

Part 1 of 3

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 12/12/2002



State of Oregon
**Department of
Environmental
Quality**

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State of Oregon

Department of Environmental Quality

Memorandum

To: Environmental Quality Commission

Date: December 11, 2002

From: Mikell O'Mealy

Subject: Summary of Director's Transactions for Commission Review

Recall that in July 2001, the Department of Administrative Services (DAS) adopted a policy requiring Commission review and approval of the Director's transactions, including monthly time reports, vacation pay, travel expenses, and state credit card use. In September 2001, the Commission adopted a policy delegating review and approval of these transactions to the Management Services Division Administrator, with annual Commission review of the approved transactions. Commissioners decided to do this review during the Director's performance appraisal, which you intend to complete at this meeting.

Attached is a two-page summary of the Director's transactions, which have been reviewed and approved by Holly Schroeder, Acting Management Services Division Administrator. Also attached are the DEQ and DAS policies directing this review. Copies of the Director's monthly time reports and travel expense claims for the past year will be available for your review during the performance appraisal.

Please review these transactions during the performance appraisal process. This review will be documented in the December 12-13 Commission meeting minutes as directed by these policies.

Thank you.




**Summary of Director's Financial Transactions
as defined by OAM 10.90.00.PO
12/1/01 - 11/30/02**

TRAVEL EXPENSE SUMMARY (continued)

<u>Date</u>	<u>Destination</u>	<u>Reason for Travel</u>	<u>Amount</u>
9/18/02	Medford, OR	Meet with Medford staff regarding budget/legislative issues.	\$221.25
10/3 - 10/4/02	St. Helens, OR	October EQC	\$66.35
10/9/02	Bend, OR	Meet with Bend staff regarding budget/legislative issues.	\$330.75
10/11/02	Seattle, WA	Meet with Region 10 state directors, BC environmental director and EPA (Gang of Seven)	\$59.50
11/26/02	Medford, OR	Meet with Southern Oregon legislators, an industry stakeholder, and Medford staff regarding 2003 budget/legislative issues.	243.25
		TOTAL:	<u><u>\$2,675.58</u></u>

USE OF SMALL PURCHASE ORDER TRANSACTION SYSTEM (SPOTS) PURCHASING CARD: none

<p align="center">DEPARTMENT OF ENVIRONMENTAL QUALITY</p> <p align="center">POLICIES AND PROCEDURES</p>	<p>POLICY NUMBER: A10.90.00.PO</p>
	<p align="center">SEPTEMBER 20, 2001</p>
	<p align="center">PAGE 1 OF 1</p>
<p>SUBJECT: APPROVAL OF DIRECTOR'S TRANSACTIONS</p>	<p>APPROVAL: </p>

INTENT: to set accountability and control standards for the review and approval of the director's financial transactions.

AUTHORITY: Oregon Accounting Manual (OAM) Policy No. 10.90.00.PO

POLICY: As delegated by the Environmental Quality Commission, the Management Services Division administrator will review and approve the Director's monthly time reports, requests for vacation payoff, use of exceptional performance leaves, travel expense reimbursement claims, and Small Purchase Order Transaction System (SPOTS) card purchases. This review will be performed in accordance with OAM 10.90.00.PO.

Annually, at the time of the Director's evaluation, the Commission will review the transactions approved as delegated. These post transaction reviews and approvals will be documented in the minutes of the Commission meeting.

OREGON ACCOUNTING MANUAL		Number 10.90.00.PO
Oregon Department of Administrative Services. State Controller's Division	Policy	Effective Date July 16, 2001
Chapter	Internal Control	
Part	Approval of Agency Head Transactions	
Section		Approval: (Signature on File at SCD)

Accountability and Control Standards

.101	This policy sets accountability and control standards for the determination and delegation of review and approval authority for the agency head's monthly time report, requests for vacation payoff, use of exceptional performance leave, travel expense reimbursement claims, and Small Purchase Order Transaction System (SPOTS) card purchases. This policy is intended to ensure that these transactions are reviewed for completeness and accuracy and that they are in conformance with and measured against the documentation and compliance standards provided herein. In the case of agency heads that are elected, this policy may be applied at the option of that elected official.
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Establishing Review and Approval Authority

.102	<p>Agency heads appointed by the Governor shall delegate review and approval authority for agency head financial transactions to the chief financial officer or to the person who holds the position of second-in-command to the agency head. The delegation shall be in writing.</p> <p>Agency heads appointed by or reporting to a board or commission shall work with that body to create a review and approval structure for financial transactions of the agency head. The board or commission may delegate the review and approval authority, by direct designation or motion, in writing, to the board or commission chair or ranking officer. Or, the board or commission may delegate to the agency second-in-command, chief financial officer, or may choose to retain an active role in the approval process. Boards and commissions choosing to take an active role in the review and approval process must make the review and approvals of financial transactions a part of their regular meetings and document them in the minutes.</p> <p>Boards and commissions delegating the review and approval process must at least annually review the financial transactions of the agency head approved as delegated. These post transaction reviews and approvals must be documented in the minutes of the board or commission annual meeting.</p>
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Requirement for Internal Procedure and Review

.103	<p>This policy requires agencies to develop internal procedures for the review and approval of the following agency head transactions:</p> <p>a. Time reporting: Review and approve the agency head's monthly report of sick</p>
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- leave, vacation, holiday or other leave hours used. Review for completeness and accuracy and to ensure that all time that has been taken has been reported. Ensure that leave hours comply with HRSD 60.000.01 Sick Leave, 60.000.05 Vacation Leave, 60.010.01 Holidays, 60.000.15 Family Medical Leave, 60.005.01 Leave Without Pay and 60.000.10 Special Leaves with Pay. Time reporting (leave usage) must be documented using either paper or electronic timekeeping methods. The documentation must show that the time reports have been and approved by the appropriate authority, which, in the case of a board or commission, may be the ranking officer of the board. Note: Heads of agencies are classified as exempt from the Fair Labor Standards Act (FLSA) and as such should not be required to report actual hours worked. The time reporting review is intended to focus only on hours related to the categories defined above. The documentation must provide evidence for an audit trail and must be maintained by the agency for the prescribed IRS retention schedule for time records of three years and one quarter as well as the current record retention standards per Secretary of State, Archives Division.
- b. Travel expense reimbursements: Review and approve all travel claims submitted by the agency head, whether for in-state or out-of-state travel. Ensure compliance with DAS Travel Rules **OAM 40 10 00.PO** as well as **OAM 10 40 00 PO**, Expenditures. The review and approval of travel transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with the prevailing state policies as listed.
- c. Exceptional Performance Leave: This leave shall be granted to agency heads using the criteria set forth in HRSD 60.000.10 "Special Leaves With Pay". For agency heads appointed by the Governor, this leave shall only be granted by the Governor or by the Director of the Department of Administrative Services on behalf of the Governor. For agency heads reporting to a board or commission; this leave shall be granted by that body or by the board or commission chair and documented in the minutes of the board or commission. The review and approval responsibility is to ensure that the Exceptional Performance leave was granted based on appropriate criteria and authority and is in compliance with HRSD policy 60.000.10. The review and approval of these transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with the prevailing state policies as listed. The documentation must clearly demonstrate the criteria upon which the leave was granted. The documentation must include copies of the written request and approval granting the leave and copies of the board or commission minutes, if applicable. The documentation must be retained according to the current record retention standards per Secretary of State, Archives Division.
- d. Vacation Payoff: Review and approve ensuring compliance with HRSD policy 60 000.05 "Vacation Leave". The review and approval of these transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with HRSD 60.000.05. That review must clearly demonstrate that the vacation payoff was approved in accordance with Section (6) (b) of that policy which mandates that a vacation payoff is only granted when taking vacation leave is not appropriate. Copies of the written request and approval granting the vacation payoff and copies of the board or commission minutes, if applicable, must be part of the documentation for these transactions.
- e. Use of the Small Purchase Order Transaction System (SPOTS) purchase card: Review purchases to ensure that they are appropriate expenditures that further the business of the state and the mission of the agency and that the use of the SPOTS card complies with **OAM 55 30 00.PO**. The review must be conducted by someone other than the person whose name appears on the card. The review approval of transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with the

prevailing state policies as listed.

The documentation for all of the above should be retained according to the current record retention standards per Secretary of State, Archives Division.

Fiscal Officer Responsibility

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| .104 | Agency fiscal officers processing these financial transactions for the agency head have a duty to pre-audit and verify that the transactions comply with this policy. |
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Seeking Guidance from State Controller's Division

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| .105 | For the purposes of this policy, those persons delegated to review and approve financial transactions for state agency heads have a duty to comply with the provisions of this policy. Any agency head requests to deviate from this policy must be approved by the State Controller. Those persons delegated review and approval authority having reservations or questions about an agency head financial transaction may seek guidance from the State Controller's Division. |
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Transactions Subject to Audit

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| .106 | All financial transactions of state agency heads are subject to periodic audit by the Secretary of State Audits Division. |
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State of Oregon

Department of Environmental Quality

Memorandum

Date: September 18, 2001
To: Environmental Quality Commission
From: Stephanie Hallock, Director
Subject: Agenda Item A: Development of Performance Appraisal Process for Director;
Review and Approval of Director's Transactions
September 20, 2001 EQC Meeting

Department Recommendation The Department requests the Commission adopt a policy (Attachment 1) delegating to the Management Services Division Administrator the review and approval of certain financial transactions of the Director. The Commission would review the approved transactions annually. These post transaction reviews and approvals would be documented in Commission meeting minutes.

Key Issues The Department of Administrative Services issued Oregon Accounting Manual (OAM) Policy No. 10.90.00.PO effective July 16, 2001, which set accountability and control standards for the review and approval of certain agency head transactions. The recommended action ensures the Department is in compliance with this new policy.

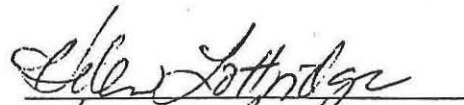
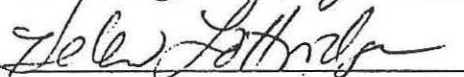
EQC Action Alternatives OAM 10.90.00.PO gives the Commission the option of reviewing and approving each specified transaction itself or delegating this task to the agency second-in-command or chief financial officer. Commissions delegating the process must at least annually review the financial transactions of the Director approved as delegated.

Attachments
1. Proposed Department Policy for Approval of Director's Transactions
2. Oregon Accounting Manual Policy No. 10.90.00.PO

Approved:

Section:

Division:

Report Prepared By: Judith L. Hatton

Phone: 503-229-5389

304/VPT 13293

Complete regulations governing travel by state employees are contained in the current Executive Department administrative rules.

Travel Expense.dot (rev. 2/99)

Fax to: EMMA Fax#: 95032296762

Azumano/Away Travel

Prepared on 12/14/01 15:37:27, PNR ZPQKKW

Prepared by Barbara

Passenger: HALLOCK/STEPHANIE

8117.EMMA.5032295990

21DEC AIR United Airlines Inc Flight: 6863 Class: Y Seat: 04C
FRI Depart: Portland, OR(PDX) 700A
Arrive: Seattle, WA(SEA) 758A
Equipment: EM2 Elapsed time: :58
NON-SMOKING
OPERATED BY UNITED EXPRESS/SKYWEST

AIR United Airlines Inc Flight: ~~6882~~ Class: Y Seat: 05C
Depart: Seattle, WA(SEA) ~~615P~~
Arrive: Portland, OR(PDX) 704P
Equipment: EM2 Elapsed time: :49
NON-SMOKING
OPERATED BY UNITED EXPRESS/SKYWEST

Look 7:30 flight

Ticket Information

Fare Quoted (Total)	Base Fare	US Taxes	Other Taxes	Ticketing Date	Reservation #
USD 234.50	USD 204.66	USD 15.34	USD 14.50	14DEC	ZPQKKW

Airfares are not guaranteed until ticketed.

TRAVEL AWARDS ACCEPTED BY STATE EMPLOYEES
BECOME THE PROPERTY OF THE STATE OF OREGON.
YOU MUST NOTIFY YOUR AGENCY OF ANY AWARDS RECEIVED.
*** PTKT:TKT/OR/INV TO TVL ARR * INCL GOVT PARK PASS
RESERVATION BOOKED WITH BARB BY EMMA
UNITED AIRLINES 800-241-6522

YOUR UNITED AIRLINES CONFIRMATION NUMBER IS: ZPQKKW

UNITED AIRLINES TICKET NUMBER/AMOUNT IS: 0167202905126\$234.50

YOU MAY ALSO VIEW THIS ITINERARY ONLINE AT WWW.AZUMANOTRAVEL.COM
YOUR VIEWTRIP CONFIRMATION CODE IS: ZPQKKW

Agency phone 503-370-7442/800-289-2959

No car or hotel requested

This is your only e-ticket receipt. Please retain for your records.

Present code AZU-GOV1010 to Thrifty Parking for discount.

[illegible]



303/VPT13611

STATE OF OREGON TRAVEL EXPENSE DETAIL SHEET

Name of Employee Stephanie Hallock		2. Agency DEQ		3. Period (Month and Year) February, 2002	
4. Official Station Director		5. Division, Work Unit, Cost Center OD, PCA MSD02		6. Regular Schedule Work Shift Other 8am to 5pm	
7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>		Bargaining Unit Name <input type="checkbox"/> Other <input type="checkbox"/>			

8. Date	9. Time of Departure	10. Time of Arrival	11. Description	12. Per Diem/ Hourly Allowance	Individual Meal Reimbursement			13. Lodging	14. Total Meals and Lodging
					Breakfast	Lunch	Dinner		
02/26/02	7am	9am	Portland>Seaside	17.00	Provided	Provided	17.00	59.00	76.00
02/27/02	2:30pm	4:30pm	Seaside>Portland	8.50	Provided	Provided			0.00 8.50
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
15. Totals				25.50	0.00	0.00	17.00	59.00	\$76.00 84.50

16. (Office Use Only)		17. Date	18. Miscellaneous Expenses Fares, Private Mileage, Room Tax, Telephone, Other Expenses	19. Training Related?	20. Rate Per Mile	21. Private Car Miles	22. Amount
Accounting Codes							
14010-41002			Personal vehicle mileage		0.365		0.00
			Room Tax				4.13
4101 88.63							
Totals 88.63					23. Section Total		\$4.13

24. I did/will _____ did not/will not ☒ accept travel awards as a result of, or associated with this state business trip. SH Initials.
Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.) EMT retreat in Seaside OR		26. Grand Total Amount 88.63 \$80.13	
		27. Travel Advance Amount	
		28. Amount Due Employee/State 88.63 \$80.13	
		29. Received Training Conducted Training	
I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.		30. Signature of Employee Stephanie Hallock	
I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted expenditure.		31. Title Director 02/28/02	
		32. Approved By Celen Lottidge for EDC	
		33. Title MSD Administrator 02/28/02	



311/VPT13693

STATE OF OREGON TRAVEL EXPENSE DETAIL SHEET

9340000295

1. Name of Employee <i>Communities</i> Stephanie Hallock		2. Agency DEQ		3. Period (Month and Year) March-02	
4. Official Station Director		5. Division, Work Unit, Cost Center OD, PCA MSD02		6. Regular Schedule Work Shift Other 8am to 5pm	
7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>		Bargaining Unit Name <input type="checkbox"/> Other <input type="checkbox"/>			

58/30

8. Date	9. Time of Departure	10. Time of Arrival	11. Description <i>Curry County</i>	12. Per Diem/ Hourly Allowance	Individual Meal Reimbursement			13. Lodging	14. Total Meals and Lodging
					Breakfast	Lunch	Dinner		
03/04/02	8am	11:30 AM	Portland>North Bend>Harbor	22.50		7.50	15.00	58.00	80.50
03/05/02	6pm	7pm	Medford>Portland	22.50	Provided	7.50	15.00		22.50
									0.00
									0.00
									0.00
									0.00
									0.00
				45.00				55.00	0.00
15. Totals				0.00	0.00	15.00	30.00	58.00	\$103.00

16. (Office Use Only)		17. Date	18. Miscellaneous Expenses Fares, Private Mileage, Room Tax, Telephone, Other Expenses	19. Training Related?	20. Rate Per Mile	21. Private Car Miles	22. Amount
Accounting Codes							
14010-41002			Personal vehicle mileage		0.365		0.00
			Parking @ PDX				16.00
4101 103.00							
4103 16.00							
Totals 119.00					23. Section Total		\$16.00

24. I did/will ☒ did not/will not ☐ accept travel awards as a result of, or associated with this state business trip. *Initials.*
Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.) Community Sollutions Director's visit to the field.		26. Grand Total Amount \$119.00	
Visiting Coos, Curry & Douglas 1st day		27. Travel Advance Amount	
Josephine & Jackson the 2nd day		28. Amount Due Employee/State <i>10</i> \$119.00	
		29. Received Training <input checked="" type="checkbox"/> Conducted Training <input checked="" type="checkbox"/>	
I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.		30. Signature of Employee <i>Stephanie Hallock</i>	
I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted expenditure.		31. Title Director 03/06/02	
32. Approved By <i>Walter Lottbridge for ERC</i>		33. Title MSD Admin 3-7-02	

Fax to: EMMA Fax#: 95032296762

Azumano/Away Travel

Prepared on 02/06/02 10:29:49, PNR SPX83Q

Prepared by Mary

Passenger: HALLOCK/STEPHANIE

8117.EMMA.5032295990

04MAR AIR Alaska Airlines Flight: 2186 Class: H Seat: 05B
MON Depart: Portland, OR(PDX) 1025A
Arrive: North Bend, OR(OTH) 1120A
Equipment: DH8 Elapsed time: :55
NON-SMOKING
OPERATED BY HORIZON AIR

05MAR AIR Alaska Airlines Flight: 2226 Class: V Seat: 08B
TUE Depart: Medford, OR(MFR) 555P
Arrive: Portland, OR(PDX) 655P
Equipment: DH8 Elapsed time: 1:00
NON-SMOKING
OPERATED BY HORIZON AIR

Ticket Information

Fare Quoted (Total)	Base Fare	US Taxes	Other Taxes	Ticketing Date	Reservation #
USD 223.00	USD 188.84	USD 14.16	USD 20.00	06FEB	SPX83Q

Airfares are not guaranteed until ticketed.

TRAVEL AWARDS ACCEPTED BY STATE EMPLOYEES
BECOME THE PROPERTY OF THE STATE OF OREGON.
YOU MUST NOTIFY YOUR AGENCY OF ANY AWARDS RECEIVED.
*** PTKT:TKT/OR/INV TO TVL ARR * INCL GOVT PARK PASS
HORIZON AIR 800-547-9308
RESERVATION BOOKED WITH BONNIE BY EMMA

YOUR ALASKA AIRLINES CONFIRMATION NUMBER IS: DDOQUX

ALASKA AIRLINES TICKET NUMBER/AMOUNT IS: 0277207564372\$223.00

ELECTRONIC TICKET

No car or hotel requested

Agency phone 503-370-7442/800-289-2959

This is your only e-ticket receipt. Please retain for your records.

Present code AZU-GOV1010 to Thrifty Parking for discount.

This is your only e-ticket receipt. Please retain for your records.

Present code AZU-GOV1010 to Thrifty Parking for discount.

**STATE OF OREGON
TRAVEL EXPENSE DETAIL SHEET**



300/VPT/13990

1. Name of Employee 9340000295 Stephanie Hallock		2. Agency DEQ		3. Period (Month and Year) April-02	
4. Official Station Director		5. Division, Work Unit, Cost Center OD, PCA MSD02		6. Regular Schedule Work Shift Other 8am to 5pm	
7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>		Bargaining Unit Name <input type="checkbox"/> Other <input type="checkbox"/>			

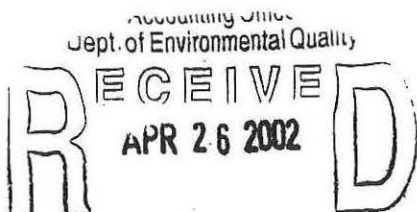
8. Date	9. Time of Departure	10. Time of Arrival	11. Description	12. Per Diem/ Hourly Allowance	Individual Meal Reimbursement			13. Lodging	14. Total Meals and Lodging
					Breakfast	Lunch	Dinner		
04/15/02	10am	Noon	Portland>The Dalles			provided			0.00
	1pm	6pm	The Dalles>John Day				15.00	53.00	68.00
04/16/02		7pm	Warm Springs>Portland		7.50	7.50	15.00 DEQ		30.00 15.00
									0.00
									0.00
									0.00
									0.00
									0.00
15. Totals				0.00	7.50	7.50	30.00	53.00	\$98.00 83.00

16. (Office Use Only)		17. Date	18. Miscellaneous Expenses Fares, Private Mileage, Room Tax, Telephone, Other Expenses	19. Training Related?	20. Rate Per Mile	21. Private Car Miles	22. Amount
Accounting Codes			Personal vehicle mileage		0.365		0.00
03-14010 -41002			Room Tax				2.00
4101		85.00					
Totals		85.00					
23. Section Total							\$2.00

24. I did/will ☒ did not/will not ☐ accept travel awards as a result of, or associated with this state business trip. *SH* Initials.
Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.) Eastern Oregon Road trip for Strategic Directions <i>meeting w/ legislators and Warm Springs Tribal officials</i>		26. Grand Total Amount 85.00 \$100.00
		27. Travel Advance Amount
		28. Amount Due Employee/State <i>SH</i> 85.00 \$100.00
		29. Received Training Conducted Training

I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.	30. Signature of Employee <i>Stephanie Hallock</i>	31. Title Director	Date 04/22/02
	I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.	32. Approved By <i>[Signature]</i>	33. Title MSD Administrator



766 611 5005



310/VPT14046

STATE OF OREGON TRAVEL EXPENSE DETAIL SHEET

1. Name of Employee <u>9340000215</u> <u>Stephanie Hallock</u> <i>climmins</i>		2. Agency <u>DEQ</u>	3. Period (Month and Year) <u>April-02</u>
4. Official Station <u>Director</u>		5. Division, Work Unit, Cost Center <u>OD, PCA MSD02</u>	6. Regular Schedule Work Shift <u>Other 8am to 5pm</u>
7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>		Bargaining Unit Name <input type="checkbox"/> Other <input type="checkbox"/>	

8. Date	9. Time of Departure	10. Time of Arrival	11. Description	12. Per Diem/ Hourly Allowance	Individual Meal Reimbursement			13. Lodging	14. Total Meals and Lodging
					Breakfast	Lunch	Dinner		
04/23/02	8am	10am	PDX>Redmond	15.00		Provided	15.00	57.00	72.00 70.00
04/24/02			Redmond } <i>Hines</i>	—	Prov	Provided	Prov.	57.00	52.00 55.00
04/25/02	3pm	5pm	Redmond>PDX	—	Prov	Provided			0.00
			(actually stayed in Bend, but this when she would have been home)						0.00
									0.00
									0.00
			<i>Hotel will credit back over charge of \$2 plus tax = \$214 w/ night.</i>					110.00	0.00
15. Totals				0.00	0.00	0.00	15.00	114.00	\$129.00 125.00

16. (Office Use Only)		17. Date	18. Miscellaneous Expenses Fares, Private Mileage, Room Tax, Telephone, Other Expenses	19. Training Related?	20. Rate Per Mile	21. Private Car Miles	22. Amount
Accounting Codes							
41010 - 41002			Personal vehicle mileage		0.365		0.00
			Room Tax (2 nights @ 3.99) $7.98 \times 7\% = 3.85$				7.98 7.70
4101		132.70					
Totals		132.70					
23. Section Total							7.70 \$7.98

24. I did/will _____ did not/will not ☒ accept travel awards as a result of, or associated with this state business trip. SLH Initials.
Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.) <u>April EQC meeting. See attached Agenda</u>		26. Grand Total Amount <u>132.70 \$136.98</u>
		27. Travel Advance Amount
		28. Amount Due Employee/State <u>132.70 \$136.98</u> <i>SLH</i>
		29. Received Training <u>Conducted Training</u>
I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.	30. Signature of Employee <u>Stephanie Hallock</u>	31. Title <u>Director</u> Date <u>05/06/02</u>
I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted expenditure.	32. Approved By <u>Edes Lottidge</u> <i>for EQC</i>	33. Title <u>MSD Admin</u> Date <u>5-7-02</u>

WVA 03 2005

Full Traveler Detail (History)



OR State Dept. of Enviromental

Trip Departures from 04/15/2002 to 04/30/2002

Report Parameters: Passenger = HALLOCK

HALLOCK/STEPHANIE

Actual: \$-124.00	Validating Carrier: ALASKA AIR (AS)	Account: OR State Dept. of Enviromental
Lowest: \$-248.00	Ticket #: 7211749213	Break 1: 8117
Service Fees: \$0.00	Invoice #: 203221843	Break 2: EMMA
Exception: LOWEST FARE ACHIEVED	Inv Date: 05/03/2002	Break 3: 5032295990

Itinerary				Airline	Flt #	Class
PORTLAND,OR	REDMOND,OR	04/23/2002	09:30-10:10	ALASKA AIR (AS)	2151	H
REDMOND,OR	PORTLAND,OR	04/25/2002	17:50-18:30	ALASKA AIR (AS)	2122	H

Total Cost of Trip: \$-124.00

HALLOCK/STEPHANIE

Actual: \$248.00	Validating Carrier: ALASKA AIR (AS)	Account: OR State Dept. of Enviromental
Lowest: \$248.00	Ticket #: 7211749213	Break 1: 8117
Service Fees: \$0.00	Invoice #: 203221843	Break 2: EMMA
Exception: LOWEST FARE ACHIEVED	Inv Date: 03/22/2002	Break 3: 5032295990

Itinerary				Airline	Flt #	Class
PORTLAND,OR	REDMOND,OR	04/23/2002	09:30-10:10	ALASKA AIR (AS)	2151	H
REDMOND,OR	PORTLAND,OR	04/25/2002	17:50-18:30	ALASKA AIR (AS)	2122	H

Total Cost of Trip: \$248.00

Report Totals

Air Totals		Car Rental Totals		Hotel Booking Totals	
# of Air Trips:	0	# of Rentals:	0	# of Stays:	0
Air Charges:	\$124.00	# of Days Rented:	0	# of RoomNights:	0
Average Cost/Trip:	\$0.00	Car Rental Charges:	\$0.00	Hotel Booking Charges:	\$0.00
** Total of All Charges **		Avg # of Days Rented:	0	Avg # of Nights:	0
		Avg Booked Rate:	\$0.00	Avg Booked Rate:	\$0.00
		Avg Cost/Day:	\$0.00	Avg Cost/RoomNight:	\$0.00
\$124.00					



327/VPT14131

STATE OF OREGON TRAVEL EXPENSE DETAIL SHEET

9340000295

1. Name of Employee <i>Cummins</i> Stephanie Hallock		2. Agency DEQ		3. Period (Month and Year) May, 2002	
4. Official Station Director		5. Division, Work Unit, Cost Center OD, PCA MSD02		6. Regular Schedule Work Shift Other 8am to 5pm	
7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/>		Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/>		Volunteer <input type="checkbox"/>	
Bargaining Unit Name <input type="checkbox"/>		Other <input type="checkbox"/>			

8. Date	9. Time of Departure	10. Time of Arrival	11. Description	12. Per Diem/ Hourly Allowance	Individual Meal Reimbursement			13. Lodging	14. Total Meals and Lodging
					Breakfast	Lunch	Dinner		
05/01/02	7am	10am	Portland>Medford>Roseburg	22.50	7.50	7.50	15.00	55.00	85.00 77.50
05/02/02			Southern Road Trip (see Itinerary)	30.00	7.50	7.50	15.00	35.00	65.00
05/03/02	6pm	8pm	North Bend>Portland	22.50	7.50	Provided	15.00		22.50
									0.00
									0.00
									0.00
									0.00
				75.00					0.00
15. Totals				0.00	22.50	15.00	45.00	90.00	\$172.50 165.00

16. (Office Use Only)		17. Date	18. Miscellaneous Expenses Fares, Private Mileage, Room Tax, Telephone, Other Expenses	19. Training Related?	20. Rate Per Mile	21. Private Car Miles	22. Amount
Accounting Codes							
14010-41002			Personal vehicle mileage		0.365		0.00
			Parking at PDX				24.00
4101		171.50	Room Tax 5/1/02				4.40
4103		44.25	Room Tax 5/2/02				2.10
			Gas for rental car				5.00
							15.25
Totals		215.75					50.75
23. Section Total							\$35.50

24. I did/will _____ did not/will not ☒ accept travel awards as a result of, or associated with this state business trip. *HL* Initials.
Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)
Strategic Directions Road Trip
Southern Oregon (see Attached Itinerary)

26. Grand Total Amount *22325* \$208.00 215 75
27. Travel Advance Amount
28. Amount Due Employee/State *HL* *22325* \$208.00 215 75

29. Received Training Conducted Training
30. Signature of Employee *Stephanie Hallock*
31. Title Director Date 05/08/02

I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.
32. Approved By *Debra Lettridge*
33. Title MSD Admin Date 5-16-02

J. EDC

APR 10 2002

Fax to: EMMA Fax#: 95032296762

Azumano/Away Travel

Prepared on 04/09/02 12:42:31, PNR SJKPTG

Prepared by Mary

Passenger: HALLOCK/STEPHANIE

8117.EMMA.5032295990

01MAY AIR United Airlines Inc Flight: 6905 Class: Y Seat: 03C
WED Depart: Portland, OR(PDX) 810A
Arrive: Medford, OR(MFR) 915A
Equipment: EM2 Elapsed time: 1:05
NON-SMOKING
OPERATED BY UNITED EXPRESS/SKYWEST

CAR Pickup: Medford, OR Dropoff: 03MAY FRI
Hertz Corporation Type: Inter Car Auto A/C Confirmation: B7871294284
rate guaranteed \$ 96.99 per day, unlimited free miles
extra hour 32.25, Rate code: ICXB
Dropoff Location: North Bend, OR

03MAY AIR Alaska Airlines Flight: 2247 Class: H Seat: 09E
FRI Depart: North Bend, OR(OTH) 620P
Arrive: Portland, OR(PDX) 710P
Equipment: DH8 Elapsed time: :50
NON-SMOKING
OPERATED BY HORIZON AIR

Ticket Information

Fare Quoted (Total)	Base Fare	US Taxes	Other Taxes	Ticketing Date	Reservation #
USD 223.00	USD 188.84	USD 14.16	USD 20.00	09APR	SJKPTG

Airfares are not guaranteed until ticketed.

