon joins eight other states in banning the sale of mercury containing thermometers and taking other positive steps to reduce mercury release into the environment. The OEC petition before this Commission is an important step in the effort in Oregon to reduce mercury exposure to pregnant women and infants. I urge you to support the petition. Thank you.
10. National Academy of Science/National Research Council. Toxicological Effects of Methyl Mercury. Washington DC: National Academy Press 2000.

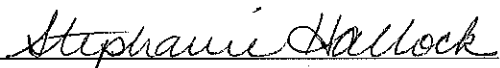
BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In The Matter of OEC's Petition for)
Permanent Rulemaking to Increase)
Regulation of Mercury Emissions to the Air)

DENIAL OF PETITION
FOR RULEMAKING

On July 10, 2002, the Oregon Environmental Council (OEC) submitted a petition requesting that the Commission initiate rulemaking to increase regulation of mercury emissions to the air. On July 26, 2002, the Commission heard comments from OEC and the Department of Environmental Quality with respect to the petition. Based on the comments and documents offered at the hearing, pursuant to ORS 183.390, it is

ORDERED that the petition for rulemaking filed by OEC is denied.


Stephanie Hallock, Director of the
Department of Environmental Quality
for the Environmental Quality Commission

GENC7038

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 8, 2002

To: Environmental Quality Commission

From: Stephanie Hallock, Director *S. Hallock*

Subject: Agenda Item K, Informational Item: Revision of EQC and ODA Memorandum of Understanding for Confined Animal Feeding Operation Permit Program
July 26, 2002 EQC Meeting

Purpose of Item The purpose of this item is to inform EQC of the need to revise the existing Memorandum of Understanding (MOU) for the confined animal feeding operation (CAFO) permit program. The revised MOU is expected to be brought to EQC at its September 2002 meeting.

What is the CAFO permit program?

The CAFO permit program began in the early 1980s to prevent CAFO wastes from contaminating groundwater and surface water. CAFOs are generally defined as the concentrated confined feeding or holding of animals in buildings, pens or lots where the surface is prepared to support animals in wet weather or where there are wastewater treatment facilities (e.g., manure lagoons). CAFO wastes include but are not limited to manure, silage pit drainage, wash down waters, contaminated runoff, milk wastewater, and bulk tank wastewater.

CAFO Permit Program History

When the program began, DEQ was the permit issuing and enforcement entity, and the Oregon Department of Agriculture (ODA) functioned as the overall program administrator and investigating authority. DEQ is the delegated authority under the federal Clean Water Act to issue National Pollutant Discharge Elimination System (NPDES) permits for wastewater discharges to surface waters, including discharges from CAFOs. However, DEQ chose not to issue NPDES permits for CAFO wastes because the state Water Pollution Control Facilities (WPCF) permit program was deemed to be more restrictive. The WPCF permit program prohibits the discharge of CAFO wastes to surface waters, whereas NPDES permits allow such discharges to surface water during large storm events.

Why does the MOU need to be revised?

In 1993, the Oregon Legislature directed EQC and ODA to enter into a formal MOU to facilitate the transition of the CAFO permit program from DEQ to ODA. The MOU developed in May 1995 addressed transfer of the state WPCF permit program for CAFOs from DEQ to ODA. Since DEQ was not issuing NPDES permits to CAFOs at that time, NPDES permitting responsibilities were not transferred. EPA has since directed DEQ and ODA to issue NPDES permits to CAFOs that fit the federal definition of a *concentrated* animal feeding operation. In addition, the 2001 Oregon Legislature authorized and directed the transfer of the NPDES permit program for CAFOs from DEQ to ODA upon approval by EPA. The existing MOU between both agencies needs to be revised to reflect this recent legislation.

[Note: *Concentrated* animal feeding operations are a type of CAFO (*confined* animal feeding operation) and the term is defined in federal regulation. See Attachment A for federal and state definitions. EPA is scheduled to revise its animal feeding operation regulations in September 2002, which may change the definition of *concentrated* animal feeding operation.]

How will the MOU be revised and what would be done differently?

The MOU is being revised (Attachment B) to add specific NPDES CAFO program roles and responsibilities for each agency during and after transfer of the NPDES program.

During the transfer, ODA will continue as it did under the previous MOU to:

- Provide technical assistance to CAFO owners and operators;
- Implement the existing WPCF CAFO general permit; and
- Conduct compliance activities for permitted CAFOs, such as inspections and enforcement actions.

Proposed new tasks for ODA to facilitate NPDES program development prior to obtaining approval from EPA include:

- Development and implementation of administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority;
- Working with DEQ to develop and implement a method of issuing NPDES permits until such delegation is received; and
- Promulgation of an NPDES CAFO general permit through joint rulemaking with DEQ.

DEQ would continue to assist ODA as needed during and after the transfer of NPDES program authority. After delegation of NPDES authority is approved by EPA, both agencies would continue to work together to address CAFO permitting issues in groundwater management areas and water quality limited streams, and maintain the State of Oregon's delegated authority to enforce the Clean Water Act.

Will the proposed revisions to the MOU change the current level of environmental protection?

The MOU revisions would not affect the level of environmental protection. The WPCF permit program is actively being administered by ODA with assistance from DEQ as needed. While NPDES permits may now be required for some CAFOs, the WPCF permit program remains protective of the environment by prohibiting the discharge of wastes to surface waters and protecting groundwater. ODA did not request any additional funding from the legislature to develop NPDES CAFO permits. Unless funding through available grants is obtained, ODA does not expect to increase activities as a result of the transfer of the NPDES CAFO program.

What will be different for CAFOs as a result of the revised MOU?

There would be no changes to the day-to-day operation of the CAFO permit program as a result of the revised MOU so CAFOs should not experience any differences. Both agencies intend to keep CAFOs advised of NPDES permit development as this process moves along.

Next Steps

Final MOU

DEQ and ODA will develop a final draft of the MOU for EQC approval.

Adoption of NPDES general permit into rule

DEQ will continue to work with ODA to develop an NPDES CAFO permit program for EPA approval. This includes the development of an NPDES CAFO general permit, which will be adopted into Oregon Administrative Rule through a joint DEQ and ODA rulemaking effort. ODA will be relying on DEQ's current NPDES delegation for NPDES authority so adoption of the general permit into DEQ rule is necessary. ODA's permit will be developed with the assistance of DEQ and follow the normal public notice procedures for permit issuance and rulemaking efforts.

EQC Involvement **Final MOU**
The final draft of the MOU will be brought before EQC for approval at its September 2002 meeting.

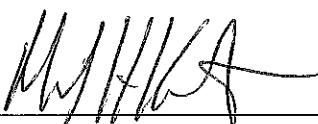
Adoption of NPDES general permit into rule
It is expected that the NPDES CAFO general permit will be brought before EQC for rulemaking at its December 2002 meeting.

Attachments A. Current federal definition of "animal feeding operation" and "concentrated animal feeding operation" and state definition of "confined animal feeding operation"
B. July 2002 draft of revised MOU
C. 1995 MOU

Available Upon Request A. ORS 468B.217 requiring formal MOU between EQC and ODA
B. 2001 Oregon Laws Chapter 248 authorizing transfer of NPDES CAFO permit program

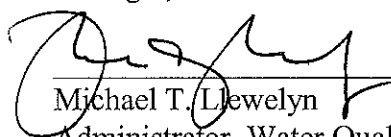
Approved:

Section:



Michael H. Korten
Manager, Surface Water Management

Division:



Michael T. Llewelyn
Administrator, Water Quality Division

Report Prepared By: Ranei Nomura

Phone: (503) 229-5657

Attachment A

Federal Definition of Animal Feeding Operation and Concentrated Animal Feeding Operation (as of July 2002) and State Definition of Confined Animal Feeding Operation

FEDERAL DEFINITIONS

Animal Feeding Operation (AFO) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
- (ii) Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. [40 CFR §122.23(b)(1)]

Concentrated Animal Feeding Operation means an "animal feeding operation" which meets the criteria in appendix B of this part, or which the Director designates under paragraph (c) of this section. [40 CFR §122.23(b)(3)]

Appendix B to §122 – Criteria for Determining a Concentrated Animal Feeding Operation (§122.23)

An animal feeding operation is a concentrated animal feeding operation for purposes of §122.23 if either of the following criteria are met:

- (a) More than the number of animals specified in any of the following categories are confined:
 - (1) 1,000 slaughter and feeder cattle,
 - (2) 700 mature dairy cattle (whether milked or dry cows),
 - (3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds)
 - (4) 500 horses,
 - (5) 10,000 sheep or lambs,
 - (6) 55,000 turkeys,
 - (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),
 - (8) 30,000 laying hen or broilers (if the facility has a liquid manure system),
 - (9) 5,000 ducks, or
 - (10) 1,000 animal units; or
- (b) More than the following number and types of animals are confined:
 - (1) 300 slaughter or feeder cattle,
 - (2) 200 mature dairy cattle (whether milked or dry cows),
 - (3) 750 swine each weighing over 25 kilograms (approximately 55 pounds)
 - (4) 150 horses,
 - (5) 3,000 sheep or lambs,
 - (6) 16,500 turkeys,
 - (7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

Agenda Item K, Informational Item: Revision of EQC and ODA Memorandum of Understanding
for Confined Animal Feeding Operations Permit Program

July 26, 2002 EQC Meeting

Page 6 of 13

Attachment A: Federal and State Definitions

(8) 9,000 laying hen or broilers (if the facility has a liquid manure system),

(9) 1,500 ducks, or

(10) 300 animal units;

and either one of the following conditions are met: pollutants are discharge into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event.

The term *animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms multiplied by 0.4, plus the number of sheep multiplies by 0.1, plus the number of horses multiplied by 2.0.

The term *manmade* means constructed by man and used for the purposed of transporting wastes.

STATE DEFINITION

Confined Animal Feeding Operation (CAFO) as defined in OAR 603-074-0010(3) means

- (a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms
 - (A) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
 - (B) That have wastewater treatment works; or
 - (C) That discharge any wastes into waters of the state; or
- (b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23.

Attachment B
July 2002 Draft of Revised MOU

Environmental Quality Commission and Oregon Department of Agriculture
Memorandum of Understanding
Relating to Confined Animal Feeding Operations

I. Parties

The Environmental Quality Commission (EQC) and the Oregon Department of Agriculture (ODA).

II. Purpose

This Memorandum of Understanding (MOU) replaces the prior MOU dated May 1995 between ODA and EQC. The prior MOU needed to be amended to address the roles and responsibilities of the agencies prior to, during and after the transfer of the NPDES program.

III. Effective Date

The MOU is effective on the date it is signed by both parties and it will remain effective until June 30, 2007 unless terminated or modified as provided in paragraphs XII and XIII.

IV. Authority

The MOU is authorized by Oregon Revised Statutes (ORS) 468B.217 and 2001 Oregon Laws Chapter 248.

V. Definition of Terms

Unless indicated otherwise by context, terms used in this MOU will be defined consistently with the Clean Water Act (33 USC §§1251), 40 Code of Federal Regulation (CFR) §122, ORS 468B.005; Oregon Administrative Rule (OAR) 340, Division 45; and OAR 603, Division 74.

A. *Confined Animal Feeding Operation (CAFO)* as defined in OAR 603-074-0010(3) means

1. The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms
 - (i) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
 - (ii) That have wastewater treatment works; or
 - (iii) That discharge any wastes into waters of the state; or

Agenda Item K, Informational Item: Revision of EQC and ODA Memorandum of Understanding for Confined Animal Feeding Operations Permit Program

July 26, 2002 EQC Meeting

Page 8 of 13

Attachment B: July 2002 Draft of Revised MOU

2. An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23.
- B. *General Permit* as defined in OAR 340-045-0010(7) means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033 in lieu of individual permits being issued to each source.
- C. *National Pollutant Discharge Elimination System (NPDES) Permit* means a waste discharge permit issued in accordance with Section 402 of the federal Clean Water Act, 33 USC §1251-1387. The federal Environmental Protection Agency (EPA) has delegated NPDES authority to the Department of Environmental Quality (DEQ). NPDES permits are issued pursuant to ORS 468B.035 and 050 and in accordance with procedures set forth in OAR 340-45.
- D. *Water Pollution Control Facilities (WPCF) permit* means a permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued pursuant to ORS 468B.050 by the Director of DEQ or ODA in accordance with the procedures of OAR Chapter 340, Division 45 or OAR 340-071-0162.
- E. *WPCF General Permit #800* means the WPCF general permit issued in accordance with the procedures of OAR 340-045-0033 for confined animal feeding operations.