TRAVEL AWARDS ACCEPTED BY STATE EMPLOYEES
BECOME THE PROPERTY OF THE STATE OF OREGON.
YOU MUST NOTIFY YOUR AGENCY OF ANY AWARDS RECEIVED.
*** PTKT:TKT/OR/INV TO TVL ARR * INCL GOVT PARK PASS
HORIZON AIR 800-547-9308
UNITED AIRLINES 800-241-6522
RESERVATION BOOKED WITH MARY BY EMMA

YOUR UNITED AIRLINES CONFIRMATION NUMBER IS: SJKPTG
YOUR ALASKA AIRLINES CONFIRMATION NUMBER IS: JHCUYU

UNITED AIRLINES TICKET NUMBER/AMOUNT IS: 0167213535362\$90.00
ALASKA AIRLINES TICKET NUMBER/AMOUNT IS: 0277213535363\$133.00

Agency phone 503-370-7442/800-289-2959

No hotel requested

This is your only e-ticket receipt. Please retain for your records.

Present code AZU-GOV1010 to Thrifty Parking for discount.



331/VPT14381

STATE OF OREGON TRAVEL EXPENSE DETAIL SHEET

1. Name of Employee <u>9340000295</u> <u>Stephanie Hallock Cummings</u>		2. Agency <u>DEQ</u>		3. Period (Month and Year) <u>June, 2002</u>	
4. Official Station <u>Director</u>		5. Division, Work Unit, Cost Center <u>OD, PCA MSD02</u>		6. Regular Schedule Work Shift <u>Other 8am to 5pm</u>	
7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>		Bargaining Unit Name <input type="checkbox"/> Other <input type="checkbox"/>			

8. Date	9. Time of Departure	10. Time of Arrival	11. Description	12. Per Diem/ Hourly Allowance	Individual Meal Reimbursement			13. Lodging	14. Total Meals and Lodging
					Breakfast	Lunch	Dinner		
06/06/02	9am	10am	Portland>Salem	15.00		Provided	15.00	55.00	70.00
06/07/02	2pm	3pm	Salem>Portland	7.50	PROV	Provided	7.50		0.00 7.50
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
				22.50					0.00
15. Totals				0.00	0.00	0.00	15.00	55.00	70.00 77.50

16. (Office Use Only)		17. Date	18. Miscellaneous Expenses Fares, Private Mileage, Room Tax, Telephone, Other Expenses	19. Training Related?	20. Rate Per Mile	21. Private Car Miles	22. Amount
Accounting Codes							
14010 - 4100Z			Personal vehicle mileage		0.365		0.00
4101		82.45	Room Tax				4.95
Totals		82.45					
23. Section Total							\$4.95

24. I did/will ☒ did not/will not ☐ accept travel awards as a result of, or associated with this state business trip. SHC Initials.
Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.) <u>June EQC meeting in Salem OR</u>		26. Grand Total Amount <u>82.45 \$74.95</u>	
		27. Travel Advance Amount	
		28. Amount Due Employee/State <u>82.45 \$74.95</u>	
		29. Received Training <u>Conducted Training</u>	
I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.		30. Signature of Employee <u>Stephanie Hallock</u> Director 06/11/02	
I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved get for the period covered and have been allotted expenditure.		31. Title <u>MSD Administrator</u> Date <u>6/17/02</u>	

**STATE OF OREGON
TRAVEL EXPENSE DETAIL SHEET**



320/VPT14732

1. Name of Employee 9340000295 Stephanie Hallock		2. Agency DEQ		3. Period (Month and Year) July, 2002	
4. Official Station Director		5. Division, Work Unit, Cost Center OD, PCA MSD02		6. Regular Schedule Work Shift Other 8am to 5pm	
7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>		Bargaining Unit Name <input type="checkbox"/> Other <input type="checkbox"/>			

8. Date	9. Time of Departure	10. Time of Arrival	11. Description	12. Per Diem/ Hourly Allowance	Individual Meal Reimbursement			13. Lodging	14. Total Meals and Lodging
					Breakfast	Lunch	Dinner		
07/23/02	* 6am	Noon	Portland>Denver CO	31.50	10.50	PROV	21.00	112.00	143.50
07/24/02	3pm	8pm	Denver CO >Portland	31.50	10.50	PROV	21.00		31.50
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
15. Totals				0.00	21.00	0.00	42.00	112.00	\$175.00

16. (Office Use Only)		17. Date	18. Miscellaneous Expenses Fares, Private Mileage, Room Tax, Telephone, Other Expenses	19. Training Related?	20. Rate Per Mile	21. Private Car Miles	22. Amount
Accounting Codes			Personal vehicle mileage		0.365		0.00
14010-41002			Parking at PDX				16.00
4151	63.00		Super Shuttle from Adam's Mark to Airport				18.00
			Room tax				15.07
10001-42004	1120.00						
4151	121.07						
4153	34.00						
Totals	224.07						
23. Section Total							\$49.07

24. I did/will ☒ did not/will not ☐ accept travel awards as a result of, or associated with this state business trip. **SH** Initials.
Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.) WRAP meeting in Denver CO. Airfare, Rooms, and ground transportation reimbursed by WRAP. 7/23-24/02		26. Grand Total Amount \$224.07	
27. Travel Advance Amount		28. Amount Due Employee/State \$224.07	
29. Received Training <input checked="" type="checkbox"/> Conducted Training <input checked="" type="checkbox"/>		30. Signature of Employee <i>Stephanie Hallock</i>	
31. Title Director		32. Approved By <i>[Signature]</i>	
33. Title MSD Admin		34. Date 07/26/02	

I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.

I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted expenditure.

AZUMANO/AWAY TRAVEL
350 MISSION SE
SALEM OREGON 97302
PHONE: 503 370-7442
FAX: 503 370-7320

CUSTOMER NUMBER: 8117
DATE OF INVOICE: MAY 31 2002
INVOICE NUMBER: ITIN
AGENT NUMBER: D9 PAGE: 01
HALLOCK/STEPHANIE
8117-EMMA.5032295990

1-541-726-
8181

DEPT OF ENVIRONMENTAL QUALITY
ATTN: LAURIE HUNTER
811 SW 6TH AVE 6TH FL
PORTLAND OR 97204

THIS IS YOUR ONLY
E-TKT INVOICE/RECEIPT
RETAIN FOR YOUR RECORDS
PRESENT CODE: 10100 TO
THRIFTY PARKING FOR DISCOUNT

20 JUL 02 - SATURDAY
UNITED 1276 COACH CLASS
LV: PORTLAND ORE 1135A
AR: DENVER 259P

NONSTOP MILES- 988 CONFIRMED

SEAT- 7F

EQUIPMENT-AIRBUS A320 JET

ELAPSED TIME- 2:24

24 JUL 02 - WEDNESDAY
UNITED 1063 COACH CLASS
LV: DENVER 515P
AR: PORTLAND ORE 645P

NONSTOP MILES- 988 CONFIRMED

SEAT-10F

EQUIPMENT-BOEING 757 JET

ELAPSED TIME- 2:30

TRAVEL AWARDS ACCEPTED BY STATE EMPLOYEES
BECOME THE PROPERTY OF THE STATE OF OREGON.
YOU MUST NOTIFY YOUR AGENCY OF ANY AWARDS RECEIVED.
*** PTKT:TKT/ORI/INV TO TUL ARR * INCL GOVT PARK PASS
UNITED AIRLINES 800-241-6522
RESERVATION BOOKED WITH MARY BY EMMA

YOUR UNITED AIRLINES CONFIRMATION NUMBER IS: LHPXC4

UNITED AIRLINES TICKET NUMBER/AMOUNT IS: 0167218151443 \$516.00

CAR OR HOTEL NOT REQUESTED.
AGENCY PHONE 503-370-7442/800-289-2959
EMERGENCY AFTER HOURS 877-840-0183
THIS IS YOUR ONLY E-TKT RECEIPT. PLEASE RETAIN FOR YOUR RECORDS.
PRESENT CODE AZU-GOV1010 TO THRIFTY PARKING FOR DISCOUNT.

COMPARED TO THE FULL FARE THIS REPRESENTS A SAVINGS OF \$ 1254.00

AIR TRANSPORTATION 461.40 TAX 54.60 TTL 516.00

SUB TOTAL 516.00
CREDIT CARD PAYMENT 516.00-
AMOUNT DUE 0.00

*for Sale
1/15/2005
Gweneth Hughes*

STATE OF OREGON
OUT OF STATE TRAVEL AUTHORIZATION



STATE TRAVEL REGULATIONS WHICH GOVERN ALL OFFICIAL TRAVEL BY STATE OFFICERS AND EMPLOYEES ARE CONTAINED IN COLLECTIVE BARGAINING AGREEMENTS AND THE DEPARTMENT OF ADMINISTRATIVE SERVICES, OREGON ACCOUNTING MANUAL.

1. NAME OF EMPLOYEE Stephanie Hallock		2. AGENCY Department of Environmental Quality		3. DATE OF REQUEST 6/26/02	4. REQUEST NO. 15-03
5. TITLE OF EMPLOYEE Director		6. DIVISION OR WORK UNIT Office of the Director			
7. AGENCY ACCOUNTING INFORMATION 03-10001-42004 M20000/00 (airfare, lodging, ground transportation), 03-14010-41002 (meals)					
8. ITINERARY - SHOW DATES AND TIMES OF ARRIVAL AND DEPARTURE		9. ESTIMATED COST OF TRIP		10. BIENNIAL ALLOCATION	
7/20/02 Depart Portland — Denver 7/24/02 Arrive Portland		MEALS AND LODGING	359.00	OUT-OF-STATE TRAVEL ALLOCATION	
		TRANSPORTATION	516.00	EXPENDITURES TO DATE	
		MISCELLANEOUS	100.00	ESTIMATED TOTAL COST THIS TRIP	975.00
		TOTAL	975.00	BALANCE AVAILABLE	
11. METHOD OF TRANSPORTATION - IF AIR, SHOW COACH OR 1 ST CLASS; IF TRAIN, SHOW SLEEPING ACCOMMODATIONS Air, coach United travel pair fare					
12. LODGING RATE(S) REQUESTED					
DATE(S) July 22 - 23, 2002		DAILY RATE(S) 2 nights at \$112 per night plus tax = \$254.00 meals - 2 1/2 x \$42 = \$105.00			
13. PURPOSE OF TRIP - BE SPECIFIC To attend WRAP Board Meeting, July 23 - 24, 2002. All costs to be reimbursed by WRAP except meals. Personal time 7/20 - evening 7/22					
14. <input checked="" type="checkbox"/> EXECUTIVE SERVICE <input type="checkbox"/> MANAGEMENT SERVICE <input type="checkbox"/> UNREPRESENTED <input type="checkbox"/> OTHER _____ BARGAINING UNIT (name)					
15. SIGNATURE OF EMPLOYEE <i>Stephanie Hallock</i>		TITLE Director		PHONE NUMBER (503) 229-5300	
16. AGENCY APPROVAL - I CERTIFY THAT THIS TRIP IS NECESSARY; THAT REQUIRED MONIES ARE BUDGETED AND ALLOTTED FOR EXPENDITURE; THAT THE TRIP MEETS ALL REQUIREMENTS OF THE STATE TRAVEL REGULATIONS.		APPROVED FOR THE AGENCY, TITLE <i>[Signature]</i>			



Out-of-State Travel Exception Request Form

RECEIVED
JUN 23 2002
By 8:20 am

Date: 6/25/02

To: Jean Gabriel, SARS Manager, DAS State Controller's Division

Submitted by: Stephanie Hallock or delegate
Department of Environmental Quality

ER 02-57

I request review and approval of an exception to the June 10, 2002 Governor's Executive Order that placed a freeze on all employee out-of-state travel paid in whole or in part with state General Fund and/or Lottery Fund dollars. Our agency's request is based on applicability to the following criteria (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Legal | <input checked="" type="checkbox"/> Reimbursed Travel |
| <input type="checkbox"/> Public Safety and Health | <input type="checkbox"/> Specialized Technical Training |
| <input type="checkbox"/> Financial | <input type="checkbox"/> Other (Please explain) |

Below is our justification, reason for travel, estimated cost, and dates of travel (please use "Other" for blanket travel exception requests):

WRAP Board Meeting July 23 1-6pm and July 24 8:30-4pm

~~WRAP Planning Team Meeting July 25 8:00-4pm~~

Airfare: 516.00

Lodging 254.00

Meals 105.00

Miscellaneous expenses: 100.00 est.

Accounting Office
Dept. of Environmental Quality

RECEIVED
JUL 03 2002

* All but meals is reimbursed by WRAP,

WRAP (Western Regional Air Partnership). The primary purpose of WRAP is to develop a plan for Western States & tribes to meet the requirements of EPA's regional haze rule. By participating in WRAP, Oregon saves a tremendous amount of work & expense that would be required to meet the regional haze rule acting on our own.

We also protect the state's interest by ensuring the decisions made by WRAP are consistent with Oregon's needs. Stephanie Hallock has not been able to attend previous meetings due to scheduling conflicts.

Questions about our agency's request should be directed to: Laurie Hunter - DEQ Travel Coordinator
(503) 229-5455

Submitted by:

Stephanie Hallock [Signature]
(Signature of Division Administrator) (Signature of Agency Head or delegate)

Recommended by:
(Approve) (Deny)

Jean Gabriel
(Jean Gabriel or delegate)

6/28/02
(Date)

Approved by:

[Signature]
(John Radford)

6-28-02
(Date)

Denied by:

(John Radford)

(Date)

Hallock, Stephanie

DEPARTMENT OF ENVIRONMENTAL QUALITY
TRANSMITTAL ADVICE
TRAVEL REIMBURSEMENT

CK#	TRAN AMNT	FOR THE ACCOUNT OF	VO#	PJT #
CHECK NAME		REASON FOR PAYMENT		INV #
30079-1	817.14	WESTERN REGIONAL AIR PARTNERSHIP		M20000
WESTERN GOVERNORS' ASSOCIATION		TRAVEL REIMBURSEMENT FOR ANDY GINSBURG		
30079-2	677.07	WESTERN REGIONAL AIR PARTNERSHIP		M20000
WESTERN GOVERNORS' ASSOCIATION		TRAVEL REIMBURSEMENT FOR STEPHANIE HALLOCK		
	1,494.21	TOTAL		

No adjustment necessary



25. REASON FOR TRAVEL: (Be specific.) Address Medford staff regarding budget/legislative issues		26. Grand Total Amount	20.50 \$33.00
		27. Travel Advance Amount	
		28. Amount Due Employee/State	20.50 \$33.00
		29. Received Training	Conducted Training
I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.	30. Signature of Employee <i>Stephanie Hellock</i>	31. Title Director	Date 10/08/02
I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted expenditure.	32. Approved By <i>[Signature]</i>	33. Title MSD Administrator	Date 11 Oct 2002

Prepared on 09/16/02 09:27:09

Prepared by Bonnie

Passenger: HALLOCK/STEPHANIE 34000.EMMA.5032295990

AIR • United Airlines Inc • Flight: 6636 confirmed • Class: H • Seat: 10A
18SEP Depart: Portland, OR 800A
WED Arrive: Medford, OR 906A
Equipment: EM2 • Elapsed Time: 1:06 nonstop
NON-SMOKING
OPERATED BY UNITED EXPRESS/SKYWEST

AIR • United Airlines Inc • Flight: 6639 confirmed • Class: H • Seat: 10A
Depart: Medford, OR 1234P
Arrive: Portland, OR 135P
Equipment: EM2 • Elapsed Time: 1:01 nonstop
NON-SMOKING
OPERATED BY UNITED EXPRESS/SKYWEST

Ticket Information

Fare Quoted (Total)	Base Fare	US Taxes	Other Taxes	Ticketing Date	Reservation #
USD 200.75	USD 137.68	USD 10.32	USD 20.00	16SEP	WGJ6DM

The total fare above includes a service fee of \$ 32.75.

Airfares are not guaranteed until ticketed.

TRAVEL AWARDS ACCEPTED BY STATE EMPLOYEES
BECOME THE PROPERTY OF THE STATE OF OREGON.
YOU MUST NOTIFY YOUR AGENCY OF ANY AWARDS RECEIVED.
*** PTKT:TKT/ORI/INV TO TVL ARR * INCL GOVT PARK PASS
UNITED AIRLINES 800-241-6522
RESERVATION BOOKED WITH BONNIE BY EMMA

YOUR UNITED AIRLINES CONFIRMATION NUMBER IS: WGJ6DM

UNITED AIRLINES TICKET NUMBER/AMOUNT IS: 0167227571624\$168.00

ORIGINAL TICKET NUMBER: 0167226185212 / \$ 84.00

No car or hotel requested

Agency phone 503-370-7442/800-289-2959

This is your only e-ticket receipt. Please retain for your records.

Present code AZU-GOV1010 to Thrifty Parking for discount.



321/VPT15303

STATE OF OREGON TRAVEL EXPENSE DETAIL SHEET

1. Name of Employee Stephanie Hallock		2. Agency DEQ		3. Period (Month and Year) October, 2002	
4. Official Station Director		5. Division, Work Unit, Cost Center OD, PCA MSD02		6. Regular Schedule Work Shift Other 8am to 5pm	
7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>		Bargaining Unit Name <input type="checkbox"/> Other <input type="checkbox"/>			

8. Date	9. Time of Departure	10. Time of Arrival	11. Description	12. Per Diem/ Hourly Allowance	Individual Meal Reimbursement			13. Lodging	14. Total Meals and Lodging
					Breakfast	Lunch	Dinner		
10/03/02	9:30am	10:30 AM	Portland>St. Helens			PROV	PROV	55.00	55.00
10/04/02	1pm	2pm	St. Helens>Portland	7.50	PROV	PROV			0.00 7.50
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
15. Totals				0.00	0.00	0.00	0.00	55.00	\$55.00 62.50

16. (Office Use Only)		17. Date	18. Miscellaneous Expenses Fares, Private Mileage, Room Tax, Telephone, Other Expenses	19. Training Related?	20. Rate Per Mile	21. Private Car Miles	22. Amount
Accounting Codes							
14010-41002			Personal vehicle mileage		0.365		0.00
			Room Tax				3.85
4101 66.35							
Totals 66.35					23. Section Total		\$3.85

24. I did/will ☒ did not/will not ☐ accept travel awards as a result of, or associated with this state business trip. AM Initials.
Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.) October EQC meeting in St. Helen's Oregon 10/3-10/4/02		26. Grand Total Amount 66.35 \$58.85	
		27. Travel Advance Amount	
		28. Amount Due Employee/State 66.35 \$58.85	
		29. Received Training Conducted Training	
I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.	30. Signature of Employee <i>Stephanie Hallock</i>	31. Title Director	Date 10/08/02
	32. Approved By <i>[Signature]</i>	33. Title MSP Administrator	Date 11 October 2002
I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted expenditure.			

STATE OF OREGON TRAVEL EXPENSE DETAIL SHEET



327/VPT15332

9370000295

1. Name of Employee <i>Cummins</i> Stephanie Hallock		2. Agency DEQ	3. Period (Month and Year) October, 2002
4. Official Station Director		5. Division, Work Unit, Cost Center OD, PCA MSD02	6. Regular Schedule Work Shift Other 8am to 5pm
7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>			
Bargaining Unit Name <input type="checkbox"/>		Other <input type="checkbox"/>	

8. Date	9. Time of Departure	10. Time of Arrival	11. Description	12. Per Diem/ Hourly Allowance	Individual Meal Reimbursement			13. Lodging	14. Total Meals and Lodging
					Breakfast	Lunch	Dinner		
10/09/02	9am	4pm	Portland>Bend>Portland			PROV			0.00
10/11/02	5:30am	9:30pm	Portland>Seattle>Portland	37.50	*12.50	*12.50	*25.00		50.00 37.50
									0.00
									0.00
			* taxable meal allowance						0.00
									0.00
									0.00
			* no lunch on day trips						0.00
15. Totals				0.00	12.50	12.50	25.00	0.00	\$50.00 37.50

16. (Office Use Only)		17. Date	18. Miscellaneous Expenses Fares, Private Mileage, Room Tax, Telephone, Other Expenses	19. Training Related?	20. Rate Per Mile	21. Private Car Miles	22. Amount
Accounting Codes							
14010 - 41002		10/9	Personal vehicle mileage		0.365		0.00
4103		8.00	Parking at PDX for 10/9/02				8.00
4151		37.50	Parking at EPA in Seattle, WA				22.00
4153		22.00					
Totals		67.50					
23. Section Total							\$30.00

24. I did/will ☒ did not/will not ☐ accept travel awards as a result of, or associated with this state business trip. *SH* Initials.
Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.) 10/9/02 Fly to Redmond/Bend to address DEQ staff RE: Budget Issues		26. Grand Total Amount 67.50 \$80.00
10/11/02 Attend Pacific NW Director's meeting in Seattle (Gang of Seven)		27. Travel Advance Amount
		28. Amount Due Employee/State 67.50 \$80.00
I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.		29. Received Training Conducted Training
30. Signature of Employee <i>Stephanie Hallock</i>	31. Title Director Date 10/14/02	
I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted expenditure.	32. Approved By <i>[Signature]</i>	33. Title MSP Administrator Date 17 OCT 2002

CUSTOMER NUMBER: 8117
DATE OF INVOICE: OCT 07 2002
INVOICE NUMBER: ITIN
AGENT NUMBER: BN PAGE: 01
HALLOCK/STEPHANIE
34000.EMMA.5032295990

AZUMANO/AWAY TRAVEL
350 MISSION SE
SALEM OREGON 97302
PHONE: 503 370-7442
FAX: 503 370-7320

DEPT OF ENVIRONMENTAL QUALITY
ATTN: LAURIE HUNTER
811 SW 6TH AVE 6TH FL
PORTLAND OR 97204

THIS IS YOUR ONLY
E-TKT INVOICE/RECEIPT
RETAIN FOR YOUR RECORDS
PRESENT CODE: 10100 TO
THRIFTY PARKING FOR DISCOUNT

09 OCT 02 - WEDNESDAY

UNITED 6651 COACH CLASS
LV: PORTLAND ORE 1101A
AR: REDMOND 1151A

OPERATED BY-UNITED EXPRESS/SKY
NONSTOP MILES- 116 CONFIRMED

SEAT- 4C

EQUIPMENT-EMB120 TURBO

ELAPSED TIME- :50

UNITED 6653 COACH CLASS
LV: REDMOND 300P
AR: PORTLAND ORE 347P

OPERATED BY-UNITED EXPRESS/SKY
NONSTOP MILES- 116 CONFIRMED

SEAT- 5C

EQUIPMENT-EMB120 TURBO

ELAPSED TIME- :47

TRAVEL AWARDS ACCEPTED BY STATE EMPLOYEES
BECOME THE PROPERTY OF THE STATE OF OREGON.
YOU MUST NOTIFY YOUR AGENCY OF ANY AWARDS RECEIVED.
*** PKT:TKT/ORI/INV TO TVL ARR * INCL GOVT PARK PASS
UNITED AIRLINES 800-241-6522
RESERVATION BOOKED WITH BARB BY EMMA

YOUR UNITED AIRLINES CONFIRMATION NUMBER IS: Z8BPDG

ORIGINAL TICKET NUMBER: 0167228304309 / \$ 290.00

UNITED AIRLINES TICKET NUMBER/AMOUNT IS: 0167229130576 \$290.00

CAR OR HOTEL NOT REQUESTED.
AGENCY PHONE 503-370-7442/800-289-2959
EMERGENCY AFTER HOURS 877-840-0183

SERVICE FEE

32.75



STATE OF OREGON TRAVEL EXPENSE DETAIL SHEET

1. Name of Employee Stephanie Hallock			2. Agency DEQ			3. Period (Month and Year) November, 2002		
4. Official Station Director			5. Division, Work Unit, Cost Center OD, PCA MSD02			6. Regular Schedule Work Shift Other 8am to 5pm		
7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>			Bargaining Unit Name <input type="checkbox"/> Other <input type="checkbox"/>					

8. Date	9. Time of Departure	10. Time of Arrival	11. Description	12. Per Diem/ Hourly Allowance	12. Individual Meal Reimbursement			13. Lodging	14. Total Meals and Lodging
					Breakfast	Lunch	Dinner		
11/26/02	6am	10pm	Portland>Medford>Portland	34.50	10.50		21.00		31.50 34.50
					41.50		23.00		
									0.00
									0.00
									0.00
			* taxable meal allowances						0.00
									0.00
15. Totals				0.00	10.50	0.00	21.00	0.00	\$31.50 34.50

16. (Office Use Only)		17.	18.	19.	20.	21.	22.
Accounting Codes		Date	Miscellaneous Expenses Fares, Private Mileage, Room Tax, Telephone, Other Expenses	Training Related?	Rate Per Mile	Private Car Miles	Amount
10-41002			Personal vehicle mileage		0.365		0.00
4101		34.50	Parking at PDX				8.00
4103		8.00					
Totals		42.50					
23. Section Total						\$8.00	

24. I did/will ☒ did not/will not ☐ accept travel awards as a result of, or associated with this state business trip. SH Initials.
Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)
Strategic Directions meetings in Medford. See attached list.
Also meet with Medford DEQ staff

26. Grand Total Amount 42.50 \$39.50

27. Travel Advance Amount

28. Amount Due Employee/State 42.50 \$39.50

29. Received Training ☐ Conducted Training ☐

30. Signature of Employee
Stephanie Hallock

31. Title
Director

32. Approved By
[Signature]

33. Title
Date
11/26/02

I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.

I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.

SNODGRASS Emma

From: Bonnie Price [bprice@azumano.com]
Sent: Wednesday, November 20, 2002 2:35 PM
To: SNODGRASS Emma
Subject: electronic ticket

CUSTOMER NUMBER: 8117
DATE OF INVOICE: NOV 20 2002
INVOICE NUMBER: ITIN
AGENT NUMBER: K7 PAGE: 01
HALLOCK/STEPHANIE

AZUMANO/AWAY TRAVEL 34000.EMMA.5032295990
350 MISSION SE
SALEM OREGON 97302
PHONE: 503 370-7442
FAX: 503 370-7320

DEPT OF ENVIRONMENTAL QUALITY THIS IS YOUR ONLY
ATTN: LAURIE HUNTER E-TKT INVOICE/RECEIPT
811 SW 6TH AVE 6TH FL RETAIN FOR YOUR RECORDS
PORTLAND OR 97204 PRESENT CODE: 1010Q TO
THRIFTY PARKING FOR DISCOUNT

IN VIEW OF INCREASINGLY RESTRICTIVE AIRLINE POLICIES PLEASE REVIEW YOUR
ITINERARY DETAILS AND ADVISE US OF ANY DISCREPANCIES WITHIN 24-HOURS.

25 NOV 02 - MONDAY

UNITED 6636 COACH CLASS OPERATED BY-UNITED EXPRESS/SKY
LV: PORTLAND ORE 800A NONSTOP MILES- 222 CONFIRMED
AR: MEDFORD 906A
SEAT- 7B
EQUIPMENT-EMB120 TURBO ELAPSED TIME- 1:06

UNITED 6643 COACH CLASS OPERATED BY-UNITED EXPRESS/SKY
LV: MEDFORD 805P NONSTOP MILES- 222 CONFIRMED
AR: PORTLAND ORE 904P
SEAT- 4B
EQUIPMENT-EMB120 TURBO ELAPSED TIME- :59

TRAVEL AWARDS ACCEPTED BY STATE EMPLOYEES
BECOME THE PROPERTY OF THE STATE OF OREGON.
YOU MUST NOTIFY YOUR AGENCY OF ANY AWARDS RECEIVED.

*** PTKT:TKT/ORI/INV TO TVL ARR * INCL GOVT PARK PASS
UNITED AIRLINES 800-241-6522
RESERVATION BOOKED WITH BONNIE BY EMMA

YOUR UNITED AIRLINES CONFIRMATION NUMBER IS: J6HDK6

UNITED AIRLINES TICKET NUMBER/AMOUNT IS: 0167233804026 \$168.00

YOU MAY ALSO VIEW THIS ITINERARY ON-LINE AT WWW.AZUMANO.COM

YOUR VIEWTRIP CONFIRMATION CODE IS: J6HDK6

CAR OR HOTEL NOT REQUESTED.

AGENCY PHONE 503-370-7442/800-289-2959

EMERGENCY AFTER HOURS 877-840-0183

THIS IS YOUR ONLY E-TKT RECEIPT. PLEASE RETAIN FOR YOUR RECORDS.

PRESENT CODE 1010Q TO THRIFTY PARKING FOR DISCOUNT.

COMPARED TO THE FULL FARE THIS REPRESENTS A SAVINGS OF \$ 612.00

AIR TRANSPORTATION 137.68 TAX 30.32 TTL 168.00

SUB TOTAL 200.75

CUSTOMER NUMBER: 8117

DATE OF INVOICE: NOV 20 2002

INVOICE NUMBER: ITIN

AGENT NUMBER: K7 PAGE: 02

HALLOCK/STEPHANIE

AZUMANO/AWAY TRAVEL 34000.EMMA.5032295990

350 MISSION SE

SALEM OREGON 97302

PHONE: 503 370-7442

FAX: 503.370-7320

DEPT OF ENVIRONMENTAL QUALITY THIS IS YOUR ONLY

ATTN: LAURIE HUNTER E-TKT INVOICE/RECEIPT

811 SW 6TH AVE 6TH FL RETAIN FOR YOUR RECORDS

PORTLAND OR 97204 PRESENT CODE: 1010Q TO

THRIFTY PARKING FOR DISCOUNT

IN VIEW OF INCREASINGLY RESTRICTIVE AIRLINE POLICIES PLEASE REVIEW YOUR
ITINERARY DETAILS AND ADVISE US OF ANY DISCREPANCIES WITHIN 24-HOURS.

SERVICE FEE 32.75

CREDIT CARD PAYMENT 200.75-

AMOUNT DUE 0.00

LINE	DATE - DAY																															P AY T Y P E	R E G H R S	L W O P	M I S C H R S
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31				
01	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	RG			
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* *	PRELIMINARY AND FINAL TOTALS																															- -			

OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

LEAVE BALANCES
AS OF:

TIME SHEET

START DATE
12/01/01

END DATE
12/31/01

FULL TIME
HOURS:

168.0

SIGNED, CERTIFYING TRUE AND ACCURATE

EMPLOYEE:

BY: Stephanie Hallock

# OF DAYS WORKED:	
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FORECAST
20

PRELIM

FINAL

SUPERVISOR:

VISOR: Helen Lettridge

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

L COPY

PAYROLL AGENCY # 34000	PERSONNEL AGENCY # 34000	SHIFT 1	CHECK DISTRICT # 11000	CUMMINS, STEPHANIE H	SOCIAL SECURITY # 541-56-1012	CONC JOB 1	POSITION # 0000001	CLASS MESN Z7014	PAY BASIS S	APPT TYPE P	WORK SCHED AA7	TIME SHEET # 2-0	
START TIME 0000	O/T NE	BEN PKG XX	COST CENTER DISTRIBUTION 034100214010 100.00 %										PERIOD ENDING 01/31/02

LINE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	DATE - DAY			
	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	PAY TYPE	REG HRS	LWOP	MISC HRS
01																																RG			
02																																HO			
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OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

SAVE BALANCES
3 OF:

TIME SHEET

01/01/02

01/31/02

FULL TIME
HOURS:

184.0

EMPLOYEE:

Stephanie Hallock

SIGNED, CERTIFYING TRUE AND ACCURATE

OF DAYS
WORKED:FORECAST
21

PRELIM

FINAL

SUPERVISOR:

Dele Lott

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

IAL COPY

PAYROLL AGENCY #	PERSONNEL AGENCY #	SHIFT	CHECK DISTRICT	SOCIAL SECURITY #	CONC JOB	POSITION #	CLASS	PAY BASIS	APPT TYPE	WORK SCHED	TIME SHEET #	
34000	34000	1	11000	CUMMINS, STEPHANIE H	541-56-1012	1	0000001	MESN Z7014	S	AA7	2-	
START TIME	QTY	BEN PKG	COST CENTER DISTRIBUTION									PERIOD ENDING
0000	NE	XX	034100214010 100.00 %									02/28/02

LINE	DATE - DAY																															DATE - DAY			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	PAY TYPE	REG HRS	LWOP	MISC HRS
01	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH				RG			
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09				2			2								2						2											SL	8		
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19																																CTA			
20																																			
* *	PRELIMINARY AND FINAL TOTALS																															-	-		

OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

LEAVE BALANCES AS OF:	START DATE	END DATE	FULL TIME HOURS	160.0	SIGNED, CERTIFYING TRUE AND ACCURATE	# OF DAYS WORKED:	19	FORECAST	PRELIM	FINAL
TIME SHEET	02/01/02	02/28/02			EMPLOYEE: Stephanie Harlock	SUPERVISOR:	Steve Joffe for EAC			

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

VAL COPY

PAYROLL AGENCY # 34000	PERSONNEL AGENCY # 34000	SHIFT 1	CHECK DISTRIBUTN 11000	CUMMINS, STEPHANIE H	SOCIAL SECURITY # 541-56-1012	CONC JOB 1	POSITION # 0000001	CLASS MESN Z7014	PAY BASIS S	APPT TYPE P	WORK SCHED AA7	TIME SHEET # 2-
START TIME 0000	O/T NE	BEN PKG XX	COST CENTER DISTRIBUTION 034100214010 100.00 %						%	%	%	PERIOD ENDING 03/31/02

LINE	DATE - DAY																																		
	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	PAY TYPE	REG HRS	LWOP	MISC HRS
01																																RG			
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OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

LEAVE BALANCES AS OF:	START DATE 03/01/02	END DATE 03/31/02	FULL TIME HOURS: 168.0	EMPLOYEE: Stephanie Hallock	SIGNED, CERTIFYING TRUE AND ACCURATE	# OF DAYS WORKED: 41	FORECAST	PRELIM	FINAL
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TIME SHEET

SUPERVISOR:

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

AL COPY

PAYROLL AGENCY #	PERSONNEL AGENCY #	SHIFT	CHECK DISTRI BTN	SOCIAL SECURITY #	CONC JOB	POSITION #	CLASS	PAY BASIS	APPT TYPE	WORK SCHED	TIME SHEET #
34000	34000	1	11000	541-56-1012	1	0000001	MESN Z7014	S	P	AA7	2-
START TIME	O/T	BEN PKG	COST CENTER DISTRIBUTION								PERIOD ENDING
0000	NE	XX	034100214010 100.00 %								04/30/0

LINE	DATE - DAY																																			
	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU		PAY TYPE	REG HRS	LWOP	MISC HRS	
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* *	PRELIMINARY AND FINAL TOTALS																																			
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PRELIMINARY AND FINAL TOTALS

OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

LEAVE BALANCES AS OF:

TIME SHEET

04/01/02

04/30/02

FULL TIME HOURS:

176.0

EMPLOYEE:

Stephanie Harlock

SIGNED, CERTIFYING TRUE AND ACCURATE

OF DAYS WORKED:

FORECAST

PRELIM

FINAL

SUPERVISOR:

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

AL COPY

PAYROLL AGENCY #	PERSONNEL AGENCY #	SHIFT	CHECK DISTRIBUTN	SOCIAL SECURITY #	CONC JOB	POSITION #	CLASS	PAY BASIS	APPT TYPE	WORK SCHED	TIME SHEET #
34000	34000	1	11000	541-56-1012	1	0000001	MESN Z7014	S	P	AA7	2-
START TIME	O/T	BEN PKG	COST CENTER DISTRIBUTION								PERIOD ENDING
0000	NE	XX	034100214010 100.00 %								05/31/0.

LINE																																DATE - DAY				
	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	PAY TYPE	REG HRS	LWOP	MISC HRS	
01																																	RG			
02																																	HO			
03																																	6TS			
04																																	RG			
05																																	HO	8		
06																																	6TS			
07																																				
08																																	VA			
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OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

LEAVE BALANCES AS OF:	# OF DAYS WORKED:	FORECAST	PRELIM	FINAL
TIME SHEET	START DATE	END DATE	FULL TIME HOURS:	SIGNED, CERTIFYING TRUE AND ACCURATE
	05/01/02	05/31/02	184.0	EMPLOYEE: <i>Stephanie Cummins</i>
				SUPERVISOR: <i>[Signature]</i>

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

AL COPY

PAYROLL AGENCY #	PERSONNEL AGENCY #	SHIFT	CHECK DISTRI BTN	SOCIAL SECURITY #	CONC JOB	POSITION #	CLASS	PAY BASIS	APPT TYPE	WORK SCHED	TIME SHEET #	
4000	34000	1	11000	CUMMINS, STEPHANIE H	541-56-1012	1	0000001	MESN Z7014	S	P	AA7	2-
START TIME	O/T	BEN PKG	COST CENTER DISTRIBUTION						PERIOD ENDING			
0	NE	XX	034100214010 100.00 %						06/30/0			

LINE	DATE - DAY																																			
	A	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU	MO	TU	WE	TH	FR	SA	SU		PAY TYPE	REG HRS	LWOP	MISC HRS	
01																																RG				
02																																HO				
03																																GTS				
04																																RG				
05																																HO				
06																																GTS				
07																																				
08																																VA	8			
09			8	2	2						2							1	1						3		2	2				SL	23			
10																																CTL				
11																																PB				
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17																																HP				
18																																SDE				
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OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

LEAVE BALANCES AS OF:	START DATE	END DATE	FULL TIME HOURS	160.0	EMPLOYEE: Stephanie Hallock	SIGNED, CERTIFYING TRUE AND ACCURATE	# OF DAYS WORKED:	20	FORECAST	PRELIM	FINAL
TIME SHEET	06/01/02	06/30/02									

SUPERVISOR:

FORM #AD174.

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

1AL COPY

PAYROLL AGENCY # 34000	PERSONNEL AGENCY # 34000	SHIFT 1	CHECK DISTRIBTN 11000	CUMMINS, STEPHANIE H	SOCIAL SECURITY # 541-56-1012	CONC JOB 1	POSITION # 0000001	CLASS MESN Z7014	PAY BASIS S	APPT TYPE P	WORK SCHED AA7	TIME SHEET # 2-
START TIME 0000	O/T NE	BEN PKG XX	COST CENTER DISTRIBUTION 034100214010 100.00 %				%	%	%	%	PERIOD ENDING 07/31/0	

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OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

LEAVE BALANCES
AS OF:# OF DAYS
WORKED:FORECAST
22

PRELIM

FINAL

TIME SHEET

START DATE
07/01/02END DATE
07/31/02FULL TIME
HOURS:

184.0

SIGNED, CERTIFYING TRUE AND ACCURATE

EMPLOYEE:

Stephanie Hallock

SUPERVISOR:

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

AL COPY

PAYROLL AGENCY #	PERSONNEL AGENCY #	SHIFT	CHECK DISTRICT	SOCIAL SECURITY #	CONC JOB	POSITION #	CLASS	PAY BASIS	APPT TYPE	WORK SCHED	TIME SHEET #	
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OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

LEAVE BALANCES AS OF:

TIME SHEET

START DATE
08/01/02END DATE
08/31/02

FULL TIME HOURS:

176.0

EMPLOYEE:

SIGNED, CERTIFYING TRUE AND ACCURATE

Stephanie Hellock

OF DAYS WORKED:

FORECAST
22

PRELIM

FINAL

SUPERVISOR:

[Signature]

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

AL COPY

PAYROLL AGENCY #	PERSONNEL AGENCY #	SHIFT	CHECK DISTRICT	SOCIAL SECURITY #	CONC JOB	POSITION #	CLASS	PAY BASIS	APPT TYPE	WORK SCHED	TIME SHEET #	
34000	34000	1	11000	CUMMINS, STEPHANIE H	541-56-1012	1	0000001	MESN Z7014	S	P	AA7	2-
START TIME	O/T	BEN PKG	COST CENTER DISTRIBUTION									PERIOD ENDING
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PRELIMINARY AND FINAL TOTALS																																			

OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

LEAVE BALANCES, AS OF:

TIME SHEET

START DATE
09/01/02END DATE
09/30/02

FULL TIME HOURS:

168.0

EMPLOYEE:

Stephanie Hallock

SIGNED, CERTIFYING TRUE AND ACCURATE

OF DAYS WORKED:

FORECAST
20

PRELIM

FINAL

SUPERVISOR:

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FINAL

SUPERVISOR

FORM # AD-7

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

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PAYROLL AGENCY # 34000	PERSONNEL AGENCY # 34000	SHIFT 1	CHECK DISTRICT # 11000	CUMMINS, STEPHANIE H	SOCIAL SECURITY # 541-56-1012	CONC JOB 1	POSITION # 0000001	CLASS MESN Z7014	PAY BASIS S	APPT TYPE P	WORK SCHED AA7	TIME SHEET # 2-0
START TIME 0000	O/T NE	BEN PKG XX	COST CENTER DISTRIBUTION 034100214010 100.00 %				%	%	%	PERIOD ENDING 11/30/02		

LINE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	DATE - DAY			
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PRELIMINARY AND FINAL TOTALS																																			

OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

LEAVE BALANCES AS OF:

TIME SHEET

START DATE
11/01/02END DATE
11/30/02

FULL TIME HOURS

168.0

EMPLOYEE:

SIGNED, CERTIFYING TRUE AND ACCURATE

Stephanie Hallock

OF DAYS WORKED:

FORECAST
19

PRELIM

FINAL

SUPERVISOR:

Oregon Environmental Quality Commission Meeting - December 12-13, 2002

AMENDED: Please note 9:00 a.m. start time on Friday, December 13

Oregon Department of Environmental Quality (DEQ), Headquarters Building, Room 3A
811 SW Sixth Avenue, Portland, Oregon

Thursday, December 12, 2002

Prior to the regular meeting, the Commission will hold an executive session beginning at 10:00 a.m., as allowed by ORS 192.660(1)(i), to review and evaluate the employment-related performance of the Director pursuant to the standards, criteria and policy directives adopted by the Commission in January 2002.

The regular Commission meeting will begin at 1:00 p.m. in DEQ Room 3A

- A. Contested Case No. WPM/D-NWR-99-186 regarding Caleb Siaw, M.D.**
The Commission will consider a contested case between DEQ and Dr. Caleb Siaw, in which Dr. Siaw appealed a May 2002, proposed order assessing him a \$317,700 civil penalty for violating a Commission order. The Commission order required Dr. Siaw to design and construct a new on-site sewage disposal system for a mobile home park he owned in Seaside, Oregon. The Commission will hear arguments from both parties on the case.
- B. Director's Dialogue**
Stephanie Hallock, DEQ Director, will discuss current events and issues involving the Department and state with the Commission.
- C. Action Item: Vote on new Commission Chair**
Commissioners will discuss and vote on a new Commission Chair person to replace outgoing Chair, Melinda Eden.

Joint meeting session with the Oregon Economic and Community Development Commission 3:00 p.m., World Trade Center, Sky Bridge A & B, S.W. Second St., Portland Oregon

At approximately 3:00 p.m., the Environmental Quality Commission will join the Oregon Economic and Community Development Commission for a joint meeting session at the World Trade Center, Sky Bridge A&B, located at SW Second & Salmon Street in downtown Portland. The joint session will feature two discussion topics:

- Maximizing financial support to communities in need of wastewater treatment system improvements
- Removing barriers to economic development in Oregon

Following the meeting, Commissioners will hold a joint reception at the World Trade Center as an opportunity for informal discussion and relationship building.

Friday, December 13, 2002

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 Commission meeting will begin at 9:00 a.m. in DEQ Room 3A

D. Approval of Minutes

The Commission will review, amend if necessary, and approve draft minutes of the October 3-4, 2002, Environmental Quality Commission meeting.

E. Action Item: Consideration of Pollution Control Facilities Tax Credit Requests

In 1967, the Oregon Legislature established the Pollution Control Facility Tax Credit Program to help businesses meet environmental requirements. The program was later expanded to encourage investment in technologies and processes that prevent, control or reduce significant amounts of pollution. In 1999, nonpoint source pollution control facilities were made eligible for the program. At this meeting, the Commission will consider tax credit applications for facilities that control air and water pollution, recycle solid and hazardous waste, reclaim plastic products, and control pollution from underground storage tanks.

F. Informational Item: Update on Status of Umatilla Chemical Agent Disposal Facility

Sue Oliver and Thomas Beam, DEQ Chemical Demilitarization Program staff, will update the Commission on the Umatilla Chemical Agent Disposal Facility, including the status of trail burns, an in-progress permit modification and a schedule for facility operation.

G. Public Comment Opportunity on Port Westward Energy Facilities Project and Proposed Wastewater Discharge Permit

The Commission will invite public comment on the proposed wastewater discharge permit for the Port Westward Energy Facilities Project. The proposed project includes construction of two natural gas fired power plants and one ethanol production plant on land owned by the Port of St. Helens adjacent to the Columbia River near Clatskanie. The Port has applied to DEQ for a wastewater permit for the collection and discharge of treated wastewater to the Columbia River from the new facilities. At a future meeting, DEQ will ask the Commission to make a determination about the impact of this project on Columbia River water quality. DEQ is in the process of soliciting public input on the proposed wastewater permit and other information that will support the Commission's determination.

H. *Rule Adoption: Total Maximum Daily Loads (TMDL) Rules

Since the early 1980s, DEQ has been establishing Total Maximum Daily Loads, or TMDLs, for waterbodies that do not meet water quality standards. A TMDL identifies the maximum amount of a pollutant a waterbody can receive and still meet water quality standards, and allocates portions of that amount to pollutant sources or groups of sources. A TMDL also includes a Water Quality Management Plan describing strategies that will achieve the targeted pollution inputs. TMDLs are implemented through permits and through implementation plans adopted by federal, state, or local governmental agencies with authority over contributing sources. At this meeting, Mike Llewelyn,

DEQ Water Quality Division Administrator, will present rules to adopt the process DEQ has been using for the past few years to develop and implement TMDLs.

I. *Rule Adoption: Oil Spill Contingency Planning and Fees

In 2001, the Legislature changed requirements for the way in which large ships and other marine vessels plan for how they would respond to oil spills. At this meeting, Dick Pedersen, DEQ Land Quality Division Administrator, will propose rules to implement the legislative changes, including new fees for regulated vessels and facilities to support DEQ's Emergency Response program. The proposed rules would confirm DEQ as the lead agency for responding to hazardous chemical and oil spills, define "spill response zones" within the state's navigable waters, specify equipment requirements for those zones, and require spill contingency plans for all fuel pipelines (current rules only require plans for pipelines that transfer oil over certain state waters).

J. *Rule Adoption: Enforcement Procedures and Civil Penalties for Ballast Water Management, Oil Spill Planning, and Emergency Response to Hazardous Material Spills

Dick Pedersen, DEQ Land Quality Division Administrator, will propose rules that align state enforcement procedures and penalties with recent rule changes in DEQ's Emergency Response program. The proposed rules include revised enforcement classifications for ballast water management and planning requirements for oil and hazardous material spills.

K. Temporary Rule Adoption: Asbestos Requirements

Asbestos is a hazardous air pollutant and known carcinogen. To protect public health, DEQ regulates disposal of asbestos-containing materials from demolition, construction, repair, and maintenance of public and private buildings. DEQ's asbestos rules, designed to prevent asbestos fiber release and exposure, were modified in January 2002 to strengthen public health protection. At this meeting, Andy Ginsburg, DEQ Air Quality Division Administrator, will propose a temporary rule to provide relief from some relatively new asbestos requirements that have caused implementation problems for some Oregon businesses. After adoption of the temporary rule, DEQ plans to work with a stakeholder group on redefining those rule requirements to be easier to use.

L. Informational Item: Response to Commission Request for Analysis of Mercury Reduction Goals and Mixing Zones

In July 2002, the Commission requested information from DEQ on state mercury reduction goals and the discharge of toxics in water quality mixing zones. At this meeting, Dick Pedersen, DEQ Land Quality Division Administrator, and Mike Llewelyn, DEQ Water Quality Division Administrator, will lead a two-part presentation of information and analysis on current and potential state efforts to reduce mercury and other toxic substances.

M. Commissioners' Reports

Adjourn

Environmental Quality Commission Meetings scheduled for 2003:

January 30-31, March 20-21, May 8-9, June 26-27, August 14-15, October 9-10, December 4-5

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.

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.

Public Forum: The Commission will break the meeting at approximately 11:30 a.m. on Friday, December 13, to provide members of the public an opportunity to speak to the Commission on environmental issues 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.

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 & Kearns 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

**Oregon
Economic & Community Development Department**

275 Summer St., Ste 200 • Salem, OR 97301-1280 • 1-800-233-3306 (in Oregon only) • TTY and Phone 503-985-0123

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The Oregon Economic & Community Development Commission

[What does the commission do?](#)[1999-2001 Economic Development Commission Biennial Report](#)[Calendar of Events](#)[Job Openings](#)[Maps to Our Offices](#)[Press Releases](#)[Publications](#)[Boards and Commission](#)[Legislative Activity](#)[Home Page](#)***Brett E. Wilcox, Chair*****The Dalles****Appointed Sept 1997, Reappointed Sept 2001****Term expires 2005**

Brett Wilcox is president and owner of two aluminum companies, one in The Dalles, the second in Goldendale, Washington. A graduate of Princeton University and Stanford Law School, his experience includes work as an attorney specializing in energy and business matters.

Wilcox is involved in numerous civic and charitable activities including board memberships for Reed College, Oregon Business Council, Washington Roundtable and Bonneville Environmental. He has been honored with the U.S. Senate Productivity Award, the Council for Economic Development Award and the Job Training Partnership Award and is the vice chair of the Oregon Progress Board.