VI. Background

- A. The Oregon Legislature established a special regulatory program for CAFOs in 1989, with an effective date of January 1, 1990. 1989 Oregon Laws Chapter 847. The legislation required DEQ to develop and issue CAFO permits pursuant to its WPCF permit program and it directed ODA to inspect CAFOs to ensure permit compliance.
- B. From the outset, ODA and DEQ worked cooperatively on water quality issues associated with CAFOs. This cooperation was encouraged by the governor and legislature and in 1993 the CAFO statutes were amended to direct the EQC and ODA to enter into a formal memorandum of understanding providing for ODA to run the CAFO program. The legislature authorized ODA to perform any function of the EQC or DEQ so long as the delegation is consistent with the MOU.
- C. In 2001, the legislature again amended the CAFO statutes. 2001 Oregon Laws Chapter 248. The purpose of the amendments was to authorize and direct the transfer of the federally delegated NPDES permit program for CAFOs from DEQ to ODA at such time as the transfer is approved by the EPA.

VII. Authorities Delegated to ODA

To the maximum extent allowed by the delegation agreement between the state and EPA, ODA is authorized to perform the following functions of the EQC and DEQ with respect to CAFOS:

- A. All functions authorized by ORS 468.065 *Issuance of Permits; Content; Fees; Use*, 468.073 *Expedited or Enhanced Regulatory Process; Payment; Disposition of Payments*, 468.095 *Investigatory Authority; Entry on Premises; Status of Records*, and 468.120 *Public Hearings; Subpoenas, Oaths, Depositions*.
- B. All functions authorized by ORS 468B.020 *Prevention of Pollution*, 468B.032 *Alternative Enforcement Proceedings; Request; Public Notice; Fees*, 468B.035 *Implementation of Federal Water Pollution Control Act*, 468B.053 *Alternatives to Obtaining Water Quality Permit*, 468B.055 *Plan Approval Required; Exemptions; Rules*, 468B.095 *Use of Sludge on Agricultural, Horticultural or Silvicultural Land; Rules*, and 468B.200 et seq *Animal Waste Control*.
- C. All functions authorized by OAR Chapter 340, including, but not limited to, Divisions 45 *Regulations pertaining to NPDES and WPCF Permit* and 51 *Confined Animal Feeding or Holding Operations of Chapter 340*.

VIII. ODA Roles and Responsibilities

- A. Prior to EPA Approval of NPDES Program Delegation to ODA, ODA will:

Technical Assistance

1. To the extent possible, conduct an education program for CAFO operators in cooperation with the OSU Cooperative Extension Service to impart Best Management Practices (BMPs) for animal waste management systems.
2. Advise CAFO owner/operators about available state, federal, and private sources of technical and financial assistance for planning, designing, and implementing appropriate BMPs for animal waste management systems.

NPDES Program Development

3. Develop and implement administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority to ODA.
4. Work with DEQ to develop and implement a method of issuing NPDES individual and general permits for qualifying CAFO facilities until such time as ODA has received the necessary delegated authority to operate a NPDES program for CAFOs.
5. Promulgate a new CAFO NPDES general permit through joint rulemaking with DEQ for use by new and existing operators.

NPDES and WPCF Permit Program Implementation

6. Receive and review permit applications for existing or proposed CAFOs.

7. Assign coverage to those applicant CAFO facilities that qualify for coverage under the existing WPCF General Permit #800 or future WPCF or NPDES general permits, or issue an individual permit if necessary.
8. Review for approval or rejection animal waste management system plans and specifications for animal waste control facilities to verify the plans and specifications have been prepared pursuant to OAR 340-051 design criteria. ODA may develop its own method for accepting certification from outside professional engineers as to the sufficiency and quality of the plans and specifications. Prior to plan approval and when appropriate:
 - (i) ODA may request that DEQ review plans and specifications for construction, modification, or expansion of CAFOs to determine whether the proposed construction conforms to groundwater protection requirements.
 - (ii) ODA may request that DEQ review plans and specifications for CAFO systems not covered by Division 51, such as mechanical treatment systems or subsurface disposal systems.

Compliance Activities

9. Conduct periodic inspections of all permitted CAFOs. Inspections will include an evaluation of animal waste collection, treatment, handling, disposal and management procedures for compliance with the Clean Water Act, Oregon water quality law, and permit conditions.
10. Respond promptly to citizen complaints pertaining to the operation of CAFOs. ODA has primary responsibility for response to complaints received from the public, and for investigation of known or suspected violations of laws, rules, orders, permits, or water quality standards associated with CAFO facilities.
11. Take prompt enforcement action when CAFOs violate permit conditions, water quality statutes, rules or orders in accordance with ODA enforcement procedures.
12. Impose civil penalties, when appropriate, on the owner or operator of a CAFO for failure to comply with the provisions of ORS 468 or 468B, or any rules adopted thereunder, or for violations of a permit issued pursuant to ORS 468B, relating to the prevention and control of water pollution from a CAFO, subject to the provisions for civil penalties contained in ORS 183.415 and ORS 468B.230 and in 2001 Oregon Laws Chapter 248 (HB 2156).
13. Develop and maintain a program database on all permit activities and produce periodic reports on the status of CAFO permits, complaint investigations, corrective orders, enforcement actions, and civil penalties imposed.
14. Notify DEQ when a discharge violation threatens public health or safety.

- B. After EPA Approval of NPDES Permit Program Delegation to ODA, ODA will:

1. Work with DEQ to draft an amended MOU to address the changes resulting from such delegation.
2. Work with DEQ to address CAFO permitting issues in groundwater management areas and water quality limited streams.
3. Work with DEQ to maintain the State of Oregon's delegated authority to enforce the CWA.

IX. DEQ/EQC Roles and Responsibilities

- A. Prior to EPA Approval of NPDES Program Delegation to ODA, DEQ/EQC will:

Permit Program Assistance

1. Provide advice, assistance, training, and program guidance relative to surface and groundwater quality problems associated with animal waste, including but not limited to groundwater protection and monitoring requirements, permit writing, lagoon leakage testing, annual compliance inspections, data analysis, and sampling parameters and protocols.
2. Work with ODA to develop and implement a method of issuing NPDES permits for qualifying CAFO facilities until such time as ODA has received the necessary delegated authority to operate an NPDES program for CAFOs.
3. Assist ODA in developing administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority to ODA.
4. Review plans as requested by ODA.

Compliance Activities

5. Refer all water pollution citizen complaints received on CAFOs and information regarding suspected violations of permits, rules, or water quality standards by CAFOs to ODA for investigation and follow-up.
6. Consistent with existing law, conduct inspections only when requested by ODA or, in situations that present an imminent and substantial danger to human health or the environment, after notifying ODA if the situation is known by DEQ to be related to a CAFO.
7. Initiate enforcement actions, within agency discretion, only as a direct result of the investigative actions outlined herein or upon request of ODA.
8. Participate in annual reviews with ODA and work cooperatively with ODA to achieve the objectives of this agreement. The annual review may include file reviews as well as inspection of a small, agreed-upon number of animal feeding operations not under ODA jurisdiction across the state by a team representing ODA and DEQ.

- B. After EPA Approval of NPDES Permit Program Delegation to ODA, DEQ/EQC will:
1. Work with ODA to draft an amended MOU to address the changes resulting from such delegation.
 2. Work with ODA to address CAFO permitting issues in groundwater management areas and water quality limited streams.
 3. Work with ODA to maintain the State of Oregon's delegated authority to enforce the CWA.

X. No Third Party Rights

Nothing in this MOU constitutes or creates a defense on behalf of a regulated party.

XI. Resolution of Disagreements Regarding the Interpretation and Application of this MOU

In the event of disagreement regarding the interpretation and application of this MOU, agency staff will direct the disagreement to designated supervisors or other managers for resolution.

- A. In the case of ODA, the director or his designee has authority to resolve disputes.
- B. In the case of DEQ, the director or her designee has authority to resolve disputes.

XII. Modification of the MOU

This MOU may be modified at any time by written agreement of the parties.

XIII. Termination of the MOU

This MOU may be terminated at any time and by either party after 60 days advance notice of intent to terminate and/or within 180 days after formal delegation has been achieved. The notice must be provided in writing and served on the director of DEQ on behalf of the EQC or the director of the State Department of Agriculture on behalf of ODA.

Stephanie Hallock
Director of DEQ on behalf of the
Environmental Quality Commission

Phil Ward
Director of ODA

Date

Date

Agenda Item K, Informational Item: Revision of EQC and ODA Memorandum of
Understanding for Confined Animal Feeding Operations Permit Program
July 26, 2002 EQC Meeting
Page 13 of 13

Attachment C
1995 MOU

MEMORANDUM OF UNDERSTANDING BETWEEN
THE ENVIRONMENTAL QUALITY COMMISSION (EQC)
AND
OREGON DEPARTMENT OF AGRICULTURE (ODA)
FOR
PREVENTING AND CONTROLLING WATER POLLUTION
FROM CAFO FACILITIES

I. PURPOSE

In accordance with ORS 190.110 and ORS 468.015, this Memorandum of Understanding (MOU) sets forth the roles and responsibilities of the Department of Environmental Quality (DEQ), as directed by the Environmental Quality Commission (EQC), and the Oregon Department of Agriculture (ODA), for managing a statewide Confined Animal Feeding Operation (CAFO) waste management program.

II. IT IS MUTUALLY AGREED BY ALL PARTIES THAT:

- A. The ODA has an existing framework for working directly with the agricultural community to identify and implement conservation practices, and
- B. The ODA has extensive knowledge and experience in delivering information to the agricultural community, and
- C. Through Oregon Revised Statutes Chapter 468 and 468B, the DEQ has been designated the state agency responsible for preventing water pollution in the state from all sources, including CAFO facilities, and
- D. The statutory framework for the water pollution control program includes, in part, reviewing plans for waste disposal systems, issuing permits for waste disposal systems, and evaluating tax credit applications for water pollution control facilities, and
- E. ORS 468.035(c) authorizes DEQ to advise, consult, and cooperate with other agencies of the state with respect to all matters pertaining to the prevention and control of water pollution, and
- F. ORS 468B.217 requires the EQC and the ODA and to enter into a Memorandum of Understanding authorizing the ODA to operate a program to prevent and control water pollution from CAFOs, and authorizing ODA to perform any function of the EQC and DEQ in this capacity,
- G. ORS 468B.230 authorizes the ODA to enforce certain provisions and impose civil penalties on owners or operators of CAFOs for failure to comply with pertinent laws, rules, or permit requirements,

THEREFORE, through mutual agreement, the DEQ (as directed by the EQC) and ODA herein establish the following definitions, procedures and responsibilities to administer a statewide CAFO program.

III. DEFINITIONS.

For the purposes of this Memorandum of Understanding, permit program and enforcement activities, the following terms shall be defined as follows:

- A. Agronomic rate of application--a rate of applying animal waste to land such that the application matches the nutrient requirements of the crop cover on the site on an annual basis; however, as normally provided in permit conditions, such application of wastewater distributed on land for dissipation by evapotranspiration shall be at locations, at a time, and in a manner such that no contamination or impairment to designated beneficial uses of public waters is caused by runoff, seepage, or other means.
- B. Animal Waste Control Facility--all or any part of a system or systems used in connection with a confined animal feeding or holding operation for the (a) control of drainage; (b) collection, retention, treatment, and disposal of liquid waste or contaminated drainage waters; or (c) collection, handling, storage, treatment, or processing and disposing of manure.
- C. Animal Waste Management System Plan--pursuant to OAR 340-51-020, a facility-specific management plan as outlined in the Oregon Animal Waste Installation Guidebook and which includes: (a) a general description of the operation; (b) a detailed operation and maintenance plan and pertinent plans, specifications, and site drawings; (c) inventory data; (d) animal waste volume computations; and (d) inspection plans. The animal waste management system plan may also include groundwater monitoring requirements specified in OAR 340-40-030(a).
- D. Beneficial use(s)--those uses designated in water quality standards in OAR 340-41-026 through -975. For groundwater, the most important designated beneficial use is for public and private drinking water supplies; however, other beneficial uses may include industrial supplies, livestock watering, and as a base flow to surface waters.