***Jean B. Tate*****Eugene****Appointed Sept 2001****Term expires 2005**

Jean Tate is the founder and former owner of Jean Tate Real Estate. She is a Certified Commercial Investment Manager (CCIM) and a former high school teacher. Tate was a founding board member of the Metropolitan Affordable Housing Corporation, which builds affordable housing for families and individuals with low incomes, in 1992 and now serves as its immediate past president. In 1977 she was a founding board member of Centennial Bank and continued to sit on its board until 2001.

She was a member of the Willamette Valley Livability Forum

and chaired the Vote by Mail Committee. She also chaired the State Commission on Women and the Capitol Planning Commission and served on the Government Standards and Practices Commission. She is a recipient of the Pioneer Award and Distinguished Service Award from the University of Oregon and the Harvey Clarke Award and Distinguished Alum Award from Pacific University;



Nancy L. Tait
Medford
Appointed Sept 2001
Term expires 2003

Nancy L. Tait was named President and CEO of Bear Creek Corporation in 2000. Her previous position with Harry and David was as Vice President of Marketing and Merchandising. Tait also has experience with the Eddie Bauer Company and Bon Marche department stores.

Tait is a member of the Oregon Shakespeare Festival Board of Directors. She is a member of the Direct Marketing Association and on its Catalog Council and was previously a member of the Oregon Internet Commission and Southern Oregon Public Television Board of Directors.



Carl Talton
Portland
Appointed Sept 2000, Reappointed July 2001
Term expires 2005

Carl Talton is the Vice President for Government Affairs and Economic Development for Portland General Electric. Prior to joining Portland General Electric, Carl served as General Business Director for PacifiCorp's electrical operations in Montana, Washington and northern Oregon.

Talton served as a board member of the Portland Development Commission from 1987-2002, and was board chair from 1995-1999. He now is a board member for several community organizations including Northeast Community Development Corporation, Oregon Association of Minority Entrepreneurs, United Way of Columbia-Willamette and the Mayor's Roundtable.



Dale White
Burns
Appointed Nov 1993, Reappointed Nov 1995, Reappointed Nov 1999
Term expires 2003

Dale White served as Harney County Judge for 24 years, in

addition to stints as both councilman and mayor for the city of Burns. A graduate of the University of Oregon, Judge White served on the boards of the Association of Oregon Counties (AOC) for more than 20 years, the Western Interstate Region for 18 years and the National Association of Counties (NACo) for 14 years.

In 1990, White received recognition as the nation's top elected county official who worked with public lands from Western Interstate Region of the National Association of Counties and the Dr. Robert K. Wood Award for Outstanding Devotion to Economic Development from the Ida-Ore Planning and Development Association. In 1993, Governor Barbara Roberts presented him with the Governor's Award of Recognition for Exceptional Contribution to State and Local Economic Development.

**Oregon
Economic & Community Development Department**

775 Summer St, Ste 200 • Salem, OR 97301-1280 • 1-800-233-3306 (In Oregon only) • TTY and Phone 503-986-0123

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What Does the Oregon Economic & Community Development Commission Do?

The Oregon Economic & Community Development Commission provides economic development policy direction and oversees the Oregon Economic & Community Development Department. The five-member bi-partisan commission was established by the 1993 Legislative Assembly to ensure an integrated approach and continuous policy direction which could transcend changes in executive and legislative leadership. Members serve staggered four-year terms and are appointed by the Governor and confirmed by the Senate.

The commission is assigned by the legislature to develop and maintain an economic development policy for the state that focuses on increasing skill levels and prosperity for Oregon workers, improving competitiveness of key industries, investing to produce the greatest possible return on investment, supporting strategies to maintain and develop infrastructure to strengthen the economy, eliminating barriers that impede business competitiveness and encouraging expansion of existing businesses.

The commission also has responsibility for approving bond financing of economic development projects and making loans. The commission has established a continuing Finance Committee to assist in this duty.

The commission is required to meet at least quarterly, and to report biennially to the Governor and the Legislative Assembly on the success of economic development efforts. The commission also is required to make recommendations for improving economic performance and to estimate the return on economic development investments.

New directions for economic development were established by the commission in November 1996. These include concentrating on existing Oregon companies and assisting rural and distressed urban areas to create better jobs for Oregonians and defend and improve our quality of life. The commission recommends sustained economic development investment to help *allof* Oregon achieve prosperity and protect livability, and to help ensure the economy remains strong in the years to come.

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State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** December 11, 2002
From: Mikell O'Mealy
Subject: Summary of Director's Transactions for Commission Review

Recall that in July 2001, the Department of Administrative Services (DAS) adopted a policy requiring Commission review and approval of the Director's transactions, including monthly time reports, vacation pay, travel expenses, and state credit card use. In September 2001, the Commission adopted a policy delegating review and approval of these transactions to the Management Services Division Administrator, with annual Commission review of the approved transactions. Commissioners decided to do this review during the Director's performance appraisal, which you intend to complete at this meeting.

Attached is a two-page summary of the Director's transactions, which have been reviewed and approved by Holly Schroeder, Acting Management Services Division Administrator. Also attached are the DEQ and DAS policies directing this review. Copies of the Director's monthly time reports and travel expense claims for the past year will be available for your review during the performance appraisal.

Please review these transactions during the performance appraisal process. This review will be documented in the December 12-13 Commission meeting minutes as directed by these policies.

Thank you.



Summary of Director's Financial Transactions
as defined by OAM 10.90.00.PO
12/1/01 - 11/30/02

TIME REPORTING

Summary of leave taken:

SL	87
VA	174
HO	72
PB	29
GL	0

VACATION PAYOFF: none

EXCEPTIONAL PERFORMANCE LEAVE: none

TRAVEL EXPENSE SUMMARY

<u>Date</u>	<u>Destination</u>	<u>Reason for Travel</u>	<u>Amount</u>
12/21/01	Seattle, WA	Meet with Region 10 state directors, BC environmental director and EPA (Gang of Seven)	\$291.00
1/30 - 1/31/02	Hermiston, OR	Meet with Hermiston Nat'l Guard, Umatilla, Pendleton and The Dalles staff	\$106.95
2/26 - 2/27/02	Seaside, OR	EMT Retreat	\$88.63
3/4 - 3/5/02	Ashland, OR	Community Solutions Director's visit to Coos, Curry, Douglas, Josephine and Jackson counties	\$342.00
4/15 - 4/16/02	The Dalles, John Day, Warm Springs, OR	ER road trip for Strategic Directions. Meet with legislators and Warm Springs tribal officials	\$85.00
4/23 - 4/25/02	Hines, OR	April EQC Meeting	\$256.70
5/1 - 5/3/02	Medford, Roseburg, North Bend, OR	WR road trip for Strategic Directions.	\$438.75
6/6 - 6/7/02	Salem, OR	June EQC Meeting	\$82.45
7/23 - 7/24/02	Denver, CO	Western Regional Air Partnerships Meeting.	\$63.00
		Total trip amount:	\$ 740.07
		Reimbursed by WRAP:	<\$ 677.07>
		Amount paid by DEQ:	\$ 63.00

Summary of Director's Financial Transactions
as defined by OAM 10.90.00.PO
12/1/01 - 11/30/02

TRAVEL EXPENSE SUMMARY (continued)

<u>Date</u>	<u>Destination</u>	<u>Reason for Travel</u>	<u>Amount</u>
9/18/02	Medford, OR	Meet with Medford staff regarding budget/legislative issues.	\$221.25
10/3 - 10/4/02	St. Helens, OR	October EQC	\$66.35
10/9/02	Bend, OR	Meet with Bend staff regarding budget/legislative issues.	\$330.75
10/11/02	Seattle, WA	Meet with Region 10 state directors, BC environmental director and EPA (Gang of Seven)	\$59.50
11/26/02	Medford, OR	Meet with Medford staff regarding Strategic Directions	243.25
		TOTAL:	<u><u>\$2,675.58</u></u>

USE OF SMALL PURCHASE ORDER TRANSACTION SYSTEM (SPOTS) PURCHASING CARD: none

<p align="center">DEPARTMENT OF ENVIRONMENTAL QUALITY</p> <p align="center">POLICIES AND PROCEDURES</p>	<p>POLICY NUMBER: A10.90.00.PO</p>
	<p align="center">SEPTEMBER 20, 2001</p>
	<p align="center">PAGE 1 OF 1</p>
<p>SUBJECT: APPROVAL OF DIRECTOR'S TRANSACTIONS</p>	<p>APPROVAL: </p>

INTENT: to set accountability and control standards for the review and approval of the director's financial transactions.

AUTHORITY: Oregon Accounting Manual (OAM) Policy No. 10.90.00.PO

POLICY: As delegated by the Environmental Quality Commission, the Management Services Division administrator will review and approve the Director's monthly time reports, requests for vacation payoff, use of exceptional performance leaves, travel expense reimbursement claims, and Small Purchase Order Transaction System (SPOTS) card purchases. This review will be performed in accordance with OAM 10.90.00.PO.

Annually, at the time of the Director's evaluation, the Commission will review the transactions approved as delegated. These post transaction reviews and approvals will be documented in the minutes of the Commission meeting.

OREGON ACCOUNTING MANUAL		Number 10.90.00.PO
Oregon Department of Administrative Services State Controller's Division	Policy	Effective Date July 16, 2001
Chapter	Internal Control	
Part	Approval of Agency Head Transactions	
Section		
		Approval: (Signature on File at SCD)

Accountability and Control Standards

.101	This policy sets accountability and control standards for the determination and delegation of review and approval authority for the agency head's monthly time report, requests for vacation payoff, use of exceptional performance leave, travel expense reimbursement claims, and Small Purchase Order Transaction System (SPOTS) card purchases. This policy is intended to ensure that these transactions are reviewed for completeness and accuracy and that they are in conformance with and measured against the documentation and compliance standards provided herein. In the case of agency heads that are elected, this policy may be applied at the option of that elected official.
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Establishing Review and Approval Authority

.102	<p>Agency heads appointed by the Governor shall delegate review and approval authority for agency head financial transactions to the chief financial officer or to the person who holds the position of second-in-command to the agency head. The delegation shall be in writing.</p> <p>Agency heads appointed by or reporting to a board or commission shall work with that body to create a review and approval structure for financial transactions of the agency head. The board or commission may delegate the review and approval authority, by direct designation or motion, in writing, to the board or commission chair or ranking officer. Or, the board or commission may delegate to the agency second-in-command, chief financial officer, or may choose to retain an active role in the approval process. Boards and commissions choosing to take an active role in the review and approval process must make the review and approvals of financial transactions a part of their regular meetings and document them in the minutes.</p> <p>Boards and commissions delegating the review and approval process must at least annually review the financial transactions of the agency head approved as delegated. These post transaction reviews and approvals must be documented in the minutes of the board or commission annual meeting.</p>
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Requirement for Internal Procedure and Review

.103	<p>This policy requires agencies to develop internal procedures for the review and approval of the following agency head transactions:</p> <p>a. Time reporting: Review and approve the agency head's monthly report of sick</p>
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leave, vacation, holiday or other leave hours used. Review for completeness and accuracy and to ensure that all time that has been taken has been reported. Ensure that leave hours comply with HRSD 60.000.01 Sick Leave, 60.000.05 Vacation Leave, 60.010.01 Holidays, 60.000.15 Family Medical Leave, 60.005.01 Leave Without Pay and 60.000.10 Special Leaves with Pay. Time reporting (leave usage) must be documented using either paper or electronic timekeeping methods. The documentation must show that the time reports have been and approved by the appropriate authority, which, in the case of a board or commission, may be the ranking officer of the board. Note: Heads of agencies are classified as exempt from the Fair Labor Standards Act (FLSA) and as such should not be required to report actual hours worked. The time reporting review is intended to focus only on hours related to the categories defined above. The documentation must provide evidence for an audit trail and must be maintained by the agency for the prescribed IRS retention schedule for time records of three years and one quarter as well as the current record retention standards per Secretary of State, Archives Division.

- b. Travel expense reimbursements: Review and approve all travel claims submitted by the agency head, whether for in-state or out-of-state travel. Ensure compliance with DAS Travel Rules **OAM 40 10 00.PO** as well as **OAM 10 40 00 PO**, Expenditures. The review and approval of travel transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with the prevailing state policies as listed.
- c. Exceptional Performance Leave: This leave shall be granted to agency heads using the criteria set forth in HRSD 60.000.10 "Special Leaves With Pay". For agency heads appointed by the Governor, this leave shall only be granted by the Governor or by the Director of the Department of Administrative Services on behalf of the Governor. For agency heads reporting to a board or commission; this leave shall be granted by that body or by the board or commission chair and documented in the minutes of the board or commission. The review and approval responsibility is to ensure that the Exceptional Performance leave was granted based on appropriate criteria and authority and is in compliance with HRSD policy 60.000.10. The review and approval of these transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with the prevailing state policies as listed. The documentation must clearly demonstrate the criteria upon which the leave was granted. The documentation must include copies of the written request and approval granting the leave and copies of the board or commission minutes, if applicable. The documentation must be retained according to the current record retention standards per Secretary of State, Archives Division.
- d. Vacation Payoff: Review and approve ensuring compliance with HRSD policy 60 000.05 "Vacation Leave". The review and approval of these transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with HRSD 60.000.05. That review must clearly demonstrate that the vacation payoff was approved in accordance with Section (6) (b) of that policy which mandates that a vacation payoff is only granted when taking vacation leave is not appropriate. Copies of the written request and approval granting the vacation payoff and copies of the board or commission minutes, if applicable, must be part of the documentation for these transactions.
- e. Use of the Small Purchase Order Transaction System (SPOTS) purchase card: Review purchases to ensure that they are appropriate expenditures that further the business of the state and the mission of the agency and that the use of the SPOTS card complies with **OAM 55 30 00.PO**. The review must be conducted by someone other than the person whose name appears on the card. The review approval of transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with the

prevailing state policies as listed.

The documentation for all of the above should be retained according to the current record retention standards per Secretary of State, Archives Division.

Fiscal Officer Responsibility

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| .104 | Agency fiscal officers processing these financial transactions for the agency head have a duty to pre-audit and verify that the transactions comply with this policy. |
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Seeking Guidance from State Controller's Division

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| .105 | For the purposes of this policy, those persons delegated to review and approve financial transactions for state agency heads have a duty to comply with the provisions of this policy. Any agency head requests to deviate from this policy must be approved by the State Controller. Those persons delegated review and approval authority having reservations or questions about an agency head financial transaction may seek guidance from the State Controller's Division. |
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Transactions Subject to Audit

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| .106 | All financial transactions of state agency heads are subject to periodic audit by the Secretary of State Audits Division. |
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State of Oregon

Department of Environmental Quality

Memorandum

Date: September 18, 2001
To: Environmental Quality Commission
From: Stephanie Hallock, Director
Subject: Agenda Item A: Development of Performance Appraisal Process for Director;
Review and Approval of Director's Transactions
September 20, 2001 EQC Meeting

Department Recommendation The Department requests the Commission adopt a policy (Attachment 1) delegating to the Management Services Division Administrator the review and approval of certain financial transactions of the Director. The Commission would review the approved transactions annually. These post transaction reviews and approvals would be documented in Commission meeting minutes.

Key Issues The Department of Administrative Services issued Oregon Accounting Manual (OAM) Policy No. 10.90.00.PO effective July 16, 2001, which set accountability and control standards for the review and approval of certain agency head transactions. The recommended action ensures the Department is in compliance with this new policy.

EQC Action Alternatives OAM 10.90.00.PO gives the Commission the option of reviewing and approving each specified transaction itself or delegating this task to the agency second-in-command or chief financial officer. Commissions delegating the process must at least annually review the financial transactions of the Director approved as delegated.

Attachments

1. Proposed Department Policy for Approval of Director's Transactions
2. Oregon Accounting Manual Policy No. 10.90.00.PO

Approved:

Section:

Division:




Report Prepared By: Judith L. Hatton

Phone: 503-229-5389

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** December 11, 2002
From: Stephanie Hallock, Director
Subject: Director's Dialogue

State Budget Update

As you know, the December revenue forecast showed a continued decline in state revenues, putting the 2001-2003 biennial budget into a \$133 million deficit. Further, the outlook for new general fund during the 2003-2005 biennium is bleak. This week, the Department of Administrative Services (DAS) released recommendations on DEQ's 2003-2005 budget request, which Holly Schroeder and I will appeal this Friday. The Governor intends to consider DAS recommendations in developing his budget priorities, and the discussion about how to fund those priorities will continue throughout what promises to be a long, contentious legislative session.

At this point, we anticipate that we will have to take the budget reductions proposed during Special Session 5 regardless of whether the January income tax measure passes or fails. Even if the measure passes, the decline in revenues means more cuts to agencies, and we intend to use the prioritized reduction list we developed during the special sessions as needed. As the state budget situation unfolds, we will continue conservative spending approaches and make changes in hiring practices as needed to avoid layoffs, if possible.

Meetings with Legislators and Stakeholders to Prepare for the 2003 Session

Since the November election, my priority has been meeting with key legislators, stakeholders and emerging leaders to discuss issues for the upcoming session and to ensure that natural resources remain part of the budget dialogue. My message has been that although natural resource agencies consume less than 2 percent of the state general fund budget, it is important to maintain some general funding for Oregon's environment. DEQ is committed to protecting people's health and our environment, while at the same time doing what we can to streamline regulatory processes and make it easier to do business in Oregon.

Attachment A provides a short list of DEQ's 2003 Legislative Priorities. Attachment B provides a summary of what to expect in the 2003 session, including November election results, the state budget situation, and major legislative themes. Below is a list of legislators, lobbyists and others I have met with over the past month (*), am scheduled to meet (†), or hope to meet with soon.

*Senator Jason Atkinson
*Senator Bev Clarno
*Senator Ted Ferrioli
*Senator Lenn Hannon
*Senator Ken Messerle
†Senator Charlie Ringo
Senator Roger Beyer
Senator Kate Brown

Senator Tony Corcoran
Senator Peter Courtney
Senator Joan Dukes
Senator John Minnis
Senator Bill Morrisette
Senator Frank Morse
*Rep. Susan Morgan
*Rep. Jackie Dingfelder

†Rep. Betsy Johnson
†Rep. Joanne Verger
†Rep. Mark Hass
†Rep. Mary Nolan
Rep. Margaret Carter
Rep. Mitch Greenlick
Rep. Deborah Kafoury
Rep. Karen Minnis

Rep. Kurt Schrader

Rep. Bruce Starr

Rep. Ben Westlund

Rep. Jackie Winters

*Tom Imeson, Transition Team

*Bill Blosser, Transition Team

Lobbyists

*Rob Douglas

*Jon Chandler

*Rich Angstrom

*Ken Strobeck

*Mark Nelson

*Jim Myron

*Joe Whitworth

*Jeff Allen

*Tom Gallagher

†Travis Williams

Lobbyists

†Lynn Lundquist

†Maureen Kirk

†Rhett Lawrence

John Ledger

Dave Barrows

Ralph Groener

Willie Tiffany

Paul Cosgrove

Doug Myers

Kathryn Van Natta

Chemical Demilitarization Program Administrator Update

As you know, Wayne Thomas, Administrator of DEQ's Chemical Demilitarization Program, left DEQ at the end of November to take a new position in Atlanta, Georgia. Sue Oliver is serving as acting Administrator while we conduct a national search to fill the vacancy. On December 11, we interviewed applicants in hopes of filling this position by the end of the year.

Status of the Trial on Commission's Refusal to Revoke the UMCDF Permit

The "G.A.S.P. III trial," which challenges the EQC's refusal to revoke the hazardous waste permit for the Umatilla Chemical Agent Disposal Facility (UMCDF), began in Multnomah County Circuit Court in October and has now recessed until March 2003. Thus far, the petitioners (led by G.A.S.P., a Hermiston environmental group) presented their case, and the state responded with its case. Wayne Thomas, Sue Oliver, Commissioner Eden and I were called to testify on behalf of the state. Following the state's presentation, the Army began its case with a number of expert witnesses called to refute the petitioners arguments. Because of obligations to hear previously scheduled cases, however, Judge Michael Marcus suspended the trial until next spring. Also, Washington Demilitarization Company (the Army's contractor) filed a motion to dismiss the lawsuit arguing that the petitioners failed to adequately make their case to the judge. Judge Marcus set a hearing for December 30, 2002, to hear arguments on that motion.

Finding a New Site for DEQ's Lab

The Department of Administrative Services (DAS) is in the lead on searching for a site to house the DEQ and the Oregon State Public Health Laboratories. As you know, the current lease at Portland State University for both labs expires in June, 2003. DAS is currently renegotiating a series of short-term lease renewals that have the potential to extend until June, 2007. In September, DAS sent out two "Requests For Information" to identify potential sites for a new joint lab facility. Seven sites that met the basic criteria were selected from the responses. DAS, with input from the agencies, is currently evaluating the properties to determine which property to begin negotiating on. Once there is agreement between all three agencies, DAS will proceed with negotiations to tie up the selected property until legislative approval is granted. Any agreement between DAS and the seller will be subject to legislative approval.

During the 2003 session, DAS will be presenting a budget package to issue certificates of participation (COPs) for state capital construction projects. The COPs allow DAS to purchase and renovate the selected property. DEQ will be responsible for repayment of the COP debt through a rent increase in 2005-07.

Privatization Study for the Vehicle Inspection Program Presented to E-Board

The 2001 Legislature directed DEQ to study privatization of the Vehicle Inspection Program and report back to the Legislative Emergency Board. On November 7, 2002, Andy Ginsburg and I presented the results of the study to the committee. Out of the five companies that initially expressed interest in the vehicle inspection process, only one, Environmental Systems Product (ESP, headquartered in Connecticut with technical services in Arizona), submitted a proposal to operate the program. ESP submitted two bids, both of which, the study concluded, would cost the public more than the current state-run program.

In my presentation to the Emergency Board, I recommended against privatization for five reasons:

- First, our program works well, and a transition would cause problems without saving cost.
- Second, because the program is fee supported, privatization would not help with the General Fund budget crisis.
- Third, under a private program, any innovations will require a contract change to implement.
- Fourth, under a private program, the state would not be able to respond as quickly to customer complaints. Rather than just directing a program fix internally, we would have to work through a contractor on improvements.
- Fifth, I am worried about the impact on staff that would either be laid off or receive lower wages and part time work under a privatized program.

The Emergency Board members voted to accept our report and continue this discussion during our budget hearings next session. ESP has hired several lobby firms, and we expect this to be a significant legislative issue throughout the 2003 session.

New Air Toxics Rules Postponed

DEQ's comment period for the proposed air toxics program rules closed on September 13, and brought in many suggestions for improving the rules and launching the program. Significant concerns were raised about adopting new rules and creating a new program during this time of economic difficulty and state budget uncertainty. As a result of the comments, we decided to delay rule adoption (originally scheduled for December 2002) to carefully consider issues of timing and funding, along with specific suggestions on rule language. It is critical that we be able to explain how we will carry out this program with available resources.

Air toxics remain a top priority for DEQ, and we intend to propose final rules for Commission consideration in 2003 after providing a second public comment opportunity. In the meantime, we are moving forward with work to lay a foundation for developing air toxics benchmarks, doing local scale emission modeling and beginning a pilot emission reduction planning effort in the Portland area.

Columbia River Update

Three Columbia River water quality efforts are moving forward.

- On November 18, EPA approved the Columbia River **TMDL for Total Dissolved Gas (TDG)**. This approval sets the stage for the Corps of Engineers to address the long standing issue of violations of both Oregon and Washington's TDG water quality standard through the TMDL implementation plan. DEQ will continue to work with the Corps on short and long term management changes to address these violations. In its approval, EPA recognized the excellent cooperation between DEQ and Washington's Department of Ecology and

specifically noted exceptional staff work by Russell Harding, DEQ's Columbia River Coordinator.

- A preliminary draft of the Columbia River **Temperature TMDL** has been released for informal comment and has drawn criticism from the Corps of Engineers and Bonneville Power Administration. Their concerns center on the proposed temperature criteria and the feasibility of dam operations meeting the allocated temperature limits. EPA was in the lead on developing this TMDL with input from Oregon, Washington, Idaho and the tribes, while the states and tribes are leading development of the TMDL implementation plan. Public comment is scheduled for January, and EPA anticipates completion of the TMDL by late summer 2003.
- Public comments are now being accepted on the proposed water quality certification and coastal zone permit applications for the Corps of Engineers' proposal to **dredge the Columbia River navigation channel** to a depth of 43 feet (three additional feet from Astoria to the I-5 bridge at Vancouver/Portland). DEQ, the state Department of Land Conservation and Development and the Washington Department of Ecology received applications from the Corps for the proposal. After holding public hearings in Astoria and Portland in January, DEQ will respond to public input, complete analysis of the dredging proposal, and approve, deny or conditionally approve the project. DEQ denied the project once before in September 2000. Since then, the Corps and sponsoring ports worked with the National Marine Fisheries Service to address fisheries concerns.

Settlement Proposed to Clean Up Former View-Master Site in Beaverton

A number of recent articles in the press have reported on DEQ's proposed cleanup plan for the former View-Master manufacturing site in Beaverton. Trichloroethylene (TCE) and other hazardous substances were released at this site when the plant was owned and operated by GAF Corporation (now G-I Holdings Inc.) prior to 1980. Recently, the plant's supply well, which was the source of drinking water for View-Master employees, was found to have TCE levels up to 300 times the 5 micrograms per liter drinking standard.

DEQ recently proposed a cleanup settlement requiring the current and former property owners to spend \$3.45 million cleaning up groundwater contamination at the site over the next 30 years. Former employees and their relatives have opposed the settlement because it does not include health assessment work. The Oregon Department of Human Services (the agency responsible for regulation of public water systems) is leading a health study of former employees to evaluate past TCE exposures from drinking water in the plant's well. Unfortunately, because of a lapse in monitoring of the well between 1990 and 1998, DEQ's credibility has been questioned in this cleanup, and we are now working diligently with the local community to reestablish trust in DEQ's oversight.

Annual Audit of Agency Financial Systems is Complete

The Audits Division of the Secretary of State's Office recently completed the field work for the annual financial and compliance audit of the Department. This extensive audit evaluated and tested DEQ's internal controls, accounting procedures and records, and compliance with state and federal laws and regulations. The Audits Division specifically looked at DEQ's Special Revenue Funds (our dedicated fee accounts, such as those for air and water quality permits). While their final report is not yet available, we know that no significant issues surfaced from this audit. The

auditors indicated that they have certified all of the Special Revenue Funds and will conclude that DEQ continues to maintain good fiscal controls and accountability.

Anticipating Employee Retirements

There have been many articles in the press lately about the uncertainty surrounding the Public Employees Retirement System (PERS) and how more public employees than usual are retiring as a result. At DEQ, we estimate that nearly 100 employees will be eligible to retire prior to January 1, 2004, the anticipated effective date of changes in the actuarial tables. This is over 10% of DEQ's workforce, and while we don't expect that all employees who are eligible will actually retire, we are preparing for a significant change in the makeup of our workforce. Some of the efforts we have underway include development of a formal mentoring program and re-design of our new employee orientation program. We also recently completed a process improvement evaluation of our recruitment procedures and are implementing changes to give managers more tools for selecting the right candidate for the job. Finally, we are examining the work of positions with an eye to whether we can redesign the work in a section more efficiently and create more entry level positions, which should help us recruit recent graduates and minority candidates.