Groundwaters which are known or assumed to be of high quality and which quality may naturally exceed the levels necessary to support beneficial uses (especially drinking water) shall be maintained at that level, unless otherwise allowed by variance (Refer to 340-40, Groundwater Quality Protection).

- E. Best Management Practices (BMPs)--effective and expedient methods, measures or practices including but not limited to schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent, reduce or control the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leakage, sludge or waste disposal, or drainage from raw material storage. BMPs may be applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into waters of the state.
- F. Confined Animal Feeding Operation (CAFO)--shall have the meaning given in ORS 468B.205; that is, the concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep or swine feeding areas, dairy confinement areas, slaughterhouses or shipping terminal holding pens, poultry or egg production facilities, and fur farms, in buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather or which have waste water treatment works.
- G. Corrective Order or Order-- shall have the meaning given in ORS 183.310(5). An Order means any ODA or DEQ action expressed orally or in writing directed to a CAFO owner or operator, issued pursuant to OAR 603-74-040, or OAR 340-12-041.
- H. Discharge or Disposal--means the placement of wastes into public waters, on land, or otherwise into the environment in a manner that does or may tend to affect the quality of public waters.
- I. General Permit--a permit issued to a category of qualifying sources pursuant to OAR 340-45-033. A general permit is assigned to a qualified source in lieu of an individual permit written specifically for a particular facility.

- J. Land Use Compatibility Statement (LUCS)--a statement submitted by a permit applicant which provides information on activities that may significantly affect land use. The information contained in the statement assists the reviewing agency in determining whether an existing or proposed activity will comply with statewide land use goals, and that the activity is compatible with acknowledged comprehensive plans. (Reference to ORS 197.180)
- K. Nonpoint source--means diffuse or unconfined sources of pollution where contaminants may either enter public waters, or be conveyed by the movement of water to public waters.
- L. Point source--any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or confined animal feeding operation from which pollutants are or may be discharged.
- M. Pollutant or water pollution--human-made or human induced alteration of the chemical, physical, biological, or radiological integrity of water; and as further defined in ORS 468B.005(3) and OAR 340-45-010(13).
- N. Waste or wastes--means sewage (including animal waste) and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution to waters of the state.
- O. Waters, public waters or waters of the State--shall have the meaning given in ORS 468B.005(8), which includes groundwater.
- P. WPCF Permit--a Water Pollution Control Facilities permit to construct or operate an animal waste disposal system which has no discharge to navigable waters. An individual WPCF permit is written for and issued to a specific facility by the authorized state agency in accordance with the procedures set forth in OAR 340-14-005 through 340-14-050.

IV. ODA DESIGNATED RESPONSIBILITIES:

The ODA agrees to:

- A. Conduct an education program for CAFO operators in cooperation with the OSU Cooperative Extension Service to impart Best Management Practices (BMPs) for animal waste control facilities.
- B. Advise CAFO owner/operators about available state, federal, and private sources of technical and financial assistance for planning, designing, and implementing appropriate BMPs for animal waste management systems.
- C. Act as DEQ's agent in receiving and reviewing registration/application forms for coverage under the CAFO general permit (General Permit Category 0800), and assigning coverage by general permit to those applicant CAFO facilities which qualify, in accordance with detailed procedures described in Section VI. A., which follows.
- D. Act as DEQ's agent in receiving and reviewing permit application forms and plans for existing or new proposed CAFO facilities, and issuing individual permits, if necessary, in accordance with procedures in Section VI. B. of this document. This would include applications from CAFOs previously operating under the general permit.
- E. Review for approval or rejection animal waste management system plans and specifications for animal waste control facilities to verify the plans and specifications have been prepared pursuant to OAR 340-51 and the Oregon Animal Waste Installation Guidebook design criteria, in accordance with Section X of this document. Prior to approval and if appropriate, the ODA may request that the DEQ review plans and specifications for construction, modification, or expansion of CAFOs to determine whether the proposed construction conforms with groundwater protection requirements. The ODA may also request that DEQ review plans and specifications for CAFO systems not covered by Division 51 or the design guide, such as mechanical treatment systems, or subsurface disposal systems.

- F. Strive to conduct at least one inspection per year for those CAFOs which have individual permits, or Corrective Orders in addition to their permit, and at least one inspection every five years for CAFOs under general permit.
- G. Respond promptly to citizen complaints pertaining to the operation of CAFO facilities. The ODA has first responsibility for response to complaints received from the public, and for investigation of known or suspected violations of laws, rules, orders, permits, or water quality standards associated with CAFO facilities. The ODA may negotiate separate agreements with Soil and Water Conservation Districts for complaint investigation and response.
- H. Negotiate with a permittee the terms and conditions to be included in a Corrective Order for CAFOs not in compliance with the conditions of the wastewater permit. The ODA will issue a unilateral Corrective Order when a negotiated Order cannot be achieved. The Corrective Order shall be in addition to the wastewater permit and not in lieu of it. The Corrective Order shall be issued by the ODA and signed by the Director of ODA or a designee.
- I. Take prompt enforcement action when CAFO facilities violate permit conditions, water quality statutes, rules or orders in accordance with ODA enforcement procedures. For non-CAFO livestock operations, the ODA may refer unresolvable complaints and violations to DEQ for investigation and enforcement.
- J. Impose civil penalties, when appropriate, on the owner or operator of a CAFO facility for failure to comply with the provisions of ORS 468 or 468B, or any rules adopted thereunder, or for violations of a permit issued pursuant to ORS 468B, relating to the prevention and control of water pollution from a CAFO, subject to the provisions for civil penalties contained in ORS 183.415 and ORS 468B.230.
- K. Develop and maintain a program database on all permit activities, and provide to EQC or DEQ, when requested, a report on the status of CAFO permits, complaint investigations, corrective orders, enforcement actions, and civil penalties imposed.

V. DEQ RESPONSIBILITIES

The DEQ agrees to:

- A. Provide advice, assistance, training, and program guidance relative to surface and ground water quality problems associated with animal waste, including but not limited to groundwater protection and monitoring requirements, permit writing, lagoon leakage testing, annual compliance inspections, data analysis, and sampling parameters and protocols.
- B. Recommend to EQC the issuance of tax credit certificates in accordance with procedures described in Section XII, below.
- C. Retain administrative oversight for the three existing individual permits until these permits are transferred to ODA oversight in accordance with the schedule contained in Section XIV, below.
- D. Retain enforcement responsibilities for existing individual permits (until transferred to ODA), and for other non-CAFO livestock operations.
- E. Refer all water pollution citizen complaints received on CAFOs and information regarding suspected violations of permits, rules, or water quality standards by CAFOs to ODA for investigation and follow-up, excepting those permits for which oversight has not yet been transferred to ODA.

VI. PERMIT PROGRAM PROCEDURES

A. General Permit (0800).

1. The ODA will distribute application forms to CAFO facilities which need to be covered by the general permit (Formally called General Permit 0800, WPCF Permit, covering any CAFO with a wastewater disposal system), unless ODA determines that an individual WPCF permit for the particular CAFO facility is necessary. Applications for general permits shall include pertinent general information and description of the activity, and if appropriate, a LUCS, an animal waste management system plan, and detailed plans and specifications.

2. Upon receipt of an application, the ODA will screen it for completeness, review the application to determine if the CAFO qualifies for a general permit, assign a maximum number of animals, and then assign coverage by the general permit if appropriate.
3. Facilities which would otherwise qualify for coverage by the general permit, but for whatever reason cannot immediately comply with all provisions, shall be issued a Corrective Order by ODA in addition to general permit coverage.
4. As allowed by statute and by this MOU, the ODA may perform any function of the EQC or DEQ relating to the control and prevention of water pollution from a CAFO. The ODA may on behalf of EQC and DEQ, modify, or revoke the general permit (General Permit 800), or issue new general permits in accordance with the requirements of OAR 340-45-033.
5. Fees for processing general permits may be charged in accordance with the fee schedule in OAR 340-45-075, and collected by the ODA.

B. Individual Water Pollution Control Facilities (WPCF) Permits

1. CAFO facilities which meet the following criteria shall be issued individual permits by the ODA:
 - a. for new CAFOs, if the proposed facility or system design cannot meet the requirements of the general permit; or
 - b. if the CAFO is not in compliance with conditions of the general permit, and ODA determines that resolution would take more than 2 years; or
 - c. if the ODA determines that the CAFO needs to monitor the waste management system or its environment and provide periodic reports to ODA to demonstrate compliance with water quality requirements; or

- d. for systems with treatment lagoons, if there is evidence that the lagoon leakage rate exceeds 1/8 inches per day, as evidenced by a DEQ acceptable leakage test; or
 - e. if groundwater quality monitoring data indicates that the CAFO adversely affects groundwater quality or surface waters into which the groundwater discharges; or
 - f. if the CAFO employs unconventional, experimental or unproven treatment methods (including constructed wetlands, mechanical treatment, or subsurface disposal systems), which require monitoring and periodic reporting to ensure proper performance and compliance with water quality requirements.
2. CAFOs which meet the criteria of Section VI.B.1.d. and e., above, or any CAFOs which are otherwise known or presumed to adversely impact groundwater quality, shall be issued individual permits containing requirements for performing hydrogeologic characterizations of groundwater. The hydrogeologic characterizations shall be completed in accordance with DEQ guidelines. If the hydrogeologic characterization indicates that the CAFO has the potential to adversely impact groundwater quality, then the CAFO shall be required to develop and undertake a groundwater monitoring program, and the permit will include specific groundwater concentration limits, pursuant to OAR 340-40-030.
 3. Individual WPCF permit application forms will be distributed by the ODA, and the application instructions shall include requirements for inclusion of a general description of the activity, relevant exhibits and supporting information, and a LUCS. The ODA will accept applications, review information, and follow the procedures set forth in OAR 340-14-005 through 045 for the issuance, renewal, modification, denial, revocation, transfer, and suspension of WPCF permits. Fees for processing individual permits may be charged in accordance with OAR 340-45-075, and collected by the ODA.

VII. CAFOS LOCATED IN WATER QUALITY MANAGEMENT AND PROTECTION AREAS

- A. Some CAFOs are now or may in the future be located in areas specially designated for water quality protection, such as groundwater management areas, wellhead protection areas, or a water quality management areas (e. g. Total Maximum Daily Loads (TMDLs) for surface water). To manage CAFO facilities in these areas, the ODA shall work with the DEQ to develop CAFO management strategies for the designated area, and the ODA shall be responsible for implementing the strategies.
- B. A management strategy may include, but not be limited to, compiling an inventory of CAFOs, inspection of all CAFO facilities in the area; establishing BMPs pertinent to the affected area, and working with area advisory committees to co-develop CAFO pollution prevention and control action plans and schedules. If CAFOs are determined to contribute to parameters of concern or otherwise adversely impact beneficial uses within a specially designated area, the management strategy may include provisions for more frequent source monitoring and inspection, more stringent permit conditions, enforceable animal waste management system plans for all CAFOs, issuing a general permit specific to the area, or requiring individual permits.

VIII. ALTERNATIVE PERMITS

- A. The ODA may develop and implement an alternative permit for CAFOs apart from the general permit (800) and individual WPCF permits. The permit would be developed in consultation with DEQ and in accordance with public information requirements. Alternative CAFO permits would provide enforceable conditions equivalent to the existing permitting program.
- B. The ODA shall be responsible for administration of the alternative permit and provide information as needed to the DEQ.

IX. CORRECTIVE ORDERS

- A. When a CAFO facility is not in compliance with the general permit or individual permit because of inadequate pollution control facilities, management, or waste disposal area, the ODA will issue a Notice of Noncompliance (NON) or

Corrective Order, pursuant to OAR 603-74-040. The NON may include a Corrective Order that specifies a schedule of actions to be taken. The NON and/or Order will be in addition to the general permit or individual permit, and will not replace it. The ODA will make reasonable attempts to negotiate a Corrective Order with the permittee; however, the Director of ODA or designee may issue a unilateral Corrective Order if a negotiated Order is not possible. The Director of ODA or designee will sign and issue the NON and/or Corrective Order to the permittee.

- B. Several CAFO facilities operating under the general permit have been issued Stipulated and Final Orders (SFOs) or Mutual Agreement and Orders (MAOs) by the DEQ. The ODA may act on behalf of the DEQ in enforcing all provisions of these orders until such time as the CAFO satisfies the conditions of the order, or the ODA and DEQ determine that the order should be replaced by a ODA-issued Corrective Order. If violation of a DEQ-issued order poses an immediate risk to public health or the environment, as determined by the ODA, the ODA may refer the violations to DEQ for enforcement.

X. PLANS AND SPECIFICATIONS REVIEW

- A. Oregon Revised Statutes (ORS) 468B.055 requires plans and specifications for water pollution control facilities to be reviewed by DEQ prior to construction, unless exempted from DEQ review by Commission rule, pursuant to OAR 340-52-045(3). The DEQ may exempt submittal of such plans where it has been determined that adequate review is conducted by another state agency. Pursuant to that rule, DEQ waives the requirement for plan submittal on animal waste control facilities where facilities have been designed and animal waste management system plans prepared in accordance with OAR 340-51 and the Oregon Animal Waste Installation Guidebook design criteria and so certified by ODA.
- B. The ODA may request technical assistance from the DEQ in the review of plans and specifications, particularly with regard to design criteria and requirements for mechanical treatment systems, subsurface disposal systems, constructed wetlands, and groundwater quality protection.

XI. COORDINATING EMERGENCY RESPONSE

- A. The ODA shall have the lead responsibility for responding to complaints and taking actions to address public concerns about CAFO facilities. When investigating citizen complaints about known or suspected releases of waste from a CAFO facility, the ODA shall obtain information about the material released, how the release occurred, actions underway to remediate the release, and potential for public health threat or environmental injury. If the ODA determines that public health or the environment may be harmed by releases from a CAFO facility, the ODA shall notify DEQ and other appropriate state and local authorities, and oversee efforts to obtain samples, clean up the site, or contain the release, as necessary.
- B. The DEQ shall refer all citizen complaints pertaining to CAFO and other non-CAFO livestock operations to the ODA for investigation and follow-up. If a citizen complaint is received outside of normal business hours, and DEQ determines that no threat to public health or the environment exists, the DEQ shall document the complaint, and forward the documentation to ODA immediately next business day. If the DEQ determines that an emergency situation exists, the DEQ shall immediately contact the designated ODA representative to coordinate investigation and follow-up activities.

XII. TAX CREDITS

- A. Tax Credit Certification. The DEQ is responsible for the review of all tax credit applications for water pollution control facilities. The ODA will inform CAFOs of the opportunity for tax credits and the requirement to have plans approved prior to construction. If ODA reviews plans and specifications pursuant to Section X. above, and provides documentation of such to DEQ, the DEQ will accept that plan review as meeting the plan review requirements associated with tax credit certification without making an independent plan review.
- B. Certificates. When DEQ receives a request for a tax credit certificate, ODA will be requested to verify that the claimed facilities are in place and are working properly.

The ODA will provide such verification within 60 days of the request. Once verification has been received, the DEQ will review the application and prepare a recommendation for the Environmental Quality Commission.

XIII. COLLECTION AND DISTRIBUTION OF PERMIT FEES

- A. The ODA will use the fee schedules in OAR 340-45-075 and OAR 603-74-020 for general permit and individual WPCF permits. ODA will collect and retain all fees relating to the processing and assignment of coverage by general permits, and for those individual permits for which ODA has administrative oversight responsibilities.
- B. The DEQ will collect and retain fees for those existing individual permits not yet transferred to the ODA. Once the permit is transferred, the responsibilities for fee collection will be borne by the agency with oversight.

XIV. TRANSFER OF EXISTING INDIVIDUAL PERMITS

- A. The DEQ will transfer the three individual permits listed below to the ODA upon joint DEQ and ODA site inspection of each facility, and consultation between agencies to coordinate a smooth transition:
 - 1. J. R. Simplot Company
Simplot Feedlot #4
Morrow County, Oregon
WPCF Permit Number 100335
 - 2. Mallorie's Dairy
Silverton, Oregon
WPCF Permit Number 100457
 - 3. Oregon Dept of Corrections
Mill Creek Correctional Facility
Salem, Oregon
WPCF Permit Number 100240
- B. The joint DEQ/ODA inspections and consultations shall occur not later than July 1, 1995.

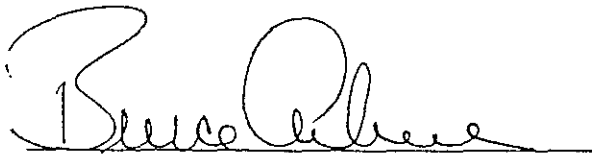
XV. LIMITATIONS

- A. Nothing in this MOU restricts the DEQ's right to inspect independently and take enforcement action on any source or suspected source of contamination or pollutant discharge; however, the DEQ recognizes that the ODA is the lead agency responsible for oversight of CAFO facilities and will exercise this right only in extraordinary circumstances.
- B. Nothing in this MOU constitutes or creates a valid defense to regulated parties operating in violation of environmental regulations, statutes, or permits.

XVI. AMENDMENTS AND TERMINATION

- A. This MOU may be modified at any time by mutual agreement of the parties. The Director of DEQ shall have authority to agree to amendments of an administrative nature on behalf of the Commission. Amendments or modifications with significant policy implications will be taken to the EQC for approval.
- B. Conveyance of jurisdiction in the administrative oversight of individual WPCF permits and the general permit is predicated upon the understanding that the ODA will provide equivalent and sustained protection of the environment. In the event that the ODA program fails to provide such protection, and upon mutual agreement of the ODA and the DEQ, then all or a portion of the CAFO program shall revert back to the DEQ.
- C. This MOU is in effect upon signature by all parties and will remain in effect until terminated by either agency, upon 180 days written notice, or until modified by mutual agreement.

STATE OF OREGON
DEPARTMENT OF AGRICULTURE



Director

5-5-95
Date

STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY

AS APPROVED BY THE
ENVIRONMENTAL QUALITY
COMMISSION



Director

5/9/95
Date

Oregon DEQ EQC Meeting Minutes

Home > EQC > EQC Minutes

Approved _____
Approved with Corrections X



Minutes are not final until approved by the Commission.

Environmental Quality Commission Minutes of the Three Hundredth and Fourth Meeting

July 25-26, 2002

Regular Meeting^[1]

The following Environmental Quality Commission (EQC) members were present for the regular meeting, held at the Department of Environmental Quality (DEQ) headquarters building, Room 3A, located at 811 S.W. Sixth Avenue, in Portland.

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

Also present were Stephanie Hallock, DEQ Director; Larry Knudsen, Oregon Department of Justice; and other DEQ staff.

Thursday, July 25, 2002

Before the regular meeting, the Environmental Quality Commission toured a DEQ monitoring site on Balch Creek in Northwest Portland. Mary Abrams, DEQ Laboratory Administrator, and Rick Hafele and Mike Mulvey, DEQ Water Quality scientists, led a macroinvertebrate sampling demonstration and discussed DEQ's biomonitoring and ambient monitoring programs with Commissioners. Following the tour, Commissioners held a working lunch with Ms. Abrams and Fenix Grange, DEQ Facilities Coordinator, to discuss the Department's efforts to locate a new lab facility.

At approximately 2:00 p.m., Chair Eden called the regular Commission meeting to order and agenda items were taken in the following order.

A. Contested Case No. WQ/M-NWR-00-010 regarding City of Scappoose

Larry Knudsen, Assistant Attorney General, introduced a contested case between DEQ and the City of Scappoose involving a proposed \$9,600 civil penalty for an alleged violation of the City's wastewater discharge permit. Mr. Knudsen explained that the

alleged violation was for intentional submittal of false data on a discharge monitoring report on two occasions in December 1998. 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. Christopher Rieve presented arguments to the Commission on behalf of the City of Scappoose. Jeff Bachman, Environmental Law Specialist, and Lynne Perry, Department of Justice, summarized arguments on behalf of the Department.

Commissioners discussed key issues in the case with Mr. Knudsen and the representatives of both parties. After deliberation, Commissioner Malarkey moved the Commission uphold the proposed order and civil penalty. Commissioner Reeve seconded the motion and it passed with four "yes" votes. Commissioner Bennett voted "no." The Commission asked Mr. Knudsen to prepare an order for the Director's signature on the Commission's behalf.

B. Contested Case No. WQ/OI-ER-01-065 regarding Brian Littleton, dba/Brian's Sewer & Septic Service

Larry Knudsen, Assistant Attorney General, introduced a contested case between DEQ and Brian Littleton, doing business as Brian's Sewer & Septic Service in the Klamath Falls area. Mr. Knudsen explained that the case involved a \$1,000 civil penalty for allegedly performing sewage disposal services without first obtaining a sewage disposal service license from DEQ. 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. Dorothy Littleton presented arguments to the Commission on behalf of Brian Littleton. Bryan Smith and Les Carlough, Environmental Law Specialists, summarized arguments on behalf of the Department.

Commissioners discussed the facts of the case and debated issues. After consideration, Commissioner Malarkey moved the Commission uphold the proposed order and civil penalty. Commissioner Reeve seconded the motion and it passed with four "yes" votes. Commissioner Van Vliet voted "no." The Commission directed Mr. Knudsen to prepare an order for the Director's signature on the Commission's behalf.

C. Rule Adoption: Permanent Rules to Add Methane, Under Certain Conditions, to the List of Environmental Cleanup Hazardous Substances

Director Hallock introduced permanent rules to add methane, under certain conditions, to Oregon's list of hazardous substances. Without these rules, DEQ lacked the authority to review and approve, order, or investigate and control methane at historic solid waste landfills. Alan Kiphut, DEQ Cleanup Program Manager, explained that under certain conditions at past landfill sites, methane gas has the potential to build up in confined spaces and create a threat of explosion. To give DEQ management authority in such cases, the Commission passed a temporary rule in January 2002. Commissioners discussed DEQ's work with a stakeholder advisory committee since January to develop permanent rules to address the issue. Commissioner Bennett moved the Commission adopt the permanent rules. Commissioner Malarkey seconded the motion and it passed with five "yes" votes. Commissioner Van Vliet moved the Commission repeal the temporary rule upon the effective date of the permanent rules. Commissioner Malarkey seconded the motion and it passed with five "yes" votes.

D. Director's Dialogue

Commissioners discussed current events and issues involving the Department and State with Stephanie Hallock, DEQ Director. In addition, Director Hallock introduced

Dick Pedersen, new DEQ Land Quality Division Administrator, who took the place of Acting Administrator David Rozell, and previous Administrator Paul Slyman.

E. Discussion Item: Preparation for Director's Performance Evaluation

In accordance with the Commission's process for evaluating the Director's performance, Chair Eden asked Director Hallock to prepare and submit a self-evaluation of her performance since becoming Director in November 2000. The Commission appointed Commissioner Van Vliet and Commissioner Bennett to serve as a subcommittee to prepare for the evaluation and solicit external input on the Commission's behalf. The Commission planned to conclude the evaluation by the end of the year.

Chair Eden recessed the meeting at approximately 5:25 p.m.

Friday, July 26, 2002^[2]

The Commission held an executive session at 8:00 a.m., 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 EQC meeting to order and agenda items were taken in the following order.