DRAFT 11/13/02

DEQ's 2003 LEGISLATIVE PRIORITIES

Recognizing the immediate challenges to Oregon's economy and budget, DEQ is committed to its strategic priorities to protect people's health and Oregon's environment. At the same time, DEQ recognizes that state priorities include getting Oregonians back to work and streamlining regulatory processes. DEQ's legislative priorities for 2003:

- 1) **Enhance services that make it easier for businesses to locate and thrive in Oregon.** DEQ will seek efficiencies and process streamlining while maintaining environmental protections. Even with efficiencies and streamlining, a certain level of resources is needed in order to be responsive to business and community needs. Areas we will seek legislative support:

- Continue 4 field staff to assist businesses and communities with permitting (\$835,000 GF request)
- Continue Hazardous Waste Technical Assistance staff to help small businesses and individuals comply with environmental laws (Redirect hazardous waste penalties from GF to support technical assistance)
- Ratify air and water permit fee increases, previously approved by the 2001 Legislature, to support timely air and water permits
- Reauthorize lottery-backed bonds to match \$30 million in federal funds. These funds provide low-interest loans to construct wastewater treatment systems and other water pollution control facilities, including nonpoint source projects. Inadequate or failing wastewater treatment systems can be a barrier to development and growth. The Clean Water State Revolving Fund helps communities create more capacity for development.

- 2) **Maintain environmental accomplishments to protect public health and clean water, air and land.** Areas we will seek legislative support:

- Continue cleaning up the Willamette River so it is healthy for drinking water, fishing and swimming, and its quality helps attract new businesses to Oregon (\$1,985,200 GF request)
- Reauthorize sale of bonds to pay for cleanup of highly contaminated land and water, including abandoned and inactive mines (\$711,000 GF request)
- Provide high-quality environmental laboratory services (\$819,800 GF request)
- Continue high-quality Vehicle Inspection Program

- 3) **Keep delegation of federal regulations so the state, not the federal government, carries out federal environmental laws in Oregon.** Areas we will seek legislative support:

- Fee increases needed to keep delegation of the federal hazardous waste program
- Aggressive pursuit of federal funding

Outlook for the 2003 Legislative Session

2002 Election Summary As of 11/18/02

Ted Kulongoski (D) will be the new governor in January. He was elected with 49% of the vote, to 46% for Kevin Mannix, and 5% for Tom Cox. Kulongoski carried 8 of Oregon's 36 counties.

Oregon Senate

There are 30 seats in the Senate. For half of these seats – 15 – there was no election this year. Of the 15 seats up for election, current legislators won 14. Eight incumbent senators won, and 6 House members will move to the Senate next year. One first-term legislator was elected in SD 8.

The election resulted in 15 Republicans and 15 Democrats in the Senate. The Democrats gained one seat (in 2001, there were 16 Republicans and 14 Democrats). Because of this split, the parties will have to negotiate leadership. It may be weeks or months, possibly January, before we know who will be the Senate President, Senate Co-Chair of Ways & Means, and other committee chairs. A list of the 2003 Legislature is attached at the end of this summary.

Oregon House

There are 60 seats in the House. All were up for election in 2002. Of 60 seats, incumbents won 41 and one incumbent was defeated. There were 18 "open seats" – that is, seats for which an incumbent House member was not running. Of those 18 seats, one was won by a former legislator and one was taken by a current senator. There will be 17 first-term, new House members.

Voters elected 35 Republicans and 25 Democrats. Republicans gained 3 seats in the House (in 2001, there were 32 Republicans and 28 Democrats)

House Speaker:	Rep. Karen Minnis (R), Fairview. Wood Village
Majority Leader:	Rep. Tim Knopp (R), Bend
Speaker Pro Tem:	Rep. Lane Shetterly (R), Dallas (presides over most daily House sessions)
Majority Whip:	Rob Patridge (R), Medford

House D Leader:	Deborah Kafoury (D), Portland
Assistant D Leader:	Mary Nolan (D), Portland
Democratic Whip:	Mark Hass (D), Portland
Deputy Whip:	Alan Bates (D), Ashland

Potential House Ways & Means Co-Chair:	Rep. Susan Morgan (R), Myrtle Creek
(not official)	Rep. Ben Westlund (R), Bend

Potential House environment/water committee chairs (not official): Betsy Close, Albany; Patti Smith, Corbett; Jeff Kropf, Halsey; Bob Jenson, Pendleton

Budget Situation

As of mid-October, the state was projecting a \$1.4 Billion dollar deficit for 2003-2005. The next revenue forecast is due in December, but may be released slightly before December 1. Given the continued state of the economy, it is likely that the deficit will grow.

The January tax measure is designed to help fill shortfalls in the 2001-2003 biennium first and 2003-2005 second.

If the measure *passes*, no further cuts will be taken during 2001-2003 (except if needed due to December forecast). The deficit for 2003-2005 is then \$1 Billion because \$400 Million of the new tax revenue is attributed to 2003-2005.

If the measure *fails*, agencies take cuts identified during Special Session 5 in the remainder of 0103. The deficit for 2003-2005 is then \$600 Million because the Special Session 5 cuts amount to \$800 Million in 2003-2005.

If the measure fails, other state agencies will likely have layoffs, including possibly 500 people from Department of Human Services and 1000 people from Department of Corrections. DEQ is currently prepared to manage General Fund cuts without layoffs if the measure fails.

Our Agency Request budget (see summary) has 4 requests for General Fund:

- Continuing CST
- Continuing Willamette TMDL
- Orphan bond sale
- Laboratory rent increase

We will need to work with the Governor-elect to see if he will include funding for any of these in the Governor's Recommended Budget. Given that the state faces a large deficit under any scenario, it is possible we will have to trade off other programs to fund high-priority projects and/or take additional reductions.

Major Themes for 2003 Session

At this point, it appears that the key issues for the 2003 session will be:

- Economic stimulus
- Balancing the budget (definitely 0305, and possibly balancing 0103)
- PERS
- Regulatory streamlining
- Impact of budget reductions on key services, most notably education, human services and corrections

2003 Legislature

11/14/02

You can find information about legislators on the Legislative Website, <http://www.leg.state.or.us> and on the Oregonian Election 2002 Voter's Guide, http://www.oregonlive.com/elections/index.ssf?/elections/2002/nov/voters_guide.html

Senate

- SD 1 Senator Bill Fisher (R) – no election in 2002; returns in 2003
Roseburg District Map: <http://www.leg.state.or.us/fisher/s01.jpg>
- SD 2 Senator Jason Atkinson (R) – no election in 2002; returns in 2003
Jacksonville District Map: <http://www.leg.state.or.us/atkinson/s02.jpg>
- SD 3 Sen. Lenn Hannon (R), re-elected 60% - 40%
Ashland District Map: <http://www.leg.state.or.us/hannon/s03.jpg>
- SD 4 Sen Tony Corcoran (D), re-elected 58% - 42%
Cottage Grove District Map: <http://www.leg.state.or.us/corcoran/s04.jpg>
- SD 5 Senator Ken Messerle (R), no election in 2002; returns in 2003
Coos Bay District Map: <http://www.leg.state.or.us/messerle/s05.jpg>
- SD 6 Senator Bill Morrisette (D), re-elected 100% (no opposition)
Springfield District Map: <http://www.leg.state.or.us/morrisette/s06.jpg>
- SD 7 Vicki Walker (D), elected 54% - 46% (currently member of House)
Eugene District Map: <http://www.leg.state.or.us/castillo/s07.jpg>
- SD 8 Frank Morse (R), elected 55% - 45%; first term
Albany District Map: <http://www.leg.state.or.us/trow/s08.jpg>
- SD 9 Senator Roger Beyer (R), no election in 2002; returns in 2003
Molalla District Map: <http://www.leg.state.or.us/beyerr/s09.jpg>
- SD 10 Jackie Winters (R), elected 55% - 45% (currently member of House)
Salem District Map:
<http://www.sos.state.or.us/elections/DistrictMaps/SenateMaps/s10.pdf>
- SD 11 Peter Courtney (D), re-elected 55% - 45%
Salem District Map: <http://www.leg.state.or.us/courtney/s11.jpg>
- SD 12 Senator Gary George (R), no election in 2002; returns in 2003
Newberg District Map: <http://www.leg.state.or.us/george/s12.jpg>

- SD 13 Charles Starr (R), re-elected 60% - 40%
Hillsboro District Map: <http://www.leg.state.or.us/starrc/s13.jpg>
- SD 14 Senator Ryan Deckert (D), no election in 2002; returns in 2003
Beaverton District Map: <http://www.leg.state.or.us/deckert/s14.jpg>
- SD 15 Bruce Starr (R), elected 62% - 34% (current member of House)
Aloha District Map: <http://www.leg.state.or.us/yih/s15.jpg>
- SD 16 Joan Dukes (D), re-elected 57% - 38%
North Coast District Map: <http://www.leg.state.or.us/dukes/s16.jpg>
- SD 17 Charlie Ringo (D), elected 54% - 46% (current member of House)
Beaverton District Map: <http://www.leg.state.or.us/hartung/s17.jpg>
- SD 18 Senator Ginny Burdick (D), no election in 2002; returns in 2003
Portland District Map: <http://www.leg.state.or.us/burdick/s18.jpg>
- SD 19 Richard Devlin (D), elected 50% - 48% (current member of House)
Tualatin District Map: <http://www.leg.state.or.us/miller/s19.jpg>
- SD 20 Kurt Schrader (D), elected 56% - 44% (current member of House)
Canby District Map:
<http://www.sos.state.or.us/elections/DistrictMaps/SenateMaps/s20.pdf>
- SD 21 Senator Kate Brown (D), no election in 2002; returns in 2003
Portland District Map: <http://www.leg.state.or.us/brown/s21.jpg>
- SD 22 Senator Margaret Carter (D), no election in 2002; returns in 2003
Portland District Map: <http://www.leg.state.or.us/carter/s22.jpg>
- SD 23 Senator Avel Gordly (D), no election in 2002; returns in 2003
Portland District Map: <http://www.leg.state.or.us/gordly/s23.jpg>
- SD 24 Frank Shields (D), re-elected 58-43%
Portland District Map: <http://www.leg.state.or.us/shields/s24.jpg>
- SD 25 Senator John Minnis (R), no election in 2002; returns in 2003
District 25 map
- SD 26 Senator Rick Metsger (D), re-elected 55% - 45%
Welches District Map: <http://www.leg.state.or.us/metsger/s26.jpg>
- SD 27 Senator Bev Clarno (R), no election in 2002; returns in 2003
Bend District Map: <http://www.leg.state.or.us/clarno/s27.jpg>

- SD 28 Senator Steve Harper (R), no election in 2002; returns in 2003
Klamath Falls District Map: <http://www.leg.state.or.us/harper/s28.jpg>
- SD 29 Senator David Nelson (R), no election in 2002; returns in 2003
Pendleton District Map: <http://www.leg.state.or.us/senate/majorityleader/s29.jpg>
- SD 30 Senator Ted Ferrioli (R), no election in 2002; returns in 2003
John Day District Map: <http://www.leg.state.or.us/ferrioli/s30.jpg>

House

- HD 1 Rep. Wayne Krieger (R), re-elected 67% - 33%
Gold Beach District Map: <http://www.leg.state.or.us/krieger/hd01.jpg>
- HD 2 Rep. Susan Morgan (R), re-elected 74% - 26%
Myrtle Creek District Map: <http://www.leg.state.or.us/morgan/hd02.jpg>
- HD 3 Gordon Anderson (R), elected 71% - 29% - First term
Grants Pass District Map: <http://www.leg.state.or.us/wilson/hd03.jpg>
- HD 4 Dennis Richardson (R), elected 61% - 39% - First term
Central Point District Map: <http://www.leg.state.or.us/walkerc/hd04.jpg>
- HD 5 Rep. Alan Bates (D), re-elected 100% (ran unopposed)
Ashland District Map: <http://www.leg.state.or.us/bates/hd05.jpg>
- HD 6 Rep. Rob Patridge (R), re-elected 63% - 37%
Medford District Map: <http://www.leg.state.or.us/patridge/hd06.jpg>
- HD 7 Rep. Jeff Kruse (R), re-elected 66% - 34%
Sutherlin District Map: <http://www.leg.state.or.us/kruse/hd07.jpg>
- HD 8 Floyd Prozanski (D), elected 73% - 27% (previously served in legislature)
Eugene District Map: <http://www.leg.state.or.us/hayden/hd08.jpg>
- HD 9 Rep. Joanne Verger (D), re-elected 75% - 25%
Coos Bay District Map: <http://www.leg.state.or.us/verger/hd09.jpg>
- HD 10 Rep. Alan Brown (R), re-elected 51% - 49%
Newport District Map: <http://www.leg.state.or.us/browna/hd10.jpg>
- HD 11 Rep. Phil Barnhart (D), re-elected 62% - 38%
Eugene District Map: <http://www.leg.state.or.us/king/hd11.jpg>

- HD 12 Rep. Elizabeth (Terry) Beyer (D), re-elected 53% - 47%
Springfield District Map: <http://www.leg.state.or.us/beyert/hd12.jpg>
- HD 13 Rep. Robert Ackerman (D), re-elected 73% - 27%
Eugene District Map: <http://www.leg.state.or.us/walker/hd13.jpg>
- HD 14 Pat Farr (R), elected 53% - 47% - First term
Eugene District Map: <http://www.leg.state.or.us/ackerman/hd14.jpg>
- HD 15 Rep. Betsy Close (R), re-elected 52% - 48%
Albany District Map: <http://www.leg.state.or.us/house/houseset.htm>
- HD 16 Rep. Kelley Wirth (D), re-elected 68% - 32%
Corvallis District Map: <http://www.leg.state.or.us/wirth/hd16.jpg>
- HD 17 Rep. Jeff Kropf (R), re-elected 69% - 31%
Lebanon District Map: <http://www.leg.state.or.us/kropf/hd17.jpg>
- HD 18 Rep. Tootie Smith (R), re-elected 83% - 17%
Molalla District Map: <http://www.leg.state.or.us/smitht/hd18.jpg>
- HD 19 Rep. Dan Doyle (R), re-elected 65% - 35%
Salem District Map: <http://www.leg.state.or.us/doyle/hd19.jpg>
- HD 20 Vicki Berger (R), elected 63% - 37% - First term
Salem District Map: <http://www.leg.state.or.us/carlson/hd20.jpg>
- HD 21 Billy Dalto (R), elected 53% - 47% - First term
Salem District Map: <http://www.leg.state.or.us/winters/hd21.jpg>
- HD 22 Rep. Cliff Zauner (R), re-elected 51% - 49%
Woodburn District Map: <http://www.leg.state.or.us/zauner/hd22.jpg>
- HD 23 Rep. Lane Shetterly (R), re-elected 68% - 32%
Dallas District Map: <http://www.leg.state.or.us/shetterly/hd23.jpg>
- HD 24 Rep. Donna Nelson (R), re-elected 59% - 41%
McMinnville District Map: <http://www.leg.state.or.us/nelsond/hd24.jpg>
- HD 25 Rep. Vic Backlund (R), re-elected 75% - 25%
Keizer District Map: <http://www.leg.state.or.us/backlund/hd25.jpg>
- HD 26 Rep. Jerry Krummel (R), re-elected 64% - 36%
Wilsonville District Map: <http://www.leg.state.or.us/krummel/hd26.jpg>

- HD 27 Rep. Mark Hass (D), re-elected 100% (ran unopposed)
Portland District Map: <http://www.leg.state.or.us/hass/hd27.jpg>
- HD 28 Jeff Barker (D), elected 51% - 49% - First term
Aloha District Map: <http://www.leg.state.or.us/witt/hd28.jpg>
- HD 29 Mary Gallegos (R), elected 52% - 48% - First term
Cornelius District Map: <http://www.leg.state.or.us/brownr/hd29.jpg>
- HD 30 Derrick Kitts (R), elected 49% - 48% - 3% - First term
Hillsboro District Map: <http://www.leg.state.or.us/starrb/hd30.jpg>
- HD 31 Rep. Betsy Johnson (D), re-elected 67% - 24% - 9%
Scappoose District Map: <http://www.leg.state.or.us/house/houseset.htm>
- HD 32 Rep. Elaine Hopson (D), re-elected 52% - 48%
Tillamook District Map: <http://www.leg.state.or.us/hopson/hd32.jpg>
- HD 33 Mitch Greenlick (D), elected 58% - 38% - 4% - First term
Portland District Map: <http://www.leg.state.or.us/beck/hd33.jpg>
- HD 34 Brad Avakian (D), elected 53% - 43% - 4% - First term
Beaverton District Map: <http://www.leg.state.or.us/ringo/hd34.jpg>
- HD 35 Rep. Max Williams (R), re-elected 61% - 33% - 6%
Tigard District Map: <http://www.leg.state.or.us/williams/hd35.jpg>
- HD 36 Rep. Mary Nolan (D), re-elected 100% (ran unopposed)
Portland District Map: <http://www.leg.state.or.us/nolan/hd36.jpg>
- HD 37 Sen. Randy Miller (R), re-elected 64% - 36% (current Senator)
West Linn District Map: <http://www.leg.state.or.us/devlin/hd37.jpg>
- HD 38 Greg Macpherson (D), elected 54% - 46% - First term
Lake Oswego District Map: <http://www.leg.state.or.us/tomei/hd38.jpg>
- HD 39 Wayne Scott (R), elected 52% - 48% - First term
Canby District Map: <http://www.leg.state.or.us/schrader/hd39.jpg>
- HD 40 Dave Hunt (D), elected 54% - 46% - First term
Milwaukie District Map: <http://www.leg.state.or.us/lowe/hd40.jpg>
- HD 41 Rep. Carolyn Tomei (D), re-elected 80% - 20%
Milwaukie District Map: <http://www.leg.state.or.us/gardner/hd41.jpg>

- HD 42 Rep. Diane Rosenbaum (D), re-elected 835 – 10% - 7%
Portland District Map: <http://www.leg.state.or.us/rosenbaum/hd42.jpg>
- HD 43 Rep. Deborah Kafoury (D), re-elected 86% - 11% - 4%
Portland District Map: <http://www.leg.state.or.us/house/hd43.jpg>
- HD 44 Rep. Gary Hansen (D), re-elected 79% - 13% - 8%
Portland District Map: <http://www.leg.state.or.us/hansen/hd44.jpg>
- HD 45 Rep. Jackie Dingfelder (D), re-elected 92% - 8%
Portland District Map: <http://www.leg.state.or.us/dingfelder/hd45.jpg>
- HD 46 Rep. Steve March (D), re-elected 82% - 18%
Portland District Map: <http://www.leg.state.or.us/march/hd46.jpg>
- HD 47 Rep. Jeff Merkley (D), re-elected 100% (ran unopposed)
Portland District Map: <http://www.leg.state.or.us/merkley/hd47.jpg>
- HD 48 Mike Schaufler (D), elected 55% - 39% - 6% -First term
Portland District Map: <http://www.leg.state.or.us/leonard/hd48.jpg>
- HD 49 Rep Karen Minnis (R), re-elected 60% - 40%
Fairview District Map: <http://www.leg.state.or.us/house/hd49.jpg>
- HD 50 Rep Laurie Monnes Anderson (D), re-elected 62% - 38%
Gresham District Map: <http://www.leg.state.or.us/monnesanderson/hd50.jpg>
- HD 51 Linda Flores (R), elected 57% - 43% - First term
Boring District Map: <http://www.leg.state.or.us/lee/hd51.jpg>
- HD 52 Rep Patti Smith (R), re-elected 64% - 36%
Corbett District Map: <http://www.leg.state.or.us/smithp/hd52.jpg>
- HD 53 Rep Ben Westlund (R), re-elected 66% - 31% - 4%
Bend District Map: <http://www.leg.state.or.us/westlund/hd53.jpg>
- HD 54 Rep Tim Knopp (R), re-elected 62% - 38%
Bend District Map: <http://www.leg.state.or.us/house/houseset.htm>
- HD 55 George Gilman (R), elected 62% - 38% -First term
White City area District Map: <http://www.leg.state.or.us/barnhart/hd55.jpg>
- HD 56 Rep Bill Garrard (R), re-elected 100% (ran unopposed)
Klamath Falls District Map: <http://www.leg.state.or.us/barnhart/hd55.jpg>

HD 57 Rep Greg Smith (R), re-elected 67% - 33%

Heppner District Map: <http://www.leg.state.or.us/house/speaker/hd57.jpg>

HD 58 Rep Bob Jenson (R), re-elected 100% (ran unopposed)

Pendleton District Map: <http://www.leg.state.or.us/jenson/hd58.jpg>

HD 59 John Mabrey (R), elected 51% - 49% - First term – current County Judge

The Dalles District Map: <http://www.leg.state.or.us/smithg/hd59.jpg>

HD 60 Rep Tom Butler (R), re-elected 72% - 28%

Ontario District Map: <http://www.leg.state.or.us/butler/hd60.jpg>

Minutes are not final until approved by the Commission.

Environmental Quality Commission Minutes of the Three Hundredth and Sixth Meeting

**October 3-4, 2002
Regular Meeting¹**

The following Environmental Quality Commission (EQC) members were present for the regular meeting, held at the Columbia County Fair Grounds, in the 4-H Building, in Columbia County, Oregon.

Melinda Eden, Chair
Mark Reeve, Member
Harvey Bennett, Member
Deirdre Malarkey, Member

Also present were Stephanie Hallock, Director of the Oregon Department of Environmental Quality (DEQ), Larry Knudsen, Oregon Department of Justice, members of DEQ's Executive Management Team, and other DEQ staff.

Thursday, October 3, 2002

Chair Eden called the regular meeting to order at 11:00 a.m. Agenda items were taken in the following order.

A. Long Term Planning Session: Update on Strategic Directions and Future Goals

Director Hallock began the session with an update on DEQ's budget, the impacts of recent special legislative sessions, and the progress of DEQ's four Strategic Directions: (1) delivering excellence in performance and product, (2) protecting Oregon's water, (3) protecting human health and the environment from toxics, and (4) involving Oregonians in solving environmental problems. Holly Schroeder, Acting Management Services Division Administrator, briefed Commissioners on how DEQ is measuring agency performance and tracking progress on the Strategic Directions. Commissioners discussed the development of long term targets for some of the Strategic Directions with members of DEQ's Executive Management Team, and gave guidance for future goals. Director Hallock thanked Commissioners for their continuing interest and involvement in DEQ's strategic planning, and committed to keep the Commission informed of progress over time.

B. Rule Adoption: Revision of Fees and Requirements for Wastewater System Operator Certification

Mike Llewelyn, DEQ Water Quality Division Administrator, proposed rules to raise fees for DEQ's wastewater certification program, as directed by the 2001 Legislature, to address a program budget shortfall this biennium. Mr. Llewelyn explained that state law requires DEQ to certify operators of domestic wastewater systems, such as treatment plants and collection sewers, and to charge fees to recover certification costs. Ed Woods, Water Quality program manager, presented rule amendments to raise fees for various small businesses, individual operators, and public and private wastewater system owners. Mr. Woods explained that the changes would also clarify requirements for operator qualification and examination, DEQ program administration, and compliance and enforcement with the regulations.

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.

The Commission discussed the proposed rules with Mr. Llewelyn and Mr. Woods. Commissioner Bennett proposed changing the definition of "Post High School Education" in OAR 340-049-0010(15) to specify "community colleges" as an example of the type of program from which post high school education is acquired. In addition, Commissioner Bennett asked the Department to review and make necessary adjustments to OAR 340-049-0030(4), relating to the basis for experience credit, to ensure subsections (a) and (b) were not in conflict with each other. Commissioner Bennett moved that the Commission adopt the proposed rules as amended. Commissioner Reeve seconded the motion and it passed with four "yes" votes.

C. Rule Adoption: Renewal of Water Quality General Permits for Fish Hatcheries (NPDES 300-J) and Log Pond Operations (NPDES 400-J)

Mike Llewelyn, DEQ Water Quality Division Administrator, recommended that the Commission renew two water quality general permits in rule to control the quality of water discharged from fish hatcheries and from log ponds: NPDES 300-J and NPDES 400-J, respectively. Mr. Llewelyn explained the Department's public process to revise the proposed permits, and introduced James Cowan, Water Quality policy staff, to present new requirements of the permits. Mr. Cowan explained that under the proposed permits, fish hatcheries would be required to monitor water temperature and nutrient levels, and submit temperature management plans, pollution prevention plans and records of chemical usage. Log pond operations, managed by saw mills and pulp mills, would be subject to new temperature monitoring requirements.

The Commission discussed the function of these permits and associated monitoring requirements with Mr. Llewelyn and Mr. Cowan. Commissioner Reeve moved that the Commission renew the two permits in rule as proposed. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

D. Action 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 Deborah Gorham, of the Oregon Department of Agriculture (ODA), presented a revised Memorandum of Understanding (MOU) between the Commission and ODA for the Confined Animal Feeding Operation (CAFO) permit program. In 1993, the Oregon Legislature directed the Commission to enter into the MOU 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. Mr. Llewelyn and Ms. Gorham explained that the revised MOU defined the roles of each agency during transfer of the NPDES permit program. Commissioners discussed the working relationship between DEQ and ODA and the progress made in coordinating CAFO management. Commissioner Malarkey moved that the Commission approve the revised MOU, including additional minor changes contained in a September 30, 2002, addendum to the September 10, 2002, staff report. Commissioner Bennett seconded the motion and it passed with four "yes" votes.

E. Informational Item: Status of Port Westward Energy Facilities Project

Neil Mullane, DEQ Northwest Region Administrator, and Bob Baumgartner, Northwest Region Water Quality Manager, updated the Commission on a proposed wastewater discharge permit for the Port Westward Energy Facilities Project. Mr. Baumgartner described the project, which involves construction of two natural gas fired power plants and one ethanol production plant on land owned by the Port of St. Helens (Port) adjacent to the Columbia River near Clatskanie. The Port applied to DEQ for a wastewater permit for the collection and discharge of treated wastewater to the Columbia River from the new facilities. Mr. Baumgartner stated that at a future meeting, DEQ would ask the Commission to make a determination about the impact of this project on Columbia River water quality. The Commission discussed the method for evaluating the proposed discharge to ensure water quality standards would not be compromised, beneficial uses of the river would not be impaired, and socioeconomic benefits of the project would be taken into account.