F. Approval of Minutes

Chair Eden corrected the spelling of Dick Pedersen's name on page 2 of draft minutes of the June 6-7, 2002, EQC meeting. Commissioner Reeve moved the Commission approve the minutes as corrected. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

G. Rule Adoption: Renewal of NPDES 1200-A, NPDES 1200-Z and WPCF 1000 General Permits

Mike Llewelyn, DEQ Water Quality Division Administrator, proposed renewal of three water quality general permits that together, apply to approximately 1,000 facilities for industrial storm water discharges or wastewater disposal at sand and gravel mining operations. DEQ issues general permits that apply to large groups of facilities with similar water discharge or pollution control systems. Kevin Masterson, DEQ Water Quality staff, described the three permits proposed for renewal in detail: (1) the National Pollutant Discharge Elimination System (NPDES) General Storm Water Discharge permit #1200-A, which covers industrial scale non-metallic mining, asphalt mix batch plants, and concrete batch plants with storm water runoff, (2) the NPDES General Storm Water Discharge permit #1200-Z, covering approximately 850 industrial facilities with storm water discharges, and (3) Water Pollution Control Facilities (WPCF) General Permit #1000, covering sand, gravel and other non-metallic mineral mining operations that dispose wastewater by recirculation, evaporation or controlled seepage, with no discharge to surface waters.

The Commission discussed the function of these permits, including associated monitoring requirements and key changes, with Mr. Llewelyn and Mr. Masterson. Commissioner Reeve moved the Commission renew the three permits in rule. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

H. Informational Item: Operation of Brine Reduction Area at the Umatilla Chemical Agent Disposal Facility

Chair Eden introduced a briefing for the Commission on issues surrounding the operation of the Brine Reduction Area (BRA) at the Umatilla Chemical Agent Disposal Facility (UMCDF) and the potential for off-site shipment of liquid brines and other wastewater. Mr. Gary I. Burke, Chairman of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), brought the issue to the Commission's attention in a May 8, 2002, letter. At this meeting, the Commission heard presentations from representatives of the Department, the CTUIR, the U.S. Army and Washington Demilitarization Company, and GASP (a Hermiston environmental group) on the issue, and discussed the status of the UMCDF with each party.

Wayne Thomas, DEQ Administrator of the Chemical Demilitarization Program, gave an update on the status of the UMCDF. Sue Oliver and Thomas Beam, DEQ Hazardous Waste policy and permit specialists, described the purpose and intended function of the BRA.

Armand Minthorn, CTUIR Board of Trustees Member, and Dr. Rod Skeen, CTUIR Chemical Engineer, expressed concerns over recent developments at the UMCDF and presented analysis of the effectiveness of the BRA.

Joseph Keating, on behalf of GASP, expressed concerns for operation of the BRA and the incineration facility.

Don Barclay, UMCDF Site Project Manager, Dave Nylander, Washington Demilitarization Company Environmental Manager, and Robert Nelson, Umatilla Chemical Depot Environmental Protection Specialist, discussed the incineration facility and plans for using the BRA on behalf of the UMCDF permittees.

The Commission discussed its response to issues raised by the speakers and asked Mr. Thomas to draft a response letter from the Commission to the CTUIR for their review. Chair Eden thanked the Tribe for bringing their concerns to the Commission's attention and thanked presenters for their comments.

Public Forum

At approximately 11:30 a.m., Chair Eden asked whether anyone wished to make general comments to the Commission. George Ward, a consulting engineer and interested citizen, presented his ideas and analysis of operation of the Brine Reduction Area at the Umatilla Chemical Agent Disposal Facility.

I. Informational Item: Preview of New Air Toxics Rules

Andy Ginsburg, DEQ Air Quality Division Administrator, described the Department's work to create a new state program to reduce air toxics emissions, designed to supplement the federal air toxics program that DEQ has implemented since 1990. Mr. Ginsburg summarized development of the program over the past two years, in cooperation with a diverse stakeholder advisory committee. Sarah Armitage, DEQ Air Toxics specialist, explained that the state program would target urban air toxic emissions from mobile and various small sources to complement the industrial focus of the federal program. Commissioners discussed the program with Mr. Ginsburg and Ms. Armitage, in preparation for considering adoption of program rules at the December 2002 EQC meeting.

J. Action Item: Consideration of Oregon Environmental Council Petition for Air Quality Rulemaking

Director Hallock introduced this item, explaining that on July 10, 2002, the Oregon Environmental Council (OEC) petitioned the Commission for permanent rulemaking to increase the regulation of mercury emissions to the air. Specifically, OEC petitioned to direct DEQ to require monitoring for mercury emissions and begin rulemaking to establish air emission limits for mercury, including Plant Site Emission Limits for facilities that discharge over one pound of mercury per year. Director Hallock described DEQ's priority and work to date to reduce the release of toxic chemicals, particularly mercury, to the environment. Chair Eden invited representatives from OEC, interested stakeholders and members of the public to comment on the petition.

Jeff Allen, OEC Executive Director, Laura Weiss, OEC Program Director, and Chris Rich, representing OEC, presented the rationale for the petition. Andy Ginsburg, DEQ Air Quality Administrator, explained the Department's reasons for recommending the Commission deny the petition, and summarized current plans for addressing the issues OEC raised. John Ledger, Associated Oregon Industries, expressed support for DEQ's toxic reduction approach and concern for OEC's request for rulemaking. Michael McColly, M.D., a public health physician and professor at the Oregon Health and Sciences University, expressed support for OEC's petition and the need for reducing all sources of mercury emissions. Rhett Lawrence, Oregon State Public Interest Research Group, provided written testimony in support of OEC's petition.

The Commission discussed the importance of making progress on reducing toxics to protect human health and the environment, as well as the complexity of the issue and DEQ's resource limitations. Commissioners also considered the difficulty of using individual regulatory mechanisms outside of a comprehensive approach that included stakeholder support. After deliberation, Commissioner Bennett moved the Commission deny the petition. Commissioner Malarkey seconded the motion and it passed with five "yes" votes. Chair Eden asked Mr. Knudsen to prepare an order for the Director's signature on the Commission's behalf. In addition, the Commission asked DEQ to respond in writing to OEC's recommendations that accompanied the petition, with the exception of OEC's comments on DEQ's water quality general permit rules. Director Hallock suggested the Department respond with details about the feasibility of OEC's recommendations, including resource limitations and necessary changes to agency work, by the end of the year. The Commission agreed with the Director's suggestion, and thanked those who presented.

K. Informational Item: Revision of MOU between the Commission and Oregon Department of Agriculture for the Confined Animal Feeding Operations Permit Program

Mike Llewelyn, DEQ Water Quality Division Administrator, and Charles Craig, Oregon Department of Agriculture (ODA) Deputy Director, described the need to revise a Memorandum of Understanding (MOU) between the EQC and ODA for the Confined Animal Feeding Operation (CAFO) permit program. They explained that in 1993, the Oregon Legislature directed the Commission to enter a MOU with the ODA to transition the CAFO permit program from DEQ to ODA. The resulting 1995 MOU transferred the state Water Pollution Control Facilities permit program for CAFOs from DEQ to ODA. In 2001, the Legislature directed DEQ to transfer the National Pollutant Discharge Elimination System permit program for CAFOs to ODA as well, upon approval from the Environmental Protection Agency. Commissioners discussed plans for revising the existing MOU with Mr. Llewelyn, Mr. Craig and Director Hallock in preparation for making the changes at the October 2002 EQC meeting.

L. Commissioners' Reports

Commissioners gave no reports.

Chair Eden adjourned the meeting at approximately 2:40 p.m.

[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] On July 26, Commissioner Van Vliet participated in the meeting by phone for items H, I and J only.

For more information contact Mikell O'Mealy at 503-229-5301.

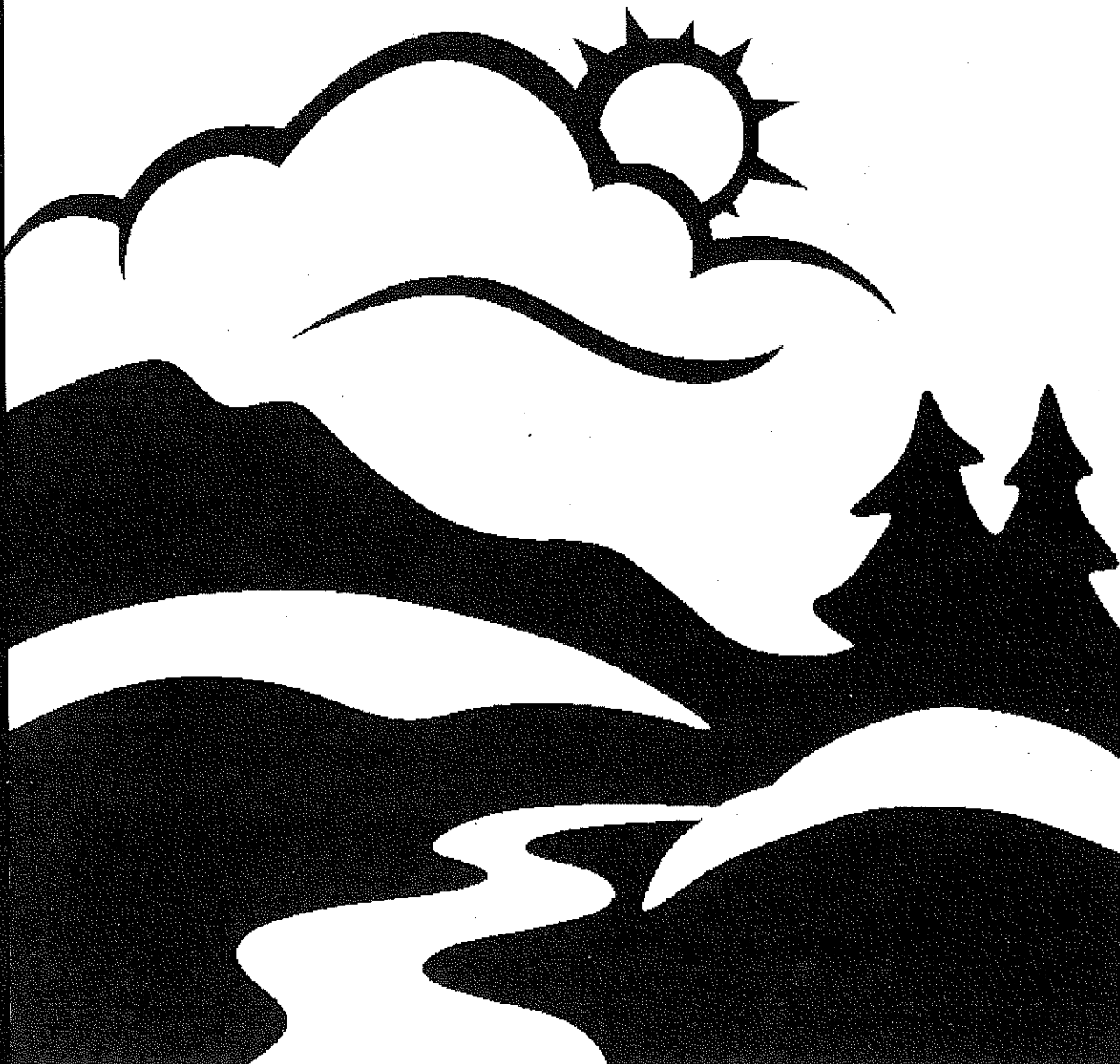
DEQ Online is DEQ's official Internet site.
If you have questions or comments contact DEQ's webmaster.

**State of Oregon
Department of
Environmental Quality**



State of Oregon
Department of
Environmental
Quality

**Laboratory Business Plan
May, 2002**



Department of Environmental Quality Laboratory Business Plan

EXECUTIVE SUMMARY	1
INTRODUCTION	3
BACKGROUND	3
VISION	4
CURRENT CONSTRAINTS	5
Space Needs Analysis	6
Location of the Laboratory	6
Locating on a Brownfield	7
STRATEGY OPTIONS FOR ACHIEVING THE VISION	7
Strategy Option A. Improve existing facilities	7
Strategy Option B. Partner with other laboratories	8
Strategy Option C. Outsource/Private	10
Strategy Option D. Renovate an existing facility for DEQ	11
Strategy Option E. Renovate an existing facility for DEQ and OPHL	13
Strategy Option F. Develop a new facility for DEQ	13
Strategy Option G. Develop a new facility with another agency partner (OPHL)	14
CONSEQUENCES OF DELAYING ACTION	15
RECOMMENDED SOLUTION	16
APPENDICES	17
Appendix 1 – Space Needs Analysis	17
Appendix 2 – Budget and staffing	18

Executive Summary

The Oregon Department of Environmental Quality (DEQ) is the state agency responsible for protecting Oregon's environment. An underlying component in this work is the continual evaluation of the condition of the environment and compliance with standards. The DEQ laboratory provides a broad spectrum of routine and special chemical and biological analyses in support of state and federal environmental protection programs. In addition, the DEQ laboratory is an important component of the state team responding to terrorist threats and other emergency situations. The DEQ laboratory analyzes over 13,000 samples each year. The results from these analyses are used by DEQ staff, citizen groups, the regulated community, and research and academic institutions. Because many decisions depend on the quality of information generated by the laboratory, DEQ is committed to the highest level of excellence in providing objective, unbiased information.