After Mr. Baumgartner's presentation, a panel of speakers presented the Commission with more information on the proposed project, including expected benefits and potential environmental issues. The panel included:

Tony Hyde, Columbia County Commissioner; Peter Williamson, Executive Director of the Port of St. Helens; Dana Siegfried, consultant with David Evans and Associates working with the Port of St. Helens; and Mark Riskedahl, Executive Director of the Northwest Environmental Defense Center. The Commission thanked panelists for their comments.

F. Discussion Item: Potential Benefits and Issues associated with the Port Westward Project, including an Opportunity for Public Comment

Chair Eden invited members of the audience to testify to the Commission on the Port Westward Energy Facilities Project and the proposed wastewater discharge permit. State Representative Betsy Johnson, representing Oregon House District 41, testified in favor of the permit and explained how the project would benefit transportation and local economic growth. Diane Pohl, a Clatskanie citizen and employee of the Clatskanie Chamber of Commerce, testified in favor of the permit and described needs of the local community for new job opportunities. Eric Gjelde, with Summit Power N.W., testified in favor of the permit, complimented DEQ staff work, and encouraged the Commission to make a decision over the next few months. Rita Bernhard, Columbia County Commissioner, testified in favor of the permit and described local economic benefits expected as a result of the project. Joe Corsiglia, Columbia County Commissioner, testified in favor of the permit and restated the expected socioeconomic benefits of the proposed energy facilities. Chair Eden thanked speakers for their comments.

At approximately 4:45 p.m., Chair Eden adjourned the regular meeting for the day.

At 6:00 p.m., the Commission held a reception with local officials at the Best Western Oak Meadows Inn, Willamette Room, located at 585 S. Columbia Highway in St. Helens, Oregon. Chair Eden, Commissioner Malarkey and Commissioner Bennett attended the reception, as did Director Hallock and DEQ staff.

Friday, October 4, 2002

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.

G. Approval of Minutes

After reviewing draft minutes of the July 25-26, 2002, meeting, Commissioner Reeve changed the word "compliment" to "complement" in Item I., and the word "permit" to "petition" in the second paragraph of Item J. Commissioner Reeve also changed the title of Item J., to be "Consideration of Oregon Environmental Council Petition for Air Quality Rulemaking." Commissioner Malarkey moved that the Commission approve minutes of the July 25-26, 2002, meeting as corrected. Commissioner Reeve seconded the motion and it passed with four "yes" votes. Commissioner Malarkey moved that the Commission approve draft minutes of the September 6, 2002, meeting. Commissioner Bennett seconded the motion and it passed with four "yes" votes.

H. Action Item: Consideration of Pollution Control Facility Tax Credit Requests

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 present applications to the Commission. Ms. Vandehey recommended the Commission approve, deny and transfer a number of tax credit requests for technology and process investments that reduce environmental pollution. The Commission discussed the applications with Ms. Schroeder and Ms. Vandehey.

Commissioner Reeve moved that the Commission approve 34 Pollution Control Facility Tax Credit applications as recommended in the Department's staff report. Commissioner Malarkey seconded the motion and it passed with four "yes" votes. Commissioner Bennett moved that the Commission deny one Pollution Control Facility Tax Credit application as recommended in the Department's staff report.

Commissioner Reeve seconded the motion and it passed with four "yes" votes. Commissioner Reeve moved that the Commission transfer 18 Pollution Control Facility Tax Credit applications as recommended in the Department's staff report. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

I. Rule Adoption: Revised Pollution Control Facility Tax Credit Rules

In September 2001, the EQC adopted temporary rules to clarify the Pollution Control Facility Tax Credit program, based on changes made by the 2001 Legislature. Holly Schroeder, Acting DEQ Management Services Division Administrator, proposed permanent rules to clarify the program and to authorize DEQ to certify wood chipper tax credit applications on behalf of the Commission. Ms. Schroeder explained that delegating approval of wood chipper applications to the Department would allow DEQ to process those tax credit requests more efficiently. Commissioners discussed the rule with Ms. Schroeder and Maggie Vandehey, DEQ Tax Credit coordinator. Commissioner Reeve moved that the Commission adopt the proposed rule. Commissioner Bennett seconded the motion and it passed with four "yes" votes.

J. Director's Dialogue

Commissioners discussed current events and issues involving the Department and State with Stephanie Hallock, DEQ Director. In addition, Director Hallock asked Holly Schroeder, Acting DEQ Management Services Division Administrator, to report on results of the October 3, 2002, Legislative Emergency Board meeting. Director Hallock also discussed potential locations for Commission meetings in 2003 and priority joint meetings with other Oregon Boards and Commissions.

K. Informational Item: Update on Status of Umatilla Chemical Agent Disposal Facility

Wayne Thomas, DEQ Administrator of the Chemical Demilitarization Program, gave Commissioners an update on recent events at the Umatilla Chemical Agent Disposal Facility, including the progress of trial burns and the status of future plans.

L. Rule Adoption: Dry Cleaning Facilities and Dry Stores

Dick Pedersen, DEQ Land Quality Division Administrator, introduced rules that describe DEQ's existing dry cleaner program, which was previously described only in guidance and statute. Al Kiphut, DEQ Environmental Cleanup Manager, explained that the program was established in 1995 to provide dry cleaners some protection from clean-up liability in exchange for meeting more stringent environmental standards than other waste generators. Mr. Kiphut presented program rules that include requirements for dry cleaners to minimize waste and manage hazardous waste, and that make funds from DEQ's Dry Cleaner Environmental Response Account available for cleaning up contaminated sites. The Commission discussed the rules with Mr. Pedersen and Mr. Kiphut.

Commissioner Reeve amended the rule for Remedial Actions Prior to Funding from Account, OAR 340-124-0070(2), by adding "pursuant to" to the phrase "If a claimant undertakes actions that are preapproved and reimbursable 'pursuant to' a DEQ order...." Commissioner Malarkey amended the rule for Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators, OAR 340-101-0007(2), by adding "40" to "In addition to the requirements of '40' CFR 261.5(f)(2) and...." Commissioner Reeve moved that the Commission adopt the proposed rules as amended, including additional, minor changes contained in a September 30, 2002, addendum to the September 10, 2002, staff report. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

M. Rule Adoption: Hazardous Materials Emergency Response Rules

Dick Pedersen, DEQ Land Quality Division Administrator, introduced rules for DEQ's Emergency Response program which coordinates with industries, other agencies and individuals to prevent spills of hazardous materials and to respond to spills when they happen. Mr. Pedersen explained that rules apply to oil shipments along the Columbia River and Oregon coast, to hazardous materials transported on highways and by rail, and to various other material spills. Michael Zollitsch, DEQ Emergency Response Program staff, presented the rules, which clarify the roles of DEQ, spill responders and responsible parties during emergencies involving oil and hazardous material spills. Mr. Zollitsch explained that the proposed changes were designed to improve Oregon's overall spill response process and to clarify

procedures for the maritime industry and other material handlers. Commissioners discussed the rules with Mr. Pedersen and Mr. Zollistch.

Commissioner Malarkey amended the rule for the definition of "Initial assessment," OAR 340-142-0005(12), by ending subsections (a) through (h) with semicolons instead of periods, with the word "and" added to the end of subsection (g). Commissioner Malarkey amended the rule for Reportable Quantities, OAR 340-142-0050(2), by adding "(MSDS)" to the phrase "information such as material safety data sheets '(MSDS)', shipping papers...." Commissioner Bennett moved that the Commission adopt the proposed rules as amended, and repeal OAR 340-108, which is no longer needed. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

N. Rule Adoption: Ballast Water Management Rules

Dick Pedersen, DEQ Land Quality Division Administrator, described a new law passed by the 2001 Legislature requiring ships to exchange ballast water in the open ocean prior to discharging any ballast water near the Oregon coast, in recognition of the international nature of invasive marine species problems. Mr. Pedersen explained that prior to this law, ballast water exchange was optional under U.S. Coast Guard rules. Jack Wylie, DEQ Emergency Response Program staff, presented rules to implement the law that gives DEQ outreach, monitoring and enforcement roles in ballast water management, and that requires vessels to report their ballast water management plans and activities to DEQ. Commissioners discussed the limited availability of Department resources to implement the rules on an ongoing basis, but recognized the need to give guidance to vessel operators for meeting the new statutory requirements. Commissioner Malarkey moved that the Commission adopt the proposed rules for ballast water management. Commissioner Reeve seconded the motion and it passed with four "yes" votes.

O. Action Item: Authorize Oregon Pollution Control Bonds for DEQ Clean-up Program

Dick Pedersen, DEQ Land Quality Division Administrator, asked the Commission to authorize DEQ and the State Treasurer to issue and sell up to \$4 million in state bonds to fund the DEQ's Orphan Site Program as approved by the 2001 Legislature. He explained that the Orphan Site Program uses funds to clean up areas that pose a threat to the environment or to public health when no other party takes responsibility to conduct the work. Mr. Pedersen stated that the program relies on Pollution Control Bonds to fund high priority cleanups and that DEQ was working on 40 active orphan cleanup projects with 15 new sites in need of funding. Commissioners discussed issuance of the bonds and funding of the program with Mr. Pedersen and Director Hallock. Commissioner Malarkey moved that the Commission adopt a resolution authorizing issuance of the bonds to fund the program. Commissioner Reeve seconded the motion and it passed with four "yes" votes.

P. Rule Adoption: Grants Pass and Klamath Falls PM₁₀ Maintenance Plans and associated industrial rule revisions

Andy Ginsburg, DEQ Air Quality Division Administrator, introduced rules to change the air quality designations for the Grants Pass and Klamath Falls areas from "nonattainment" to "maintenance" for particulate matter ten microns and smaller (PM₁₀), and to adopt local 10-year plans designed to ensure that those areas meet federal standards. Mr. Ginsburg explained that prior to 1988 and 1992, respectively, the Grants Pass and Klamath Falls areas violated the federal clean air standard for PM₁₀. When inhaled, PM₁₀ particles accumulate and aggravate respiratory conditions, particularly asthma. Both Grants Pass and Klamath Falls now have a 10-year history of meeting the standard. Larry Calkins, DEQ Air Quality staff in the Bend office, presented the new rules and local plans, which recognize the progress made by these communities and allow more flexibility for transportation projects and growth. Additionally, Mr. Ginsburg proposed temporary rules to delay the extension of a distance requirement for ozone impacts to sensitive areas, in order to provide more time for data collection and scientific evaluation.

Commissioners discussed the rules with Mr. Ginsburg, Mr. Calkins, and Annette Liebe, DEQ Air Quality Planning Manager. Commissioner Reeve moved that the Commission adopt the proposed rules for air quality maintenance in Grants Pass and Klamath Falls and associated local 10-year maintenance plans as revisions to the State Implementation Plan under the Clean Air Act. Commissioner Malarkey seconded the motion and it passed with four "yes" votes. Commissioner Reeve moved that the Commission adopt

the proposed temporary rule and associated statement of need and justification. Commissioner Bennett seconded the motion and it passed with four "yes" votes.

Public Forum

At approximately 11:30 a.m., the Commission invited comments from members of the audience on environmental issues not part of the regular meeting agenda. Sabrina Moore, St. Helens resident, read a letter on behalf of Melvin Moore expressing concerns and dissatisfaction with DEQ's on-site septic system program in its Northwest Region. Mr. Melvin Moore, then spoke personally to the Commission about his experience. The Commission thanked Ms. Moore and Mr. Moore for their testimony, affirmed DEQ's priority on delivering high quality customer service, and directed the Department to respond to Mr. Moore and the Commission on the situation.

Q. Rule Adoption: Rule Revisions Regarding Rulemaking and Contested Case Hearings

Anne Price, DEQ Administrator of the Office of Compliance and Enforcement, presented procedural rules related to agency rulemaking and the process for contested case hearings. Ms. Price explained that the rules were needed to update DEQ's reference to the Attorney General's "model rules" for rulemaking, and to make permanent a temporary rule that allowed certain entities appearing before the Department in a contested case hearing to be represented by a person other than an attorney.

Commissioner Reeve amended the rule for the definition of Model Rules or Uniform Rules, OAR 340-011-0005(6), to be "Model Rules' or 'Uniform Rules' means the October 21, 2001, version of the Attorney General's Uniform and Model Rules of Procedure, OAR 137-001-0005 through 137-003-0500, excluding OAR 137-001-0008 through 137-001-0009." Commissioner Bennett moved that the Commission adopt the proposed rules as amended. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

R. Action Item: Request from U.S. Army Corps of Engineers for a Waiver to the Total Dissolved Gas Water Quality Standard on the Columbia River

Mike Llewelyn, DEQ Water Quality Division Administrator, introduced a request from the U.S. Army Corps of Engineers (Corps) for a variance to Oregon's total dissolved gas water quality standard to conduct a spill test at The Dalles Dam in mid-October 2002. Russell Harding, DEQ Columbia River Water Quality Coordinator, described a proposed order and findings the Commission must make to grant the request. Mike Langeslay, Corps Fish Biologist, explained that the test was needed to collect information on ways to improve survival of salmon during downstream passage around dams. Commissioners discussed the request with Mr. Harding and Mr. Langeslay. Commissioner Reeve moved that the Commission grant the request by adopting the proposed order and making the findings required to approve the variance. Commissioner Malarkey seconded the motion and it passed with four "yes" votes. The Commission asked Director Hallock to sign the order on the Commission's behalf.

S. Commissioners' Reports

Commissioner Bennett shared his observations of the recent Southern Oregon wild fires and local community response to the fires. He reported that over 5,000 people worked in fire crews from as far away as New Zealand to help fight the fires this summer.

Chair Eden reported her attendance at a recent DEQ Water Quality Temperature Standard meeting in Monument, Oregon. Chair Eden commended Don Butcher, DEQ Water Quality staff in the Pendleton office, for an excellent job answering questions and explaining issues to those who attended the meeting.

Chair Eden adjourned the meeting at approximately 12:50 p.m.

State of Oregon
Department of Environmental Quality

Memorandum

DEQ Item No. 02-1843 (92.95)

To: Environmental Quality Commission
Stephanie Hallock, Director
Larry Knudsen, Department of Justice
Larry Edelman, Department of Justice

Date: November 4, 2002

From: *Wayne C. Thomas*
Wayne C. Thomas, Administrator
Chemical Demilitarization Program

Subject: Information Package—Proposed Modification to the UMCDF Hazardous Waste Permit, UMCDF-02-039-BRA(EQC) “Required Operation of the Brine Reduction Area”

Please find attached a copy of the information package developed by the Department for distribution to interested individuals responding to the Public Notice (included as Attachment A of the information package) that was mailed out on November 1, 2002.

The Department is proposing this modification to the Umatilla Chemical Agent Disposal Facility (UMCDF) Hazardous Waste Treatment and Storage Permit (HW Permit) [ID No. ORQ 000 009 431] in response to the information on the operation of the UMCDF Brine Reduction Area that was provided to the Commission at their July 26, 2002 meeting in Portland, Oregon.

The Department will provide a brief update on the status of this effort during the regularly scheduled Umatilla Project status update at the Commission’s December 13, 2002 meeting in Portland, Oregon.

If you have any questions concerning this matter, please contact me at (541) 567-8297, x. 21, or Tom Beam of my staff at (541) 567-8297, x. 30.

Enclosure: Fact Sheet—Proposed Modification of the UMCDF HW Permit “Required Operation of the Brine Reduction Area” [Modification No. UMCDF-02-039-BRA(EQC)] [DEQ Item No. 02-1844 (92.95)]

Cf: Ann Mayes, DEQ Hermiston (w/o enclosure)





State of Oregon
Department of
Environmental
Quality

FACT SHEET

**Proposed Modification of the
Hazardous Waste Storage and Treatment Permit
for the
Umatilla Chemical Agent Disposal Facility
(Permit No. ORQ 000 009 431)**

**Permit Modification No. UMCDF-02-039-BRA(EQC)
“Required Operation of the Brine Reduction Area”**

Introduction

In February 1997, the Environmental Quality Commission (“Commission” or EQC) and the Department of Environmental Quality (“Department” or DEQ) issued a Hazardous Waste Storage and Treatment Permit (HW Permit) to the United States Army¹ to build and operate the Umatilla Chemical Agent Disposal Facility (UMCDF). Construction of UMCDF started in June 1997 and is now essentially complete. A systemization² and surrogate “shakedown”³ (i.e. testing) phase is now underway to ensure that all UMCDF systems (e.g. incinerators and their associated pollution abatement systems) are working properly prior to the start of actual chemical agent destruction operations.

When the UMCDF HW Permit was issued in February 1997, the Commission and Department believed that all brines generated by each incinerator pollution abatement system (PAS) (during both surrogate testing and chemical agent destruction operations) would be treated in the Brine Reduction Area (BRA). The BRA was permitted as a miscellaneous treatment unit in the HW Permit for just such a reason. The existing UMCDF HW Permit does not explicitly require all PAS brines be treated in the Brine Reduction Area.

The proposed modification will add a HW Permit Condition requiring the UMCDF Permittees to utilize the Brine Reduction Area for treatment of all brines generated by the incinerator pollution abatement systems during chemical agent destruction operations. The DEQ is also proposing the addition of a HW Permit Condition requiring the UMCDF BRA be fully tested and operational prior to the start of chemical agent destruction operations. This Fact Sheet describes the proposed modification and provides background information concerning the basis for the proposed modification.

Attachment A is a copy of the public notice that was mailed to interested parties and contains detailed information concerning information repositories and public hearings related to the proposed modification. Attachment B contains copies of several letters documenting recent developments with respect to the strategy for managing the PAS brines in the Brine Reduction Area. Attachment C is a list of Permit Modification Requests that have previously been submitted by the UMCDF Permittees related to the design and operations of the BRA.

¹ There are three “Permittees” named on the UMCDF HW Permit. The U.S. Army Umatilla Chemical Depot and the U.S. Army Project Manager for Chemical Stockpile Disposal (PMCS D) are named as Owner and Operator of UMCDF. Washington Demilitarization Company (the Army’s construction and operations contractor) is named as a co-operator of UMCDF.

² Systemization is a pre-operational testing phase that involves testing components, instruments, and associated equipment using non-hazardous materials and waste feeds (such as simulated munitions filled with ethylene glycol to test conveyors, controls, and feed mechanisms).

³ Hazardous waste regulations allow a facility to operate with permitted waste feeds for up to 720 hours (equivalent to 30 days at 24 hours/day operation) prior to conducting actual “trial burn” tests. This period is known as a “shakedown” period. Because of the extreme toxicity of chemical warfare agents, UMCDF is required to first test the incineration systems with surrogate waste feeds (chemicals not as toxic as the chemical warfare agents, but more difficult to burn) prior to beginning shakedown operations with actual chemical warfare agents.

Location and Purpose of UMCDF

The UMCDF is located in northeastern Oregon at the Umatilla Chemical Depot, about seven miles west of Hermiston, Oregon (about 175 miles east of Portland, Oregon). The address is 78072 Ordnance Road, Hermiston, OR 97838-9544. The UMCDF is a hazardous waste treatment facility that will use four incinerators to destroy a stockpile of chemical warfare agents that has been stored at the Umatilla Chemical Depot (UMCD) since 1962.

The chemical agents stored at UMCD include nerve agents and blister ("mustard") agents in liquid form. Nerve agents ("GB" and "VX") are contained in munitions, such as rockets, projectiles, and land mines, and in large containers, such as spray tanks, bombs, and "ton containers." Mustard agent is stored only in ton containers.

Description of the UMCDF

UMCDF includes two liquid injection incinerators to destroy liquid nerve and blister agents. In addition to the liquid incinerators there are two other high temperature furnaces that will be used for thermal treatment of metal parts ("Metal Parts Furnace") and destruction of explosives and propellants ("Deactivation Furnace System"). All container handling, munitions disassembly, and incinerator loading will be conducted within an enclosed building. Emissions from the building and the incinerators will be directed through pollution control systems before being released to the atmosphere. Computer controls will shut down waste feed to the incinerators if proper operating conditions are not maintained or if chemical agent is detected in the exhaust from any of the four incinerators. Liquid brines that are generated by the incinerator pollution abatement systems as they cool and clean the exhaust gases are pumped to a separate treatment facility ("Brine Reduction Area") located nearby, where all the liquid is evaporated off, leaving behind only a salt residue for off-site disposal.

Proposed Modification to the UMCDF HW Permit

Because the UMCDF HW Permit is considered an operating document, modifications are expected to occur over the duration of the project. For example, modifications are required if there are alterations to the originally permitted facility, if new information becomes available to the Permittees or to the Department, or if there are new regulations that apply to the facility. There have already been over 160 modifications made to the HW Permit at the request of the Permittees.

The proposed modification will add two new conditions to the UMCDF HW Permit. The new Permit Conditions will require the UMCDF Permittees to treat all incinerator PAS brines generated during chemical agent destruction operations in the Brine Reduction Area, and require the BRA be fully tested and operational prior to the start of chemical agent shakedown operations for the first UMCDF furnace to feed chemical agent.

The Department proposes to add one Permit Condition to Module II ("General Facility Conditions") of the HW Permit in a section titled "Receipt of Offsite Waste and Shipment of Onsite Waste" (Condition II.B.). The Department proposes to revise Condition II.B. by adding Permit Condition II.B.4. as indicated by the underlined text below:

II.B. RECEIPT OF OFFSITE WASTE AND SHIPMENT OF ONSITE WASTE

- II.B.1. The Permittee is not authorized to accept and therefore shall not receive hazardous waste, chemical agent, or munitions containing chemical agents from offsite, except from the UMCD.
- II.B.2. Any chemical agent-related material and/or demilitarization waste being transferred to an off-site RCRA Subtitle C permitted hazardous waste disposal facility (or RCRA Subtitle C permitted smelting facility in the case of munition casings) must meet the agent-free criteria as defined in Attachment 2 of the Permit.

II.B.3 The Permittee shall process, in accordance with this Permit, all chemical agents, and chemical agent-contaminated materials currently stored or otherwise located at the Umatilla Chemical Depot.

Proposed Text
Addition →

II.B.4. The Permittee shall process all brines generated by each UMCDF pollution abatement system from the treatment of chemical agent, or chemical agent-contaminated materials, in the Brine Reduction Area Subpart X miscellaneous treatment units in accordance with the requirements of Module V of this Permit.

The Department also proposes to add one Permit Condition to Attachment 6 ("Requirements for Commencement of Unit and Facility Operations") of the HW Permit in a section titled "Requirements for Commencement of Shakedown Period II (Agent) on the First Incinerator" (Section D). The Department proposes to revise Section D by adding Permit Condition D.12 as indicated by the underlined text below (Permit Conditions D.1. through D.11. are current, existing requirements that are shown in abbreviated format to provide convenient context for the reader):

D. REQUIREMENTS FOR COMMENCEMENT OF SHAKEDOWN PERIOD II (AGENT) ON THE FIRST INCINERATOR

Prior to commencing a Shakedown Period II (Agent) for the first incinerator, or by the date specified, the Permittee must complete all of the following:

D.1. The Permittee must implement a waste/munitions tracking procedure and system approved by the Department.

D.2. The Permittee must...

D.11. The Permittee must have written notification from the Environmental Quality Commission authorizing the start of agent shakedown operations.

Proposed Text
Addition →

D.12. The Permittee must have a fully tested and operational Brine Reduction Area (40 CFR 264 Subpart X Miscellaneous Treatment Units) ready to treat all brines generated from operation of the incinerator pollution abatement systems.

Regulatory Basis to Modify UMCDF HW Permit

Regulations regarding the permitting and operation of hazardous waste treatment, storage, and disposal facilities are known as the "Resource, Conservation and Recovery Act" (RCRA) regulations. They are contained in Title 40 of the Code of Federal Regulations (CFR). In accordance with the RCRA regulations, the State of Oregon has been authorized by the U.S. Environmental Protection Agency to implement its own hazardous waste program. Oregon has adopted RCRA regulations as Oregon Administrative Rules.

In accordance with 40 CFR §270.41, the Department/Commission may not modify the UMCDF HW Permit unless sufficient cause [as defined in 40 CFR §270.41(a) and (b)] exists to warrant such action. If the Department/Commission determines that sufficient cause exists to modify the UMCDF HW Permit, a draft Permit must be prepared and processed in accordance with the applicable requirements of 40 CFR Part 124, Subpart A.

The Department believes that sufficient cause, based on two of the criteria listed in 40 CFR §270.41(a), does exist to warrant a modification of the UMCDF HW Permit to require that all PAS brines generated during chemical agent destruction operations be treated in the Brine Reduction Area, and that the UMCDF Permittees be required to have the BRA fully tested and operational prior to the start of chemical agent shakedown for the first incinerator. These two applicable causes for modification are:

- 40 CFR §270.41(a)(1) -- *“There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.”*
- 40 CFR §270.41(a)(2) -- *“The Director has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.”*

At the time the UMCDF HW Permit was issued in February 1997, the Commission and Department did not believe there was any question as to whether the Brine Reduction Area would be used to treat all PAS brines generated during UMCDF operations. All information provided by the U.S. Army during the permitting process indicated they planned to process all brines (including those generated during surrogate operations) through the BRA, and not pursue off-site shipment and disposal. As a result, the HW Permit was issued without any explicit requirements for UMCDF to treat its brine on-site in the Brine Reduction Area, although language in the Waste Analysis Plan (Attachment 3 of the HW Permit), Permit Condition V.A.7. and Section D-9 of the Permit Application indicates that the brines were to be treated in the BRA. One of the key issues surrounding the debate over the issuance of the HW Permit was the desire to treat everything possible on-site and minimize any off-site waste shipments. If the Commission and Department had foreseen the possibility that the UMCDF Permittees would pursue other brine management strategies, specific requirements very similar to those being proposed at this time would have been included in the UMCDF HW Permit.

During the original permitting process, the UMCDF project timeline was portrayed in a very sequential manner that proceeded from the construction phase to systemization activities to facility operations. Based on the information available to the Commission and Department at that time, it was expected that all treatment units, including the Brine Reduction Area, would be ready prior to the start of facility operations. As the UMCDF project experienced delays in the construction schedule, the systemization and testing schedule underwent significant compression to try and mitigate some of the delay. In addition, the Permittees have proposed numerous facility changes to improve the design and operational efficiency of various treatment units (including the BRA). As a result, the Department is concerned that the Brine Reduction Area may not be fully operational to support the planned start of chemical agent operations. Once again, if the Commission and Department had foreseen this possibility, they would have included HW Permit Conditions requiring a fully operational BRA prior to authorizing the start of facility operations.

Additional Background Information and Discussion

A summary overview of the recent developments regarding operation of the Brine Reduction Area to treat PAS brines can be found by a review of the correspondence provided in Attachment B of this information package. Information available when the original HW Permit was issued indicated that the BRA had sufficient capacity to treat all the brines generated by the pollution abatement systems. All subsequent permit modification requests submitted by the UMCDF Permittees that proposed operational or design changes to the Brine Reduction Area (see Attachment C) continued to indicate that both surrogate and agent brines would be treated in the BRA. Since the Brine Reduction Area was operated only for a limited time at the Tooele Chemical Agent Disposal Facility (TOCDF) in Utah, the Department made every effort to stay informed of operational plans for the BRA at UMCDF. It was not until February 2002, that the Department became aware of the Army's plans to revise their brine management strategy as a way to help mitigate additional delays that had been experienced in the project schedule. The proposed modifications to the HW Permit will allow the UMCDF Permittees to continue shipping brines generated during surrogate operations off-site for disposal at a permitted hazardous waste management facility, but still require the BRA be ready to process all brines from chemical agent operations. While this is a departure from the original intent, the Department believes this is a reasonable approach that continues to provide appropriate protection of human health and the environment.

Potential Impacts of Proposed Changes

At this time, the Department has insufficient information to fully quantify the potential impacts of these proposed changes on UMCDF operations. However, it is possible to qualitatively discuss the potential impacts.

If the Brine Reduction Area has sufficient operational capacity to handle the expected generation quantities of PAS brines, then the proposed changes should have little or no impact on UMCDF operations. The proposed changes would implement explicit requirements that are already consistent with the UMCDF Permittees' current plans to have the BRA ready for processing of PAS brines generated during chemical agent operations.

If, however, it is determined that the Brine Reduction Area has an operational capacity lower than the generated quantities of PAS brines, the proposed permit modification could potentially impact UMCDF operations depending on what additional brine waste management approaches are implemented. The Department believes that if the existing Brine Reduction Area has insufficient operational capacity, the UMCDF Permittees will have to examine the following alternative waste management approaches (either individually or in combination):

- Increase on-site brine storage capacity to compensate for the lower treatment capacity;
- Increase BRA operational capacity to handle expected brine generation quantities;
- Reduce chemical agent destruction rates so that brines are only generated in quantities that the BRA can accommodate; or
- Pursue off-site shipment of brines generated during chemical agent operations for disposal at a permitted hazardous waste management facility.

Other alternative brine waste management approaches may also exist that the Department has not considered. Regardless, the Department does not have sufficient information to fully evaluate the potential impacts on UMCDF operations of any of these options.

If the proposed changes are not implemented, the UMCDF HW Permit will not include any enforceable requirement(s) to treat PAS brines in the BRA. The UMCDF Permittees have maintained that they intend to process PAS brines in the BRA during chemical agent operations, but lacking a specific requirement to do so, would be able to change their mind if they so desire. The Department estimates (based on the latest information available in the UMCDF Permit Application) that off-site shipment of PAS brines during chemical agent operations would be approximately 40,000 gallons per day at the maximum brine generation rate.

Opportunity for Public Comment

The proposed modification will add two conditions to the HW Permit (described on Page 3) requiring the UMCDF Permittees to treat all PAS brines generated during chemical agent destruction operations in the Brine Reduction Area, and the Brine Reduction Area to be fully tested and operational prior to the start of chemical agent operations for the first incinerator. **The Department, on behalf of the Commission, is seeking comment not only on the proposed language of the new Permit Conditions, but also on whether the public believes that there is a need to impose these additional requirements on the Permittees. In addition, the Department is seeking information that will allow a more complete assessment of the UMCDF operational impacts from these proposed changes. The Department is also seeking information that will allow a full evaluation of the alternative PAS brine waste management approaches outlined above (as well as any others that are identified), including a discussion of PAS brine management when the Brine Reduction Area is unavailable for treatment due to maintenance activities, repairs or unanticipated operational problems.**

The Department will review and consider all oral and written comments received during the comment period. Department staff will then prepare a report with a recommendation to the Environmental Quality

Commission. The report will include the Department's response to all significant comments received during the open public comment period. The Commission is anticipated to make a final decision on the proposed modification to the UMCDF HW Permit in March 2003 at its regularly scheduled meeting (March 20-21, to be held in the Portland, Oregon area). The Commission may decide to modify the HW Permit as proposed or with changes, or may decide against modifying the HW Permit.

How to Submit Comments on the Proposed Permit Modification

The public comment period on this proposed Permit Modification will remain open from November 1 through 5:00 p.m. on December 23, 2002. Written comments may be submitted by e-mail, fax, or regular mail any time during the comment period, provided the comment is received by the Department no later than 5:00 p.m. on December 23. E-mail comments should be submitted to mayes.ann@deq.state.or.us and include the words "Public Comment" in the subject line. Comments submitted by facsimile transmission should be sent to (541) 567-4741. Comments sent by regular mail should be addressed to Mr. Wayne C. Thomas, Administrator, Chemical Demilitarization Program, 256 E. Hurlburt, Hermiston, Oregon 97838. There will be an opportunity for the public to provide oral comments to the Department on December 4, 2002 in Hermiston, Oregon (Good Shepherd Conference Center, 610 N.W. 11th, beginning at 7:00 p.m.).

For More Information

For more information about this Permit Modification, or for information on UMCDF, please contact Ann Mayes, Chemical Demilitarization Program, Hermiston office of the DEQ [Phone 541-567-8297, ext. 25 or toll free in Oregon (800) 452-4011, E-mail: mayes.ann@deq.state.or.us]. The Department's Chemical Demilitarization Program has prepared numerous fact sheets about the chemical weapons destruction process at the Umatilla Chemical Depot, available upon request:

- ❖ Storage and Management of Hazardous Waste (June 2000, also available in Spanish)
- ❖ Public Participation (June 2000, also available in Spanish)
- ❖ Hazardous Waste Storage Permit Application (June 2000, also available in Spanish)
- ❖ Modification of a Hazardous Waste Permit (June 2000, also available in Spanish)
- ❖ Metal Parts Furnace (September 2000, also available in Spanish)
- ❖ Liquid Incinerator (September 2000, also available in Spanish)
- ❖ Dunnage Incinerator (September 2000, also available in Spanish)
- ❖ Deactivation Furnace System (September 2000, also available in Spanish)
- ❖ Rocket Processing (January 2001)
- ❖ Projectile Processing (January 2001)
- ❖ Mine Processing (January 2001)
- ❖ Bulk Item Processing (January 2001)

Attachments

- A Public Notice: Request for Comments and Notice of Public Hearing
- B Copies of Recent Correspondence Regarding Operation of the Brine Reduction Area
- C List of UMCDF Permit Modification Requests (PMR) Modifying the Design and Operation of the Brine Reduction Area

ATTACHMENT A

Copy of Public Notice

"REQUEST FOR COMMENTS AND NOTICE OF PUBLIC HEARING"

[DEQ Item No. 02-1833]

Public Notice: Request for Comments and Notice of Public Hearing

Proposed Modification of the Hazardous Waste Storage and Treatment Permit for the Umatilla Chemical Agent Disposal Facility (UMCDF) (Permit NO. ORQ 000 009 431)

[Permit Modification No. UMCDF-02-039-BRA(EQC), "Required Operation of the Brine Reduction Area"]

Notice issued: November 1, 2002

Written comments due:
5:00 p.m., December 23, 2002

Hearing date: December 4, 2002

Hearing time: 7:00 p.m.
(DEQ staff will be available to answer questions before the hearing from 6:30-7:00 p.m.)

Hearing location:
Good Shepherd Conference Center
610 N.W. 11th
Hermiston, OR

How can I send comments?
The Oregon Department of Environmental Quality (DEQ) will accept both written and oral comments at the hearing listed above, or written comments by mail, fax or e-mail as shown below.

Contact Name:
Ann Mayes, Public Information Specialist
Hermiston DEQ office

Phone: (541) 567-8297 ext. 25, or
Cellular (541) 561-6332, or
toll free in Oregon (800) 452-4011

Mailing address:
Oregon DEQ
Chemical Demilitarization Program
256 E. Hurlburt Avenue
Hermiston, OR 97838

Fax: (541) 567-4741

E-mail: mayes.ann@deq.state.or.us

(Please include "Public Comment" in the subject line. E-mail comments will be acknowledged as soon as possible. The DEQ is not responsible for delays between servers that result in missed comment deadlines.)

What are DEQ's responsibilities?

DEQ is the regulatory agency that helps protect and preserve Oregon's environment. DEQ is responsible for protecting and enhancing Oregon's water and air quality, for cleaning up spills and releases of hazardous materials, and for managing the proper disposal of hazardous and solid waste. One way DEQ does this is by requiring permits for certain activities.

A Hazardous Waste Storage and Treatment Permit (HW Permit) for UMCDF was issued by the DEQ and the Environmental Quality Commission [EQC] (DEQ's policy and rule-making board) in February 1997. It is DEQ's responsibility, under the direction of the EQC, to process permit modification requests and to ensure that UMCDF complies with requirements of the HW Permit.

Who are the UMCDF Permittees?

There are three Permittees named on the UMCDF HW Permit. The U.S. Army Umatilla Chemical Depot and the U.S. Army Project Manager for Chemical Stockpile Disposal (PMCSO) are named as Owner and Operator of UMCDF. Washington Demilitarization Company (the Army's construction and operations contractor) is named as a co-operator.

What kind of facility is this?

The UMCDF is a hazardous waste storage and treatment facility that will use four incinerators to destroy a stockpile of chemical warfare agents that has been stored at the Umatilla Chemical Depot (UMCD) since 1962. The chemical agent stockpile at UMCD includes about 3,717 tons of nerve agents ("VX" and "GB") and blister ("mustard") agents in liquid form.

Nerve agents are contained in munitions, such as rockets, projectiles and land mines, and in large containers, such as spray tanks, bombs and "ton containers." Mustard agent is stored only in ton containers. All of the chemical warfare agents are highly toxic.



State of Oregon
Department of
Environmental
Quality

**Office of the
Director
Chemical
Demilitarization
Program**
256 E. Hurlburt Ave.
Hermiston, OR 97838
Phone: (541) 567-8297
(800) 452-4011
Fax: (541) 567-4741

Contact: Ann Mayes

DEQ Item No. 02-1833

www.deq.state.or.us

Where is the facility located?

The UMCDF is located in northeastern Oregon at the Umatilla Chemical Depot, about seven miles west of Hermiston, Oregon (about 175 miles east of Portland, Oregon). The address is 78072 Ordnance Road, Hermiston, OR 97838-9544.

What changes are proposed?

The DEQ is proposing to modify the UMCDF HW Permit to add a Permit Condition that will require all incinerator pollution abatement system brines generated during chemical agent destruction operations be treated onsite in the Brine Reduction Area (BRA). The DEQ is also proposing to add a Permit Condition that will require UMCDF to have a fully tested and operational BRA prior to the start of chemical agent operations for the first incinerator.

How do I get more information and review pertinent documents?

You can review documents related to the proposed permit modification and the UMCDF at the Hermiston DEQ office (please call ahead for an appointment) or at one of the following information repositories:

Hermiston Public Library
235 E. Gladys Avenue
Hermiston, OR 97838
(541) 567-2882

Mid Columbia Library (Kennewick Branch)
1620 S. Union St.
Kennewick, WA 99336
(509) 586-3156

Pendleton Public Library
502 S.W. Dorion Avenue
Pendleton, OR 97801
(541) 966-0210

Portland State University Library
951 S.W. Hall, Fifth Floor
Portland, OR 97204
(503) 725-4617

You can also call, write or e-mail the Hermiston DEQ office to have an information package sent to you by mail or electronic transmission.

The information package includes a Fact Sheet that describes the proposed changes, provides appropriate background information, and explains the impact and need for the proposed changes.

Interested parties are invited to provide comments on any or all of the proposed changes to the UMCDF HW Permit.

What happens next?

After completion of the public comment period the DEQ will review and consider all oral and written comments received during the comment period. DEQ staff will prepare a report with a recommendation to the EQC on whether to approve the proposed modification. The report will include the DEQ's response to all significant comments received during the public comment period.

The EQC is anticipated to make a final decision on the proposed modification at its regularly scheduled meeting on March 21, 2003 to be held in the Portland, Oregon area. The EQC may decide to modify the HW Permit as proposed or with changes, or may decide against modifying the HW Permit.

Accessibility information

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact Ann Mayes at (541) 567-8297 ext. 25, cellular (541) 561-6332, or toll free in Oregon at (800) 452-4011.

People with hearing impairments may call DEQ's TTY number, (503) 229-6993.

ATTACHMENT B

Copies of Recent Correspondence Regarding Operation of the Brine Reduction Area

- Letter, dated February 1, 2002, Wayne C. Thomas, DEQ, to UMCDF Permittees "Off-site Shipment of PAS Liquids (Brines) Prior to the Start of Chemical Agent Operations" [DEQ Item No. 02-0165]
- Letter, dated February 8, 2002, Stephanie Hallock, DEQ, to James L. Bacon, PMCD [DEQ Item No. 02-0226]
- Letter, dated March 5, 2002, UMCDF Permittees to Mr. Wayne C. Thomas, DEQ "Off-Site Shipment of Pollution Abatement System (PAS) Wastewater" [DEQ Item No. 02-0324]
- Letter, dated May 7, 2002, Gary I. Burke, CTUIR, to Ms. Melinda Eden, EQC [DEQ Item No. 02-0704]
- Letter, dated August 21, 2002, Melinda S. Eden, EQC, to Gary I. Burke, CTUIR "Response to May 7, 2002 CTUIR Letter Regarding Operation of the UMCDF Brine Reduction Area and Off-Site Shipment of Pollution Abatement System Brines" [DEQ Item No. 02-1380]



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

COPY

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 UMCDF RCRA Part B Hazardous Waste Permit Application (used by the Department to develop the initial UMCDF 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 UMCDF-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 UMCDF staff to discuss alternate BRA operational approaches that maintained compliance with the HW Permit and applicable regulations, while accommodating UMCDF'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, UMCDF 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

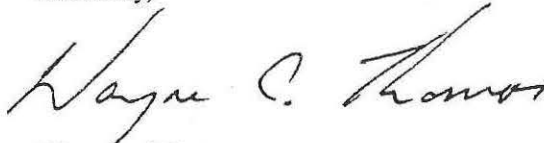
DEQ Item No. 02-0165 (27.05)

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,

A handwritten signature in dark ink, appearing to read "Wayne C. Thomas". The signature is fluid and cursive, with the first name "Wayne" being the most prominent.

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, PMCSD



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

February 8, 2002

02-0226

Mr. James L. Bacon

Program Manager for Chemical Demilitarization (PMCD)

ATTN: SFAE-CD-Z, Building E4585

Corner of Hoadley and Parrish Roads, Edgewood Area

Aberdeen Proving Ground, Maryland 21010-5401

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED

FEB 11 2002

Dear Mr. Bacon:

HERMISTON OFFICE

During my twelve years of involvement with the Chemical Demilitarization Program, Army and Department of Defense representatives repeatedly have stated that "safety and environment" are the number one priority for the Umatilla Chemical Agent Disposal Facility (UMCDF). I am, however, concerned that schedule pressures to begin surrogate operations may compromise safety and compliance with the hazardous waste permit.

Recently, Army site representatives requested that DEQ modify the Independent Engineer Facility Construction Certification (FCC) process in order to achieve the planned facility startup date. The independent FCC process was a critical aspect in granting approval of the hazardous waste permit in 1997. An independent certification of the final as-built configuration of UMCDF provides the state with assurance that the thousands of engineering changes made to the UMCDF design have been approved, implemented and documented. Although the Department does not want to unnecessarily delay the start of UMCDF, we cannot modify this permit requirement simply to accommodate the Army's concerns about schedule.

At public and private meetings in the past seven years, the Army has reiterated a commitment to: process liquid brines on-site using the Brine Reduction Area; identify secondary waste treatment technologies; and, to leave no legacy wastes behind. This commitment has provided assurance that the Army is prepared to meet its obligation to protect citizens and the environment, and to comply with permit conditions.

The Brine Reduction Area is not used at the Tooele facility, and the Army apparently does not intend to use it at the facilities in Alabama or Arkansas. Not using the Brine Reduction Area means shipping millions of gallons of liquid wastes off-site for further treatment or disposal. The Army has always assured the citizens of Oregon that all liquid wastes will be treated on-site, and yet just recently UMCDF informed the Department that liquids generated during surrogate testing will, in fact, be shipped to an off-site facility. Despite the Army's past commitments to resolve the issues of treatment and disposal of secondary wastes, both the Department and the Environmental Quality Commission are disappointed that the Army is not meeting the schedule developed in 1999 to resolve the secondary waste issues.

We are very concerned about the potential for "legacy wastes" remaining at the Umatilla Chemical Depot after the chemical weapons have been destroyed. Disposal of secondary waste has not yet been resolved and does not appear to be a priority for the Army. It is difficult to understand how the Army can expect the state to support facility startup with this issue unresolved. Our concern about legacy wastes was clearly communicated to you in a letter dated September 24, 1999 from Carol Whipple, then-Chair of the Environmental Quality Commission.

Mr. James Bacon

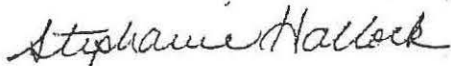
February 7, 2002

Page 2 of 2

The primary mission given to the Department and the Environmental Quality Commission by the Governor of the State of Oregon is the maximum protection of human health and the environment. In our public outreach activities DEQ has consistently communicated the message that the Army is also committed to ensuring public safety. It is my hope that we can continue to voice this message to the surrounding communities.

The beginning of surrogate operations at UMCDF will be a significant milestone for the project and an integral step toward the planned start of chemical agent operations in February 2003. Critical issues will continue to emerge that will challenge the Army and the State of Oregon to work together to seek acceptable solutions. I must emphasize that the success of moving the Umatilla project forward has been due in large part to our unwavering commitment to the public and permit processes expected by the citizens of Oregon. We will continue to fulfill that commitment, and we expect to do that in partnership with the Army, not in conflict.

Sincerely,



Stephanie Hallock
Director

cc: Governor John Kitzhaber
Environmental Quality Commission members
Wayne Thomas, Administrator, Chemical Demilitarization Program, DEQ
Don Barclay, UMCDF Site Manager, Program Manager for Chemical Demilitarization
LTC Pellissier, Commander, Umatilla Chemical Depot
Loren Sharp, Site Project Manager, Washington Demilitarization Company



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
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.



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

7 May 2002

Ms. Melinda Eden
Chair, Environmental Quality Commission
c/o Department of Environmental Quality
811 SW 6th Ave.
Portland, OR 97204

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
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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)

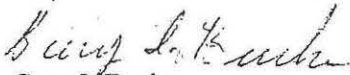
Melinda Eden, EQC Chair
7 May 2002
Page 2

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

ENVIRONMENTAL
QUALITYSTATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
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AUG 28 2002

August 21, 2002

Gary I. Burke, Chairman
Board of Trustees
Confederated Tribes of the Umatilla Indian Reservation
P.O. Box 638
Pendleton, OR 97801

HERMISTON OFFICE

Re: Response to May 7, 2002 CTUIR Letter Regarding Operation of the UMCDF Brine Reduction Area and Off-Site Shipment of Pollution Abatement System Brines

Dear Chairman Burke:

I would like to thank Armand Minthorn and Dr. Rod Skeen for speaking on behalf of the Board of Trustees during the Environmental Quality Commission meeting on July 26, 2002. We were prompted to schedule the briefing session when we received your letter of May 7, 2002, expressing the concerns of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) related to the operation of the Brine Reduction Area at the Umatilla Chemical Agent Disposal Facility (UMCDF) and off-site shipment of liquid waste for disposal. Your letter requested a response from the Commission "on what actions the EQC is taking, or intends to take, to ensure the Army holds to their word on not shipping liquid waste off-site, particularly the liquids from the pollution abatement system."

First, let me assure you that the Commission understands your frustration and disappointment with the apparent lack of desire by the U.S. Army and its contractors to fulfill previous commitments made to the State of Oregon regarding the operation of the Brine Reduction Area. Throughout the entire life (15+ years) of the UMCDF project, the U.S. Army has consistently conveyed the message that all pollution abatement system (PAS) liquids (i.e. brines) would be processed in the Brine Reduction Area, and that no significant quantities of liquid waste would be shipped to off-site hazardous waste disposal facilities.

At the July 26 briefing session, the Commission heard from representatives of CTUIR, GASP, and the UMCDF Permittees (U.S. Army and its contractor, Washington Demilitarization Company). In addition, Department of Environmental Quality (DEQ) staff briefed the Commission on the existing requirements of the UMCDF Hazardous Waste Permit, and on the history of commitments by, and discussions with, the UMCDF Permittees regarding operation of the Brine Reduction Area and off-site shipments of PAS brines.

The U.S. Army clearly stated that it has no plans to operate the Brine Reduction Area during systemization and testing activities, including the surrogate shakedown and trial burn periods. They claimed that the use of available resources to prepare the Brine Reduction Area for operations during surrogate testing would adversely affect scheduled activities and preparations to begin chemical agent operations. This approach by UMCDF is a significant departure from plans discussed with DEQ staff as recently as



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early 2002. The Army did indicate that UMCDF intends to operate the Brine Reduction Area during chemical agent operations.

The Environmental Quality Commission believes that a fully functional Brine Reduction Area is vital to the over-all success of the UMCDF in completing its mission of destroying all chemical warfare agent, munitions and secondary waste stored at the Umatilla Chemical Depot. The UMCDF Brine Reduction Area must be fully tested and operational to support the start of chemical agent operations. The Commission expects to take the operational status of the Brine Reduction Area into account when deciding whether or not to authorize the start of UMCDF chemical agent operations, currently scheduled for Summer 2003. As an immediate measure, DEQ is preparing a proposed modification to the UMCDF Hazardous Waste Permit specifically addressing operation of the Brine Reduction Area and off-site shipment of PAS brines. DEQ expects to have this proposed modification available for public comment in September 2002, and present it to the Commission for final decision in December 2002.

The Commission appreciates and shares the substantive environmental and safety concerns raised by CTUIR on this issue, and we welcome a continued dialogue with you and your staff to address any future concerns that you may have regarding the Umatilla Chemical Agent Disposal Facility.

Sincerely,



Melinda S. Eden, Chair
Environmental Quality Commission

Cf: Environmental Quality Commissioners
Stephanie Hallock, DEQ Director
Chris Dearth, Office of the Governor
Wayne C. Thomas, DEQ Hermiston
LTC Frederick D. Pellissier, Commander, Umatilla Chemical Depot
Don E. Barclay, UMCDF Site Project Manager, Project Manager for Chemical
Stockpile Disposal
Ronald W. Garner, Project General Manager, WA Demilitarization Company
Karyn Jones, GASP

ATTACHMENT C

List of UMCDF Permit Modification Requests (PMR) Modifying the Design and Operation of the Brine Reduction Area

- Class 1 PMR UMCDF-98-007-BRA(1R) "Subpart X Engineering Drawings", submitted 6/22/98. Approved 8/4/98.
- Class 1 PMR UMCDF-98-015-BRA(1R) "Secondary Containment for the Subpart X Units in Section D-9, Miscellaneous Units", submitted 9/24/98. Approved 4/57/99.
- Class 2 PMR UMCDF-99-002-BRA(2R) "Brine Surge Tank System (BRA)", submitted 1/27/99. Approved 8/17/99.
- Class 2 PMR UMCDF-99-018-BRA(2) "Brine Reduction Area Subpart X Treatment Unit Performance Test", submitted 5/11/99. Approved 10/19/99.
- Class 2 PMR UMCDF-99-028-BRA(2) "Design of the Brine Reduction Area System", submitted 8/31/99. Approved 12/18/00.
- Class 1 PMR UMCDF-99-035-BRA(1R) "Clarification of the Brine Reduction Area Installation Certification Permit Condition", submitted 9/16/99. Approved 10/29/99.
- Class 2 PMR UMCDF-01-005-BRA(2) "Brine Reduction Area Operating Conditions and Certified Design Changes", submitted 2/27/01. Approved 10/15/01.
- Class 1 PMR UMCDF-01-032-CONS(1R) "Update of RCRA-Only Specification Sections 11510, BRA Drum Dryers, 11522, Brine Reduction Area Pollution Abatement System (BRA PAS), and 11524, BRA Evaporator Package", submitted 1/2/02. Approved 1/25/02.
- Class 1 PMR UMCDF-02-018-BRA(1R) "Brine Reduction Area (BRA), and BRA Pollution Abatement System (BRA PAS) Design Changes", submitted 8/20/02. No DEQ decision yet.
- Temporary Authorization Request (TAR) UMCDF-02-034-BRAT(TA) "Waste Transfer Modification to the Brine Surge Tank", submitted 10/1/02. Approved 10/10/02. Expires 4/9/03.

State of Oregon

Department of Environmental Quality

Memorandum

Date: November 25, 2002

To: Environmental Quality Commission

From: Stephanie Hallock, Director *S. Hallock*

Subject: Agenda Item H, Rule Adoption: Adoption of Total Maximum Daily Loads (TMDL) Rules
December 13, 2002 EQC Meeting

Department Recommendation The Department recommends that the Commission adopt the proposed TMDL rules as presented in Attachment A.

Need for Rulemaking The Department is requesting that the Commission adopt as rules the procedures and practices the Department follows to establish and implement TMDLs for waterbodies that do not meet water quality standards.

ORS 468B.110 authorizes the Commission and Department to establish TMDLs by rule or by order. Since 1990, the Department has been issuing TMDLs as orders. During dialogue concerning repeal of the Tualatin River TMDL rules in early 2001, the Commission and Department agreed that general procedures for issuing TMDLs should be adopted as rules to comply with Oregon's Administrative Procedures Act, ORS 183.310.

Although the Department already implements the procedures proposed, adopting them by rule provides more certainty to the TMDL process and reinforces the Department's ability to meet Oregon's TMDL schedule. In a February 2000 Memorandum of Agreement and a May 2000 federal consent decree, the Department and EPA committed to complete TMDLs for 91 subbasins by 2007.

Effect of Rule Section 303(d) of the Clean Water Act requires the Department to establish TMDLs for waterbodies included on Oregon's 303(d) list of waters that do not meet water quality standards. A TMDL identifies the maximum amount of a pollutant a waterbody can receive and still meet water quality standards and allocates portions of that amount to contributing point sources such as industrial or municipal discharges, and to contributing nonpoint sources or groups of sources such as agriculture, forestry, or municipal development. Oregon's TMDLs also include a Water Quality Management Plan (WQPM) describing strategies to achieve the targeted allocations. The federal TMDL rules do not explicitly require implementation plans.