The vision of the DEQ laboratory is to provide scientifically sound, timely, safe and efficient analytical capabilities for assessing the quality of Oregon's environment. The existing laboratory, however, is constrained by its current facilities. Designed in 1975 for 50 staff, the existing facility currently houses nearly 90. In addition, the age and size of the facility increase the likelihood of cross contamination of samples and limit the ability of the lab to safely respond to emergency situations, such as analysis of unknown substances from bomb threats or potential terrorist activities. Finally, the space is now urgently needed by Portland State University (PSU) for classrooms and teaching laboratories and DEQ has been officially informed by PSU (the Lessor) that the lease will not be continued.

Due to the length of tenancy, and the age and condition of the laboratory, rental rates paid by DEQ are far below current market rates for laboratory facilities. The low rental rates and small size of the laboratory have provided a benefit to the State by keeping the true cost of the laboratory artificially low for many years. This makes the move to new, larger facilities financially challenging. DEQ has conducted a needs assessment and cost comparison of a number of alternatives:

- Improve the current facilities – No expansion space is available on the PSU campus. Even if additional space could be found, the current facility would require massive system and structural upgrades to extend its useful life..
- Partner with other laboratories – DEQ reviewed the potential of co-locating with local, state and federal partners involved in similar laboratory activities. The Oregon Public Health laboratory provides an opportunity for co-location.
- Outsource/Privatize – The DEQ laboratory has already identified and implemented some outsourcing opportunities. Due to the data quality required for compliance and enforcement activities and the large volume of specialized monitoring and analysis, it is not possible for all work to be out-sourced to private or academic partners.
- Moving to a different facility:
 - Renovation of an existing facility – This offers the potential for cost savings over new construction, depending on the nature of the existing facility.
 - Construction of a new facility – This is the most expensive alternative, but has some advantages in optimizing efficient use of space, and maintaining long term laboratory flexibility.

The recommended alternative for the DEQ laboratory is to renovate an existing facility in partnership with the Oregon Public Health laboratory. DEQ and OPHL hope to take advantage of the existing market conditions to create a suitable facility at the least cost to the state.

On a final note, since market rental rates for laboratory facilities are not built into DEQ's base budget, the agency cannot fund the increased carrying cost without making large cuts in key program areas. If the State does not fund the increased leasehold costs of the laboratory in the 2003-2005 budget, there won't be a new laboratory before 2008. As the laboratory's ability to monitor and analyze environmental conditions in the State is compromised by aging and inadequate facilities, the effectiveness of the agency as a whole is degraded.



State of Oregon
Department of
Environmental
Quality

Management Services Division

811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
Fax: (503) 229-6730
Toll Free: (800) 452-4011
Contact: Holly Schroeder,
MSD Administrator

Laboratory Division

1712 SW 11th Avenue
Portland, OR 97201
Phone: (503) 229-5983
Fax: (503) 229-6924
Contact: Mary Abrams, PhD
Laboratory Administrator

www.deq.state.or.us

Introduction

This Business Plan outlines the need for and responsibilities of the Laboratory Division of the Department of Environmental Quality. It lays out a vision for the laboratory function, and identifies current constraints on and possible solutions for achieving that vision. Several options for how to achieve this vision are explored.

Background

The Oregon Department of Environmental Quality (DEQ) is the state agency responsible for environmental protection of Oregon's environment for all Oregonians. DEQ implements federal environmental programs delegated to the state by the US Environmental Protection Agency (EPA) and state programs defined by the legislature.

An underlying component in protecting Oregon's environment is knowledge of the condition of the environment and the status of compliance with standards. DEQ's laboratory is responsible for this essential science. The DEQ laboratory scientists analyze air, water, soil, fish and aquatic life, hazardous and solid waste, and pollutant discharges for all significant environmental contaminants.

Data produced by the laboratory have a direct impact on agency priorities and the protection of public health and the environment. Information from DEQ's environmental monitoring network informs decisions about new policies, regulations and standards that are needed to protect Oregon's environment. Samples from pollutant discharges and emissions provide information about whether regulated facilities are complying with permit limits and may be used in enforcement cases. Because so much depends on the quality of information generated by the laboratory, DEQ is committed to the highest level of excellence in providing objective, unbiased information on the quality of Oregon's air, water and land.

The laboratory provides a broad spectrum of chemical and biological analyses in support of state and federal environmental protection programs, including the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act and the Toxic Substances Control Act.

In addition, the DEQ laboratory is a member of the state response team in emergency situations. Within the state, the ODHS Public Health Laboratory (OSPHL) and the Department of Environmental Quality (DEQ) laboratory are the lead agencies in identifying unknown substances. The FBI and Oregon Emergency Management (OEM) turn to these labs to characterize samples identified as credible threats. The laboratories work closely together, with OSPHL identifying biologic agents, and DEQ characterizing chemical agents.



State of Oregon
Department of
Environmental
Quality

Management Services Division

811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
Fax: (503) 229-6730
Toll Free: (800) 452-4011
Contact: Holly Schroeder,
MSD Administrator

Laboratory Division

1712 SW 11th Avenue
Portland, OR 97201
Phone: (503) 229-5983
Fax: (503) 229-6924
Contact: Mary Abrams, PhD
Laboratory Administrator

www.deq.state.or.us

The DEQ laboratory analyzes over 13,000 samples each year. The data from these analyses are used to guide agency decisions and priorities. The data are also used by stakeholders in research and academic institutions, citizen groups, and the general public. The laboratory provides Quality Assurance oversight for the entire agency, increasing the reliability of the data used in environmental decision-making. Statewide, the laboratory works to insure the quality of thousands of results produced by private laboratories through ORELAP, the Oregon Laboratory Accreditation Program. Contractors involved in environmental clean up operations also receive Quality Assurance assistance and oversight from the Laboratory.

The DEQ laboratory provides the scientific foundation for DEQ's mission to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, water and land. The functions of the DEQ laboratory are as important to protection of Oregonians and the environment as are adequately maintained roads and bridges for transportation, new-born screening for diseases, or troopers for the Oregon State Police. The State of Oregon must maintain a well-functioning state environmental laboratory in order to accomplish the work of protecting its citizens and natural resources.

Vision

The vision of the DEQ laboratory is to provide scientifically sound, timely, safe and efficient analytical capabilities for assessing the quality of Oregon's environment.

Scientifically sound: The laboratory should be able to run sampling and analysis in accordance with approved protocols. The facility should support analysis and reporting at required detection limits without the potential for cross-contamination. All samples should be processed within approved holding times. Data should undergo quality assurance/quality control (QA/QC) checks and other independent audits and be unbiased from policy decisions. In its roles with the Justice Department and Oregon Emergency Management, the laboratory should maintain appropriate chain of custody and sample handling to support investigating agencies in prosecuting criminal activity.

Timely: The laboratory should provide data to users in a timely manner so that the data are current to the user's needs. Internal users should expect reliable turn-around times on samples. Round the clock laboratory services should be available to assist Oregon Emergency Management with immediate identification services for potentially harmful chemical agents.

Safe: The facility must meet all health and safety standards for laboratories. Designated by Oregon Emergency Management as the state laboratory for characterization of chemical agents used in attacks against civilians, the laboratory must also provide rapid and safe identification of unknown chemical compounds, including potential nerve agents. The laboratory, therefore, must include adequate containment and appropriate specialized equipment so that these samples can be analyzed without harm to employees or the public.

Efficient: The cost of operating a laboratory should be the minimum possible to accomplish the job effectively and safely. This includes the cost of operating the laboratory facility itself, and the appropriate use of staffing and expertise. Lab design should support work flow and maximize efficient use of space. Since samples are taken from all parts of the state, transportation of samples to the laboratory for analysis must be easy and safe and not cause unnecessary delays that could violate required sample holding times. To avoid creation of redundant state laboratory facilities, the laboratory should be used to conduct both environmental analyses and analyses of harmful compounds which may be used in terrorist threats.

Current Constraints

The DEQ laboratory has been located in Science Building Two on the Portland State University (PSU) campus for 26 years. The existing laboratory facility was designed in 1975 for 50 full time staff. Since that time, the staff has grown to nearly 90, with an additional 20 summer field staff who use the laboratory as their base of operations. The 76% staff growth at the laboratory has outpaced the 52% state population growth, due to increased state and federal environmental protections. Plans to build a new laboratory on the PSU campus began in 1997, and were abandoned in 2001. The laboratory lease expires in 2003, with extensions currently being negotiated through 2007. While the primary functions of the laboratory are continuing, the space constraints have reached a critical point; the laboratory is now 90% over-capacity, based upon the recently completed Needs Assessment. The added responsibility of analyses for the State's chemical terrorism response program further increases the strain on the existing facilities.

The existing physical structure of the laboratory severely limits efficient operation. Outdated and poorly regulated heating and air conditioning systems and inadequate hood systems limit the laboratory's ability to perform ultra-clean analyses, and occasionally cause contamination in conventional analyses. Staff are housed in hallways, in undersized workspaces, and in some cases off-site, in order to allow the work functions of the laboratory to continue. At the same time, the number and complexity of analyses have continued to grow over time. As science uncovers new risks, laboratories must be able to accurately detect an increasingly broad range of compounds at increasingly lower concentrations.

The current DEQ laboratory facilities have limitations that impair safe and rapid analysis of unknown substances or known chemical agents. The existing laboratory does not have adequate containment facilities, and existing controls limit 24 hour /7 day analysis. In addition, complete analytical capabilities for chemical agents are limited by existing instrumentation. While the DEQ laboratory has expertise for characterizing chemical threats and analyzing a wide variety of chemical compounds, additional equipment and protocols are needed to identify unknown agents used as weapons against the public. Identification is needed to mount an appropriate response, to identify compounds without further risk to responders or to the public, and to manage clean up efforts after an attack



State of Oregon
Department of
Environmental
Quality

Management Services Division

811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
Fax: (503) 229-6730
Toll Free: (800) 452-4011
Contact: Holly Schroeder,
MSD Administrator

Laboratory Division

1712 SW 11th Avenue
Portland, OR 97201
Phone: (503) 229-5983
Fax: (503) 229-6924
Contact: Mary Abrams, PhD
Laboratory Administrator

www.deq.state.or.us

or incident. Other state and regional laboratories are not prepared to conduct unknown chemical analyses. To date, with the exception of the Army, no other state or regional agency has performed laboratory analyses of unknown chemicals used as weapons. State HAZMAT teams are capable of conducting some preliminary field assessments only. Without access to the analytical capability of the DEQ laboratory, the FBI would be forced to ship potentially dangerous samples across the country to one of two federal laboratories.

DEQ faces a significant financial constraint in the search for a new lab because the agency's budget allocation for rental for laboratory facilities has been far below the true cost of a modern laboratory for many years. Due to the length of tenancy, and the age and condition of the laboratory, rental rates currently paid by DEQ are far below current market rates for laboratory facilities. The low rental rates and artificially small size of the laboratory have kept the laboratory rental expense artificially low for many years.

Space Needs Analysis

DEQ hired an architectural firm with expertise in laboratory planning to conduct a Needs Assessment to determine the amount of space and type of facilities required to conduct existing core functions and to respond safely to emergency analytical needs. The Assessment looked at options for improving current facilities, acquiring and retrofitting an existing facility, and new construction. The Assessment compared the efficiencies of a stand-alone DEQ facility to a joint facility with the Oregon Public Health Laboratory. DEQ directed the consultant to develop options for a facility that is "minimally adequate" to address the agencies' needs, and to incorporate modern laboratory efficiencies wherever possible.

Location of the Laboratory

The DEQ laboratory is currently located in the Portland metropolitan area. This location is optimal because of the need to receive samples from throughout the state, some of which have holding time requirements that cannot be exceeded between the time of sampling and analysis. At least 50% of the sampling occurs within the Willamette Valley due to the higher need for air quality monitoring and the large number of regulated entities in the Valley.

In addition, although there may be benefits to economically depressed communities by locating the lab outside of the metropolitan Portland area, it is not currently possible to move samples between many areas of the state (even relatively close areas) without passing through the Portland area. The added time to transport a sample by air between locations with a stop-over in Portland would not allow the laboratory to meet its required sample holding times for certain analyses. As an example, if the laboratory were located in Prineville (the geographical center of the state), a water sample to be analyzed for bacteria taken in Wallowa County would have to be transported to Pendleton, flown to Portland, transferred to another flight, flown to Redmond, and transported to Prineville. It would not be possible to make this trip within the holding time allowed for this analysis. Private charters do provide some direct transport between Oregon cities without a Portland stopover.

Currently, however, there is not adequate predictability in flight frequency and price stability to meet the laboratory's needs. Without these provisions in place, as well as rapid access to all parts of the state, locating the laboratory in the Portland metropolitan area appears to be the most viable option.

Locating on a Brownfield

Brownfields are abandoned, idled, or under-used industrial and commercial facilities where redevelopment is complicated by real or perceived environmental contamination.

Siting the laboratory facility on a brownfield would serve the State's long term interests in a number of ways. First, it would be highly appropriate for the agency to "walk its talk", and demonstrate that reclamation of polluted sites is both possible and feasible. Cleaning up and redeveloping a brownfield site can help communities by making use of existing infrastructure and catalyzing economic redevelopment and neighborhood revitalization. Properties that have contamination issues are much less marketable due to fears concerning liability issues. Decreased property values and federal brownfields assistance programs could potentially decrease the State's investment.

There are some limiting factors, however, that would need to be carefully evaluated if a brownfield property is considered. The most significant factor is timing. The characterization of contamination, remediation and negotiation of liability agreements can add significantly to a project schedule. This is a critical factor for Superfund sites because of the complex multi-agency mitigation agreements required. Clean up expenses can also introduce significant uncertainty into overall project costs. Finally, certain environmental contaminants, which may be present in brownfields, have the potential to interfere with laboratory analyses of incoming environmental samples, even when remediation has reduced concentrations to below thresholds for human health concerns.

In the site selection process, DEQ will actively seek appropriate brownfield properties. The type and extent of contamination will need to be evaluated for ease of remediation. Sites with more complex contamination issues will be considered if clean up is complete or in progress and liability issues can be resolved in a timely manner.

Strategy Options for Achieving the Vision

Strategy Option A. Improve existing facilities

The facility that DEQ has occupied for the past 25 years is inadequate to support ongoing laboratory work. DEQ is exploring adding additional office and storage



State of Oregon
Department of
Environmental
Quality

Management Services Division

811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
Fax: (503) 229-6730
Toll Free: (800) 452-4011
Contact: Holly Schroeder,
MSD Administrator

Laboratory Division

1712 SW 11th Avenue
Portland, OR 97201
Phone: (503) 229-5983
Fax: (503) 229-6924
Contact: Mary Abrams, PhD
Laboratory Administrator

www.deq.state.or.us

space within a few block radius to relieve immediate space constraints and that will allow all existing laboratory space to be used solely for laboratory purposes. While this “bridge solution” will help maintain minimal laboratory functionality for an additional three to four years, it is not a viable long-term solution. The size of the existing laboratory space is inadequate and cannot be expanded. In addition, the age and status of the environmental control systems limit some protocols due to the potential for cross-contamination of samples. Finally, Portland State University has notified DEQ that a lease extension beyond 2007 is not possible, because the laboratory space is needed for expansion of its science research and teaching programs.

One creative way to accommodate the space problem within the existing space would be to work with multiple shifts. However, this is not possible because the existing HVAC system does not provide enough recirculation after hours for safe working conditions in the laboratories. These HVAC constraints already effect analytical timeliness and will continue to deteriorate with time.

DEQ is enhancing existing containment facilities to ensure safer analyses of unidentified materials, but the existing laboratory cannot support the level of containment, protection and equipment support which would be required in the event of a significant chemical event.

Even if PSU agreed to allow the laboratory lease to extend beyond 2007, the infrastructure of the existing facility would require massive upgrades to provide support for increasingly sophisticated laboratory functions, such as ultra-clean analyses that require dedicated HVAC systems. A 1999 FEMA 178 evaluation of the building also indicated that it “does not appear to meet Life Safety for the design level earthquake”.

Strategy Option B. Partner with other laboratories

There are many other laboratories in the state, and DEQ has considered opportunities for partnering that would still ensure scientifically-sound, timely and efficient analytical capabilities for assessing the quality of Oregon’s environment.

Academic institutions

Academic partnerships provide a solid research connection to DEQ’s scientific regulatory role. DEQ’s reach has been extended by collaboration with PSU through use of interns, student technical workers, advanced study programs for DEQ employees, and teaching relationships. Current academic projects in the Air, Water, and Bio-monitoring Sections are providing additional in-depth information about projects important to DEQ’s mission.

Although expansion or continued location on the PSU campus has been ruled out due to space and financial constraints, other private institutions may be interested in locating the DEQ laboratory facilities on campus, in exchange for the rich research experiences which the laboratory could provide to its students. Private institutions may be better able to finance a build-to-suit building for DEQ.

On the other hand, because of the nature of academic research labs, they are typically not equipped or staffed to handle the production-level capacity provided by the DEQ laboratory. In addition, these laboratories rarely have the QA procedures that are needed to defend regulatory actions that are taken based on the data.

Oregon Public Health Laboratory

The Oregon Public Health Laboratory (OPHL) is currently co-located on the Portland State University campus with the DEQ laboratory. The two laboratories have a long-standing collaborative relationship: DEQ focuses on chemical analysis, and OPHL focuses on biological analysis. The agencies share technical and scientific expertise and regularly transfer samples between the two laboratories. The labs already collaborate on the administration of the Oregon Environmental Laboratory Accreditation Program (ORELAP). Both labs have leases expiring simultaneously and have requirements for highly specialized wet lab and containment facilities.

Co-location could provide substantial efficiencies for both agencies through shared common spaces, including loading docks, conference rooms, staff facilities, and sample tracking. Possible efficiencies also exist in construction costs per square foot resulting from shared construction requirements. Since OPHL is the designated state laboratory for identifying biological agents used in terrorist threats, co-location of the two laboratories could provide a centralized characterization triage center for Oregon Emergency Management. If separately located, DEQ and OPHL labs could each need to have sample triage centers because agents cannot always be identified in the field as chemical or biological in nature.

Oregon Department of Agriculture (ODA)

The Oregon Department of Agriculture laboratory was completed in 1997. While there are some similarities in analytical capabilities between the DEQ and ODA laboratories, the ODA laboratory is substantially smaller than needed for DEQ or combined functions.

Oregon OSHA

OR OSHA has just moved into a new facility. It is a small facility that is not equipped to handle the volume of work DEQ conducts. Since the laboratory is new and meets OSHA's needs, co-locating a facility with OR OSHA does not seem feasible at this time.

Oregon State Police (OSP)

The Oregon State Police are currently in the midst of a planning process to relocate their forensic laboratory facility and Medical Examiner's Office into a joint facility in Clackamas. DAS has received approval to acquire and renovate an existing R&D facility to convert into the OSP laboratory. The property is not large enough to accommodate additional laboratory facilities for DEQ.



State of Oregon
Department of
Environmental
Quality

Management Services Division

811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
Fax: (503) 229-6730
Toll Free: (800) 452-4011
Contact: Holly Schroeder,
MSD Administrator

Laboratory Division

1712 SW 11th Avenue
Portland, OR 97201
Phone: (503) 229-5983
Fax: (503) 229-6924
Contact: Mary Abrams, PhD
Laboratory Administrator

www.deq.state.or.us

Oregon Department of Fish and Wildlife (ODFW)

ODFW does not have laboratory facilities for chemical analyses. Some needed analyses are conducted for ODFW by DEQ, others by private laboratories.

US Environmental Protection Agency (EPA)

The EPA has a national network of highly specialized regional laboratories, and does not perceive a need for additional EPA laboratory functions in Oregon. It is interesting to note, however, that the EPA Region 10 lab, located in Seattle, is a mixed agency facility, supporting EPA Region 10 and the Washington Department of Ecology.

US Geological Survey (USGS)

The US Geological Survey's area of expertise includes water quality and bio-monitoring. USGS conducts surface, groundwater and soil sampling throughout Oregon and SW Washington. The agencies are often involved in closely related state and federal projects. Samples are collected statewide and prepared for transport at the Portland USGS laboratory, and then shipped to Denver for analysis. The current USGS facility is 30,000 square feet, including a 6,000 square foot laboratory, located in outer southeast Portland. The facility lease expires in 2003, and the agency has expressed interest in co-location, especially in concert with an academic partnership. Co-location could provide substantial efficiencies for both agencies through: shared common spaces, including conference rooms, and staff facilities, and less transit time for meetings. The local USGS sample preparation laboratory could possibly be integrated into DEQ laboratory functions. USGS has indicated, however, that while they could relocate to a new facility, they cannot provide any investment costs. The USGS existing facility is insufficient to handle the volume of work handled by the DEQ laboratory, and do not include the full range of analyses that DEQ conducts.

US National Marine Fisheries Service (NMFS)

There is no laboratory for NMFS in Portland. There is a NMFS laboratory in Seattle that is dedicated to fish samples and bio-assessment, and does not have the technical capabilities to provide the range of analyses performed by DEQ.

City of Portland Laboratories

Both the Drinking Water and Environmental laboratories have been constructed within the last 10 years, and have no foreseeable need for new or expanded facilities. In fact, both labs currently have expansion wet lab facilities that are outfitted but not currently in use, but this space is substantially smaller than the needs of DEQ's laboratory.

Strategy Option C. Outsource/Privatize

As a regulatory agency, it is essential that DEQ maintain impartiality in data collection and analyses. Unlike the research-centered mission of an academic institution, the regulatory nature of DEQ's mission requires production of standardized data from a wide variety of sample sources. Since many of the analyses

conducted at the laboratory are used for enforcement and compliance with state and federal environmental protection laws, it is essential to produce the highest quality and most credible data possible. A strong quality assurance program is a fundamental ethic of the DEQ laboratory program because of inherent scientific uncertainty associated with sample and instrument limitations. In fact, a full 30% of the analytical capability of the laboratory is devoted to quality assurance.

Many private laboratories do not implement the rigorous QA/QC procedures that are needed for data that is used as the basis for regulatory policy decisions. In addition, DEQ is responsible for accrediting environmental laboratories, and needs an independent basis for making those determinations.

Nationwide, state laboratories are a key component of state environmental protection programs. In most states, environmental quality agencies maintain discrete environmental laboratories. About ten states have combined function laboratory facilities that serve the needs of all of the state's agencies, including public health, environmental protection, agriculture, etc. Three other states do not maintain state facilities for environmental sample analysis: Nevada, Wisconsin and Iowa. These states have funded partnerships with state academic laboratories to meet the analysis and production requirements of federal environmental regulations.

DEQ has identified functions within the laboratory that can be privatized. As part of cleaning up contaminated sites, DEQ needs to know whether soil samples taken from the site are still contaminated. These analyses do not require the levels of QA/QC that are expected of other environmental quality samples. Running these samples on DEQ equipment also means that equipment must be decontaminated before using it for other analyses. The clean-up site samples in question are rarely used for enforcement actions or final decisions to certify a site as "clean". In late 2001, DEQ began sending these samples to private labs, with a result of reduced cost for the agency and improved cycle time for all samples.

DEQ constantly strives to reduce its laboratory operating costs, implementing efficiencies wherever possible and outsourcing functions which are not cost-effective.

Strategy Option D. Renovate an existing facility for DEQ

Renovation of an existing facility into a DEQ laboratory would be a cost-effective option for the State if an appropriate facility can be located. Once an appropriate facility is identified, the waiting period until occupancy can be as little as 2-4 years.

In order to realize savings from retrofitting an existing facility as compared to new construction, the building selected should include an adequate building footprint and parking, ceiling heights of at least 15 feet for laboratory spaces, high capacity utility service to the site, earthquake resistant construction, and high volume HVAC service. Maximum savings projected from renovation versus new construction are 29%. Savings may decrease to less than 10% if the building



State of Oregon
Department of
Environmental
Quality

Management Services Division

811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
Fax: (503) 229-6730
Toll Free: (800) 452-4011
Contact: Holly Schroeder,
MSD Administrator

Laboratory Division

1712 SW 11th Avenue
Portland, OR 97201
Phone: (503) 229-5983
Fax: (503) 229-6924
Contact: Mary Abrams, PhD
Laboratory Administrator

www.deq.state.or.us

envelope and structural system require significant upgrading. The number of properties available that meet the size and structural criteria required to make retrofitting a cost effective option may be extremely limited. The current economic climate and high vacancy rate in the commercial real estate market, however, may potentially increase the number of acceptable sites and reduce acquisition costs.

Renovations typically require 5-10% more square footage to achieve program needs, due to the loss of layout efficiencies that would be possible in new construction. However, the savings in project cost overall diminish the impact of this loss of efficiency.

Required Size: 56,162 square feet

Construction Cost Estimate: \$19,656,635

Projected Annual Rent Cost for DEQ: \$1,653,000¹

Timeline: From identification of a suitable property to occupancy – 2-4 years

¹ Rent Calculation Assumptions:

DAS ownership; State financing using Certificates of Participation

Property Acquisition Cost: \$4,500,000; retrofitting costs of \$245 per square foot

25 year amortization – interest rate at 4.75%

Strategy Option E. Renovate an existing facility for DEQ and OPHL

Renovation of an existing facility into a combined laboratory for DEQ and OPHL combines the substantial cost savings of renovation with the additional space efficiencies possible through sharing resources. There would be a savings of 8,117 square feet and approximately \$3.5 million as compared to renovating separate laboratories for each agency, and as much as \$10 million in project cost savings compared to new construction of a shared facility (depending on the property acquisition cost). Compared to new construction, renovations typically reduce the time between acquisition and occupancy.

Required Size: 95,293 square feet

Construction Cost Estimate: \$32,685,687

Construction Cost Allocated to DEQ occupancy: \$17,751,548

Projected Annual Rent Cost for DEQ: \$1,512,000²

Timeline: From identification of a suitable property to occupancy – 2-4 years

Space Efficiency savings over separate, renovated facilities for each agency:

8,117 square feet

Building Cost savings over separate, renovated facilities for each agency:

\$3,500,000

Strategy Option F. Develop a new facility for DEQ

Construction of a new laboratory facility for DEQ would provide efficient use of space because the building can be designed to meet the specific long-term needs of the laboratory, and to provide greater flexibility to meet changing requirements over time. The number of sites available for new construction is substantially greater than the number potential renovation properties available. Site size and zoning requirements are not likely to be limiting factors. New construction project costs are estimated to be 29% higher than comparable renovation projects. Land acquisition, design review, site work and construction increase the time to occupancy to 4 to 7 years.

Required Size: 52,244 square feet

Construction Cost Estimate: \$25,599,339

Projected Annual Rent Cost for DEQ: \$1,977,000³

Timeline: From identification of a suitable property to occupancy – 4-7 years

² Rent Calculation Assumptions:

DAS ownership; State financing using Certificates of Participation

Property Acquisition Cost: \$8,000,000; retrofitting costs of \$245 per square foot

25 year amortization – interest rate at 4.75%

³ Rent Calculation Assumptions:

DAS ownership; State financing using Certificates of Participation

Land Acquisition Cost: \$3,300,000; hard construction costs of \$350 per square foot

25 year amortization – interest rate at 4.75%



State of Oregon
Department of
Environmental
Quality

Management Services Division

811 SW 6th Avenue

Portland, OR 97204

Phone: (503) 229-5696

Fax: (503) 229-6730

Toll Free: (800) 452-4011

Contact: Holly Schroeder,

MSD Administrator

Laboratory Division

1712 SW 11th Avenue

Portland, OR 97201

Phone: (503) 229-5983

Fax: (503) 229-6924

Contact: Mary Abrams, PhD

Laboratory Administrator

www.deq.state.or.us

Strategy Option G. Develop a new facility with another agency partner (OPHL)

Construction of a combined, new laboratory facility for DEQ and OPHL would combine the design efficiency advantages of new construction with the additional space efficiencies possible through sharing resources. There would be savings of 7,550 square feet and approximately \$4.9 million as compared to new construction of separate laboratories for each agency. Because of the premium for new construction, this option would be more costly than either renovation option, Strategy Option D or E. Site availability is not likely to be a limiting factor for new construction.

Required Size: 88,645 square feet

Construction Cost Estimate: \$42,195,000

Projected Annual Rent Cost for DEQ occupancy: \$1,781,400⁴

Timeline: From identification of a suitable property to occupancy – 4-7 years

Space Efficiency savings over separate, new facilities for each agency:

7,550 square feet

Building Cost savings over separate, new facilities for each agency:

\$4,900,000

⁴ Rent Calculation Assumptions:

DAS ownership; State financing using Certificates of Participation

Land Acquisition Cost: \$5,750,000; hard construction costs of \$340 per square foot

25 year amortization – interest rate at 4.75%

Consequences of Delaying Action

The strategy options described in this Business Plan that will provide adequate environmental laboratory facilities for the State each carry a certain price tag. Despite the pivotal role the Laboratory plays in all DEQ programs, the agency would have to make large cuts in key areas to absorb the full cost of a new laboratory within its existing operating budget. This section describes the risks and possible outcomes if the State does not take action and if it is not possible for the agency to make the cuts.

DEQ is in the process of implementing an interim expansion solution which will preserve the laboratory's existing analytical capacity and capabilities for as long as five years. If funding is not available in the '03-05 biennium to relocate the laboratory by 2007, laboratory operations will become increasingly constrained. Data produced by the laboratory has a direct impact on agency policy decisions and the protection of public health and the environment. As the laboratory's ability to monitor and analyze environmental conditions in the State is compromised by aging and inadequate facilities, so is the effectiveness of the agency as a whole degraded.

While the laboratory is not in violation of OSHA workplace standards, overcrowding, a serious shortage of hood space and inadequate air handling increase potential risk to personnel. The number of staff has increased by 76% over the design capacity of the laboratory. To accommodate the increase, permanent workstations for some staff are located within analytical space, contrary to accepted laboratory practice. Lack of chemical hood space results in certain analytical tasks being performed in open lab areas, which should be routinely performed in hoods.

The current condition of the laboratory has direct impacts on the quality of data we are able to produce. At present, the laboratory cannot report low levels of methylene chloride (a carcinogenic air contaminant being reviewed for inclusion in the state and federal air toxics studies) due to the lack of environmental controls for ultra-clean sample handling. The laboratory lacks dedicated air handling for metals, nitrates, ammonia, extractions and volatile analyses. This causes intermittent low level cross-contamination of certain sample types. Such cross contamination limits our ability to report low concentrations of certain compounds that are used to gauge stream quality.

Because of the primacy of federally mandated environmental programs, other laboratory functions would need to be curtailed or abandoned as space pressures increase. Programs that could be lost include: Quality Assurance oversight for contractors involved in clean up operations; ORELAP, the Oregon Laboratory Accreditation Program, which supports private laboratories statewide; and innovative state environmental monitoring and assessment programs such as the Oregon Plan for Salmon and Watersheds and the Willamette Plan.



State of Oregon
Department of
Environmental
Quality

Management Services Division

811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
Fax: (503) 229-6730
Toll Free: (800) 452-4011
Contact: Holly Schroeder,
MSD Administrator

Laboratory Division

1712 SW 11th Avenue
Portland, OR 97201
Phone: (503) 229-5983
Fax: (503) 229-6924
Contact: Mary Abrams, PhD
Laboratory Administrator

www.deq.state.or.us

If the laboratory is not relocated, it is reasonable to predict that within 10 years, the DEQ laboratory could lose its ability to comply with analytical requirements mandated under federal delegation under the Clean Air Act. The agency might also not be able to fulfill its federal responsibilities under the Resource Conservation and Recovery Act, or the Comprehensive Environmental Response Compensation and Liability Act. In the absence of robust field monitoring and analysis of actual conditions, protective standards set by the agency under the Clean Water Act may need to be much more conservative, placing added economic burdens on Oregon's industries. On-going monitoring activities statewide that provide crucial data about the health of our communities and natural ecosystems would also be drastically curtailed.

Recommended Solution

Strategy Option E.

Renovate an existing facility with another agency partner (OPHL)

Because of the economies of renovation over new construction and the efficiency gains of co-locating the two laboratories, this solution appears to be in the best long-term interest of the state. Renovation is consistent with state sustainability goals. Partnering with OPHL is cost effective and provides a coordinated laboratory analytical service to Oregon Emergency Management. Renovation also provides the timeliest alternative to improve state laboratory functionality.

Renovation of an existing facility is particularly favorable for the State of Oregon if the property can be acquired in the current economic downturn. While a weak economy may make it harder to appropriate funding, the soft real estate market is likely to result in significantly greater availability of properties suitable for retrofitting, and significantly reduced property acquisition costs. These reduced costs become long term savings for the state as rent expense is derived from the overall project cost.

In the event an appropriate facility cannot be located within the geographic requirements for the laboratories, the next recommended strategy would be **Strategy Option G. Develop a new facility with another agency partner (OPHL).**

Appendix 1 – Space Needs Analysis

The DEQ laboratory provides monitoring resources to collect samples of air, water, and soil quality. It has the analytical capability to analyze these samples for inorganic and organic chemicals, as well as physical and biological parameters. Facilities also exist within the laboratory for bioassays and for calibration of field equipment.

Laboratory space is highly intensive, outfitted with dense electrical, specialty plumbing and gas services as well as chemical fume hoods. Each laboratory area needs to be supported with extensive ventilation, safety and climate control facilities. Parts of the wet laboratory areas need to be fully climate controlled. In order to function properly, laboratories also require extensive support areas, including additional spaces for receipt and tracking of samples, washing of glassware, storing hazardous chemicals, maintaining equipment, and storing samples, and office workspace for laboratory and field technicians.

DEQ updated its Needs Assessment in April 2002 with SRG Architects. See attached.



State of Oregon
Department of
Environmental
Quality

Management Services Division

811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
Fax: (503) 229-6730
Toll Free: (800) 452-4011
Contact: Holly Schroeder,
MSD Administrator

Laboratory Division

1712 SW 11th Avenue
Portland, OR 97201
Phone: (503) 229-5983
Fax: (503) 229-6924
Contact: Mary Abrams, PhD
Laboratory Administrator

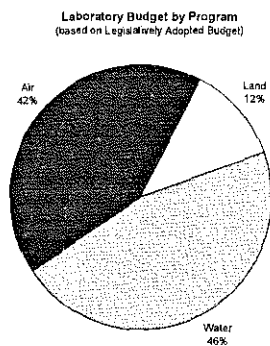
www.deq.state.or.us

08/01
10/01

Appendix 2 – Budget and staffing

Because DEQ's laboratory supports DEQ's environmental programs, its funding is included in the budgets for air, water, and land quality protection. The laboratory budget, as a whole, is approximately \$32 million. This includes funding for staff as well as equipment and monitoring supplies.

The funding for the laboratory comes from a combination of General Fund, Federal Funds, and Other Funds. In appropriating State General Funds, the Legislature has



directed the agency to perform environmental monitoring and analyses to support activities such as the Oregon Plan for Salmon and Watersheds, Willamette Restoration, and general water and air quality monitoring throughout the state. Federal funds are used for specific projects, such as determining the baseline air pollution levels of small, air-borne particulates, assessing estuary conditions and conducting bio-monitoring in small upstream rivers, as well as to supplement state money for general monitoring and analysis. Other funds support lab-specific activities, such as the lab accreditation program and asbestos analysis, and are also used to provide the underlying data for permitting and other regulatory decisions in programs such as the Air Contaminant Discharge Permitting Program.

DEQ's laboratory currently employs 88 employees and, during the summer water quality monitoring season, adds 20 seasonal employees. The laboratory typically comprises between 9 – 10% of the agency staff.