The proposed rules (Attachment A) describe:

- Procedures and criteria for establishing TMDLs including:
 - determination of waterbodies and pollutants to be addressed in a TMDL (OAR 340-042-0040(1));
 - determination of the geographic area to be covered by a TMDL (OAR 340-042-0040(2));
 - factors to be considered in prioritizing and scheduling TMDLs (OAR 340-042-0040(3));
 - elements to be included in a TMDL (e.g., identification of pollutants and sources, loading capacity, and wasteload and load allocations) (OAR 340-042-0040(4));
 - development of a Water Quality Management Plan (WQMP) describing strategies to achieve TMDL allocations and water quality standards (OAR 340-042-0040(4)(1));
 - factors to be considered in determining and distributing allocations among sources (OAR 340-042-0040(5) and (6));
 - revisions to allocations in a TMDL to accommodate changed needs and new information (OAR 340-042-0040(7)); and
 - implementation of TMDLs issued by EPA (OAR 340-042-0040(8));
- Opportunities for local advisory groups and the public to participate in developing and revising TMDLs (OAR 340-042-0050);
- A process for issuing TMDLs as orders and for requesting reconsideration and judicial review of those orders (OAR 340-042-0060 and 340-042-0070); and
- Responsibilities for implementing TMDLs through point source permits and through nonpoint source implementation plans adopted by federal, state, or local governmental agencies with authority over contributing sources (called designated management agencies or DMAs) in accordance with the WQMP (OAR 340-042-0080).

**Commission
Authority**

The Commission has authority to take this action under ORS 468.020, 468B.020, 468B.030, 468B.035, and 468B.110. These rules implement ORS 468B.020 and 468B.110.

**Stakeholder
Involvement**

The Water Quality Standards Review Policy Advisory Committee (PAC) discussed the draft TMDL rules at length during four meetings in 2001 and provided early comment to help shape the rules proposed for public comment. A list of PAC members is included in Attachment C. The Department also discussed the proposed rules with key stakeholder groups such as the

Association of Oregon Counties, Oregon Forest Industries Council, and US Forest Service, as well as the organizations and agencies represented on the PAC and those submitting comments.

Public Comment A public comment period extended from June 1 to July 31, 2002, and included public hearings in Pendleton, Eugene and Portland. Eleven persons representing environmental groups, agricultural associations, wastewater treatment agencies, and federal and state agencies commented.

Most comments requested clarifying edits and more explanation of the TMDL process. The Department made several changes to clarify the rules, but will explain the process more fully in guidance rather than rules. One agricultural organization requested the Department delay adoption of the proposed rules pending revisions to the federal TMDL program, discussed in Key Issues below. Commenting agricultural groups would also scale back TMDLs to exclude nonpoint sources of pollution, while the environmental commenters would expand TMDLs to address all water quality restoration work required for waterbodies (see Comments 2 and 3, pages 2 and 3 of Attachment B). The Department did not change the scope of TMDLs. A summary of all comments and the Department's responses is provided in Attachment B.

Key Issue *Should the Commission stay adoption of TMDL rules pending revisions to the federal TMDL program?*

Recommendation: Proceed with the proposed rule adoption because of the uncertainty in the direction and timing of any federal program changes and the need to proceed with establishing TMDLs under Commission-adopted rules.

EPA revised regulations governing the TMDL program in July 2000, but has delayed the effective date of those revisions until April 2003 to allow reconsideration under the Bush administration. Since then, EPA has signaled intent to repeal those revisions, but has not provided clear direction on timing or alternative approaches.

The proposed rules are consistent with both the federal TMDL regulations currently in effect and those scheduled to take effect in April 2003 if not

repealed.¹ The Department does not anticipate significant changes in the federal program that would be inconsistent with the rules proposed here. Rather than delaying rulemaking, the Department proposes to review Oregon's TMDL rules in light of any subsequent revisions in the federal TMDL regulations and recommend changes to the Commission as appropriate.

**Implementation
of TMDLs**

To help ensure that TMDLs are effectively implemented, the Department:

- Requires Water Quality Management Plans (WQMPs) as an integral part of TMDLs;
- Uses collaborative processes to engage designated management agencies (DMAs), stakeholders, and other interested persons in both development and implementation of TMDLs; and
- Incorporates adaptive management in TMDLs. The Department and DMAs use ongoing monitoring and evaluation during implementation to improve TMDLs as new information on pollutants, sources, management methods, and other factors is developed.

To implement management strategies in WQMPs, the Department will generally incorporate wasteload allocations and other strategies for permitted sources into permit requirements. DMAs will develop source or sector-specific implementation plans for other, mostly nonpoint, sources. Implementation plans are managed differently for forestry and agriculture sources than for other, primarily urban and rural residential, nonpoint sources.

Implementation for nonpoint sources other than forestry and agriculture:
Except for the Departments of Forestry and Agriculture (ODF and ODA), DMAs must submit implementation plans to the Department describing how they will achieve load allocations for nonpoint sources under their authority. Because TMDLs to date have addressed mostly forestry and agricultural sources, many DMAs, particularly local governments, will just be getting involved in implementation with upcoming TMDLs that address urban and rural residential sources, such as stormwater runoff. The Department is developing *Model Urban Water Quality Management Plan Guidance* to help local authorities identify and implement effective nonpoint source control measures, and will work closely with these DMAs throughout the TMDL process.

¹ The federal TMDL rules currently in effect were adopted in 1985 and amended in 1989 and 1992. Both the current TMDL rules and the 2000 amendments, effective April 2003 unless repealed, are found at 40 CFR Part 130, particularly §§130.2 and 130.7.

The Department anticipates that the collaborative processes used to develop and implement TMDLs, such as those used for the Tualatin and Upper Grande Ronde TMDLs, will lead to effective implementation. When problems arise, the Department expects DMAs to provide education and technical support to land managers, to make appropriate adjustments to implementation plans, and to take enforcement action as needed. If a DMA other than ODF or ODA fails to take reasonable steps to develop or carry out an implementation plan, in many circumstances the Department can order the DMA to comply with the TMDL and enforce that order.

Implementation for forestry and agricultural nonpoint sources:

Oregon's Forest Practices Act (enacted in 1971) and Senate Bill 1010 (enacted in 1993) authorize ODF and ODA respectively to develop and implement plans to prevent and control water pollution from state and private forestry and agricultural sources. The proposed rules recognize those authorities (see OAR 340-042-0080(2), Attachment A). The Department consults with both agencies to help ensure that implementation plans are sufficient to achieve forestry and agriculture allocations, but ODF and ODA are responsible for achieving those allocations. The Commission may engage the Boards of Forestry and Agriculture as needed to support these efforts and address issues warranting higher level attention.

Implementation of TMDLs is described in more detail in the Department's Response to Comment 44 in Attachment B (see pages 18-20) and, for forestry and agricultural sources, in MOAs between the Department and ODF and ODA describing TMDL responsibilities and coordination. The MOAs are available upon request.

Next Steps

The rules will become effective upon filing. The Department is already applying the proposed procedures to establish and implement TMDLs. The Department will use the rules to support ongoing training for TMDL staff and to better communicate the TMDL process to Department staff, DMAs and other agencies, stakeholders and interested persons. The Department's Rule Implementation Plan is available upon request.

Attachments

- A. Proposed Rules
- B. Summary of Public Comments and Agency Responses
- C. Advisory Committee Membership
- D. Presiding Officers' Reports on Public Hearings

- E. Relationship to Federal Requirements Questions
- F. Statement of Need and Fiscal and Economic Impact
- G. Land Use Evaluation Statement

**Available Upon
Request**

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Written Comment Received
- 4. Rule Implementation Plan
- 5. Memoranda of Agreement for TMDLs: DEQ and ODA (6/98); DEQ and ODF (4/98) and DEQ and EPA (2000).
- 6. Consent Decree, May 2002, *Northwest Environmental Advocates vs. Browner*, incorporating Oregon's TMDL schedule.

Approved:

Section:


Manager, Program Planning and Policy
Assistance

Division:


Water Quality Administrator

Report Prepared By: Loretta Pickerell

Phone: 503-229-5878

ATTACHMENT A

DIVISION 42 **TOTAL MAXIMUM DAILY LOADS (TMDLs)**

340-042-0025

Policy, Purpose and Effect

- (1) The public policy of the State of Oregon is to protect, maintain and improve the quality of waters of the state for beneficial uses and to provide for prevention, abatement and control of water pollution. To achieve and maintain water quality standards, the Environmental Quality Commission may impose limitations and controls including Total Maximum Daily Loads (TMDLs), wasteload allocations for point sources and load allocations for nonpoint sources.
- (2) The policy of the Environmental Quality Commission is to have the Department of Environmental Quality establish TMDLs, including wasteload and load allocations, and have responsible sources meet these allocations through compliance with discharge permits or other strategies developed in sector or source-specific implementation plans. These measures must achieve and maintain water quality standards and restore waters of the state that are water quality limited.
- (3) These rules establish procedures for developing, issuing and implementing TMDLs as required by the Federal Water Pollution Control Act Section 303(d) (33 USC Section 1313(d)) and authorized by Oregon statutes to ensure that state water quality standards are met and beneficial uses protected.
- (4) The Department of Environmental Quality will review any changes to Federal Water Pollution Control Act Section 303(d) or implementing regulations in 40 CFR Part 130 promulgated after the effective date of these rules. The Department may subsequently recommend that the Environmental Quality Commission amend, repeal or adopt new rules. Rules adopted by the Commission remain in effect until the Commission takes action on the recommendations.

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110

Stats. Implemented: ORS 468B.020, ORS 468B.110

340-042-0030

Definitions

In addition to the definitions provided in ORS 468.005, ORS 468B.005, OAR 340-041-0006 and OAR 340-045-0010, unless otherwise required by context, the following definitions apply to OAR Chapter 340, Division 42.

- (1) "Background Sources" include all sources of pollution or pollutants not originating from human activities. In the context of a TMDL, background sources may also include anthropogenic sources of a pollutant that the Department or another Oregon state agency does not have authority to regulate, such as pollutants emanating from another state, tribal lands or sources otherwise beyond the jurisdiction of the state.

- (2) "Designated Management Agency (DMA)" means a federal, state or local governmental agency that has legal authority over a sector or source contributing pollutants, and is identified as such by the Department of Environmental Quality in a TMDL.
- (3) "Director" means the Director of the Department of Environmental Quality or the Director's authorized designee.
- (4) "Hydrologic Unit Code (HUC)" means a multi-scale numeric code used by the U.S. Geological Survey to classify major areas of surface drainage in the United States. The code includes fields for geographic regions, geographic subregions, major river basins and subbasins. The third field of the code generally corresponds to the major river basins named in OAR Chapter 340, Division 41. The fourth field generally corresponds to the subbasins typically addressed in TMDLs.
- (5) "Local Advisory Group" means a group of people with experience and interest in a specific watershed or subbasin that is designated by the Department to provide local input during TMDL development.
- (6) "Management Strategies" means measures to control the addition of pollutants to waters of the state and includes application of pollutant control practices, technologies, processes, siting criteria, operating methods, best management practices or other alternatives.
- (7) "Performance Monitoring" means monitoring implementation of management strategies, including sector-specific and source-specific implementation plans, and resulting water quality changes.
- (8) "Pollutant" has the meaning provided in the Federal Water Pollution Control Act Section 502 (33 USC Section 1362).
- (9) "Reasonable Assurance" means a demonstration that a TMDL will be implemented by federal, state or local governments or individuals through regulatory or voluntary actions including management strategies or other controls.
- (10) "Sector" means a category or group of similar nonpoint source activities such as forestry, agriculture, recreation, urban development or mining.
- (11) "Sector-Specific Implementation Plan" or "Source-Specific Implementation Plan" in the context of a TMDL means a plan for implementing a Water Quality Management Plan for a specific sector or source not subject to permit requirements in ORS 486.050. The elements of an implementation plan are described in OAR 340-042-0080.
- (12) "Source" means any process, practice, activity or resulting condition that causes or may cause pollution or the introduction of pollutants to a waterbody.
- (13) "Subbasin" means the designation in the fourth field of the U.S. Geological Survey Hydrologic Unit Code.
- (14) "Surrogate Measures" means substitute methods or parameters used in a TMDL to represent pollutants.
- (15) "Total Maximum Daily Load (TMDL)" means a written quantitative plan and analysis for attaining and maintaining water quality standards and includes the elements described in OAR 340-042-0040. These elements include a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet state water quality standards, allocations of portions of that amount to the pollutant sources or sectors, and a Water Quality Management Plan to achieve water quality standards.
- (16) "Waterbody" means any surface waters of the state.

- (17) "Water Quality Management Plan (WQMP)" means the element of a TMDL describing strategies to achieve allocations identified in the TMDL to attain water quality standards. The elements of a WQMP are described in OAR 340-042-0040(4)(I).

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110
Stats. Implemented: ORS 468B.020, ORS 468B.110

340-042-0040

Establishing Total Maximum Daily Loads (TMDLs)

- (1) The Department will establish TMDLs for pollutants in waters of the state that are listed in accordance with the Federal Water Pollution Control Act Section 303(d) (33 USC Section 1313(d)).
- (2) The Department will group stream segments and other waterbodies geographically by subbasin and develop TMDLs for those subbasins, unless it determines another approach is warranted.
- (3) The Department will prioritize and schedule TMDLs for completion considering the following factors:
 - (a) Severity of the pollution.
 - (b) Uses of the water.
 - (c) Availability of resources to develop TMDLs.
 - (d) Specific judicial requirements, and
 - (e) Any other relevant information.
- (4) A TMDL will include the following elements:
 - (a) Name and location. This element describes the geographic area for which the TMDL is developed and includes maps as appropriate.
 - (b) Pollutant identification. This element identifies the pollutants causing impairment of water quality that are addressed in the TMDL.
 - (c) Water quality standards and beneficial uses. This element identifies the beneficial uses in the basin and the relevant water quality standards, including specific basin standards established in OAR 340-041-0202 through OAR 340-041-0975. The beneficial use that is most sensitive to impairment by the pollutant or pollutants addressed in the TMDL will be specified.
 - (d) Loading capacity. This element specifies the amount of a pollutant or pollutants that a waterbody can receive and still meet water quality standards. The TMDL will be set at a level to ensure that loading capacity is not exceeded. Flow assumptions used in the TMDL will be specified.
 - (e) Excess load. This element evaluates, to the extent existing data allow, the difference between the actual pollutant load in a waterbody and the loading capacity of that waterbody.
 - (f) Sources or source categories. This element identifies the pollutant sources and estimates, to the extent existing data allow, the amount of actual pollutant loading from these sources. The TMDL will establish wasteload allocations and load allocations for these sources. The Department will use available information and analyses to identify and document sources.

- (g) Wasteload allocations. This element determines the portions of the receiving water's loading capacity that are allocated to existing point sources of pollution, including all point source discharges regulated under the Federal Water Pollution Control Act Section 402 (33 USC Section 1342).
- (h) Load allocations. This element determines the portions of the receiving water's loading capacity that are allocated to existing nonpoint sources of pollution or to background sources. Load allocations are best estimates of loading, and may range from reasonably accurate estimates to gross allotments depending on the availability of data and appropriate techniques for predicting loading. Whenever reasonably feasible, natural background and anthropogenic nonpoint source loads will be distinguished from each other.
- (i) Margin of safety. This element accounts for uncertainty related to the TMDL and, where feasible, quantifies uncertainties associated with estimating pollutant loads, modeling water quality and monitoring water quality. The TMDL will explain how the margin of safety was derived and incorporated into the TMDL.
- (j) Seasonal variation. This element accounts for seasonal variation and critical conditions in stream flow, sensitive beneficial uses, pollutant loading and water quality parameters so that water quality standards will be attained and maintained during all seasons of the year.
- (k) Reserve capacity. This element is an allocation for increases in pollutant loads from future growth and new or expanded sources. The TMDL may allocate no reserve capacity and explain that decision.
- (l) Water quality management plan (WQMP). This element provides the framework of management strategies to attain and maintain water quality standards. The framework is designed to work in conjunction with detailed plans and analyses provided in sector-specific or source-specific implementation plans. The WQMP will address the following:
 - (A) Condition assessment and problem description.
 - (B) Goals and objectives.
 - (C) Proposed management strategies designed to meet the wasteload allocations and load allocations in the TMDL. This will include a categorization of sources and a description of the management strategies proposed for each source category.
 - (D) Timeline for implementing management strategies including:
 - (i) Schedule for revising permits,
 - (ii) Schedule for achieving appropriate incremental and measurable water quality targets,
 - (iii) Schedule for implementing control actions, and
 - (iv) Schedule for completing other measurable milestones.
 - (E) Explanation of how implementing the management strategies will result in attainment of water quality standards.
 - (F) Timeline for attainment of water quality standards.
 - (G) Identification of persons, including Designated Management Agencies (DMAs), responsible for implementing the management strategies and developing and revising sector-specific or source-specific implementation plans.
 - (H) Identification of sector-specific or source-specific implementation plans that are available at the time the TMDL is issued.

- (I) Schedule for preparation and submission of sector-specific or source-specific implementation plans by responsible persons, including DMAs, and processes that trigger revisions to these implementation plans.
- (J) Description of reasonable assurance that management strategies and sector-specific or source-specific implementation plans will be carried out through regulatory or voluntary actions.
- (K) Plan to monitor and evaluate progress toward achieving TMDL allocations and water quality standards including:
 - (i) Identification of persons responsible for monitoring, and
 - (ii) Plan and schedule for reviewing monitoring information and revising the TMDL.
- (L) Plan for public involvement in implementing management strategies.
- (M) Description of planned efforts to maintain management strategies over time.
- (N) General discussion of costs and funding for implementing management strategies. Sector-specific or source-specific implementation plans may provide more detailed analyses of costs and funding for specific management strategies.
- (O) Citation of legal authorities relating to implementation of management strategies.
- (5) To determine allocations for sources identified in the TMDL, the Department:
 - (a) Will use water quality data analyses, which may include statistical analyses or mathematical models.
 - (b) May use surrogate measures to estimate allocations for pollutants addressed in the TMDL. The Department may use one or more surrogate measures for a pollutant that is difficult to measure or highly variable. A surrogate measure will be closely related to the pollutant, and may be easier to monitor and track. The TMDL will establish the correlation between the surrogate measure and pollutant.
- (6) The Department will distribute wasteload and load allocations among identified sources and in doing so, may consider the following factors:
 - (a) Contributions from sources,
 - (b) Costs of implementing measures,
 - (c) Ease of implementation,
 - (d) Timelines for attainment of water quality standards,
 - (e) Environmental impacts of allocations,
 - (f) Unintended consequences,
 - (g) Reasonable assurances of implementation, and
 - (h) Any other relevant factor.
- (7) After issuing the TMDL, the Department may revise the loading capacity and allocations to accommodate changed needs or new information. In making these revisions, the Department will comply with the public notice provisions in OAR 340-042-0050(2) and procedures for issuing TMDL orders in OAR 340-042-0060.
- (8) If the Environmental Protection Agency establishes a TMDL addressing waterbodies in Oregon, the Department may prepare a WQMP to implement that TMDL.

340-042-0050

Public Participation

- (1) The Department will establish a local advisory group or identify an existing group or forum to assist in developing a TMDL.
- (2) The Department will provide an opportunity for persons to review and comment on a draft TMDL and on proposals to revise loading capacity or allocations in a TMDL as follows:
 - (a) The Department will maintain a mailing list for each TMDL.
 - (b) The Department will provide notice and an opportunity for public comment on a proposed TMDL or revision to loading capacity or allocations in a TMDL. The public comment period will generally be 60 days.
 - (c) The Department will respond to public comments received during the public comment period and will prepare a written summary of responses.

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110
Stats. Implemented: ORS 468B.020, ORS 468B.110

340-042-0060

Issuing a Total Maximum Daily Load

- (1) The Director will issue a TMDL as an order. If the Environmental Protection Agency establishes a TMDL addressing waterbodies in Oregon, the Director may issue as an order a WQMP to implement that TMDL.
- (2) The order will be effective and final on the date signed by the Director.
- (3) Following issuance, the Department will submit the TMDL to the Environmental Protection Agency.
- (4) Within 20 business days after the Director signs the order, the Department will notify all affected NPDES permittees, nonpoint source DMAs identified in the TMDL and persons who provided formal public comment on the draft TMDL that the order has been issued and the summary of responses to comments is available.

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110
Stats. Implemented: ORS 468B.020, ORS 468B.110

340-042-0070

Requesting Reconsideration or Appealing a Total Maximum Daily Load

- (1) Any person who participated in establishing a TMDL, including those who submitted comments, and any other person entitled to seek judicial review of an order issuing a TMDL may request reconsideration by the Director in accordance with OAR 137-004-0080.
- (2) A person may file a petition for judicial review of a final TMDL order as allowed by ORS 183.484.

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110
Stats. Implemented: ORS 183.484, ORS 468B.020, ORS 468B.110

340-042-0080

Implementing a Total Maximum Daily Load

- (1) Management strategies identified in a WQMP to achieve wasteload and load allocations in a TMDL will be implemented through water quality permits for those sources subject to permit requirements in ORS 468B.050 and through sector-specific or source-specific implementation plans for other sources. WQMPs will identify the sector and source-specific implementation plans required and the persons, including DMAs, responsible for developing and revising those plans.
- (2) The Oregon Department of Forestry will develop and enforce implementation plans addressing state and private forestry sources as authorized by ORS 527.610 through 527.992 and according to OAR Chapter 629, Divisions 600 through 665. The Oregon Department of Agriculture will develop implementation plans for agricultural activities and soil erosion and enforce associated rules as authorized by ORS 568.900 through 568.933 and according to OAR Chapter 603, Divisions 90 and 95.
- (3) Persons, including DMAs other than the Oregon Department of Forestry or the Oregon Department of Agriculture, identified in a WQMP as responsible for developing and revising sector-specific or source-specific implementation plans must:
 - (a) Prepare an implementation plan and submit the plan to the Department for review and approval according to the schedule specified in the WQMP. The implementation plan must:
 - (A) Identify the management strategies the DMA or other responsible person will use to achieve load allocations and reduce pollutant loading,
 - (B) Provide a timeline for implementing management strategies and a schedule for completing measurable milestones,
 - (C) Provide for performance monitoring with a plan for periodic review and revision of the implementation plan,
 - (D) To the extent required by ORS 197.180 and OAR Chapter 340, Division 18, provide evidence of compliance with applicable statewide land use requirements, and
 - (E) Provide any other analyses or information specified in the WQMP.
 - (b) Implement and revise the plan as needed.
- (4) For sources subject to permit requirements in ORS 468B.050, wasteload allocations and other management strategies will be incorporated into permit requirements.

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110
Stats. Implemented: ORS 197.180, ORS 468B.020, ORS 468B.110

Attachment B
Summary of Public Comment and Agency Response
Proposed TMDL Rules

**Comment
period**

The public comment period opened on June 1, 2002 and closed at 5:00 p.m. on July 31, 2002. DEQ conducted public hearings on July 9 at 7:00 p.m. in Pendleton, July 15 at 2:00 p.m. in Portland, and July 16 at 7:00 p.m. in Eugene. Five people attended the hearing in Portland but none testified; no one attended the other hearings.

Eleven organizations submitted written comments: two environmental organizations, three agricultural associations, two representatives of wastewater treatment agencies, two federal agencies and two state agencies. A list of commenters follows the Summary of Comments and Agency Responses (see pages 21 and 22 of this Attachment).

**Organization
of comments
and
responses**

Summaries of individual comments and DEQ's responses are provided below. The numbers in parenthesis after each comment identify the commenters. General comments are followed by specific comments organized by rule.

Summary of Comments and Agency Responses

General Comments

Comment 1 Coordination with EPA rulemaking	<ul style="list-style-type: none">• Delay adoption of rules until EPA has revised the federal TMDL rules; in the interim, rely on OAR Chapter 340, Division 41 for guidance. (10)• Adopt the more stringent federal TMDL rules to become effective April 2003, or wait until EPA revises them. EPA's rules define the process more clearly and hold DEQ to higher standards. (11)• <i>Require</i> DEQ to amend, repeal, or adopt new rules when EPA revises the federal TMDL rules, so that Oregon's program is consistent with the federal program. (10)
Response	<p>The proposed rules describe procedures for establishing and implementing TMDLs to guide the public and DEQ. Division 41 (Water Pollution State-Wide Water Quality Maintenance Plan; Beneficial Uses, Policies, Standards, and Treatment Criteria For Oregon) does not establish TMDL procedures.</p> <p>EPA revised regulations governing the TMDL process in July 2000, but has delayed the effective date of those revisions until April 2003 to allow reconsideration under the Bush administration. Since then, EPA has signaled intent to repeal those revisions, but has not provided clear direction on timing or alternative approaches.</p> <p>The proposed rules are consistent with both the federal rules currently in effect and those scheduled to take effect in April 2003 if not repealed. DEQ does not anticipate</p>



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	<p>significant changes that would be inconsistent with DEQ's proposed rules. Rather than delaying rulemaking, DEQ proposes to review Oregon TMDL rules in light of any subsequent amendments to the federal TMDL rules and recommend changes to the EQC as appropriate. The proposed rules do not <i>require</i> the EQC to amend Oregon's rules in response to EPA rulemaking. See proposed OAR 340-042-0025(4).</p> <p>No changes were made in response to these comments.</p>
<p>Comment 2 Expansion of TMDLs</p> <p>Antidegradation policy</p>	<ul style="list-style-type: none"> Expand the scope of TMDLs to address all of the work needed to restore waterbodies consistent with the watershed approach, including waterbodies, pollutants, and beneficial uses not identified on Oregon's 303(d) list of impaired waters. (Section 303(d) of the Clean Water Act). Address all standards and pollutants related to the identified impairment, such as toxics or multiple pollutants with additive or synergistic effects, and all beneficial uses affected by those pollutants. (1, 8) Clarify how DEQ will implement the antidegradation policy in the TMDL process. (1, 8)
Response	<p>DEQ coordinates TMDL and other watershed planning and related activities within the subbasins addressed, but does not propose to expand the scope of TMDLs. DEQ will continue to use the 303(d) listing process to identify and prioritize waterbodies and pollutants for establishing TMDLs, and use other water quality planning and regulatory programs to address problems beyond that scope. This approach is consistent with the federal 303(d) and other water quality planning processes and grant programs.</p> <p>TMDLs usually address all listed pollutants and any non-listed pollutants that cause or contribute significant amounts of listed pollutants, and include allocations of loads and wasteloads for those other pollutants. For example, nutrients or aquatic weeds may be addressed because they contribute to listed pH or dissolved oxygen. Each TMDL explains the selection of the pollutants to be addressed.</p> <p>Oregon's water quality standards include an antidegradation policy to prevent unnecessary degradation and to protect, maintain, and enhance existing surface water quality. A TMDL sets load and wasteload allocations to reduce current loading to a level that will meet applicable water quality standards, and includes management strategies to achieve those allocations and standards. DEQ and other DMAs will apply the antidegradation policy during implementation of these management strategies as appropriate, for example in reviewing new or modified permits for discharges subject to the TMDL.</p> <p>No changes were made in response to these comments.</p>
Comment 3 Exclusion of nonpoint sources from	<ul style="list-style-type: none"> Exclude from TMDLs stream reaches that do not have any point source discharges or permits unless these nonpoint segments are adjacent to a point source TMDL and DEQ can justify their inclusion. (4, 6)

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TMDLs	<ul style="list-style-type: none"> Eliminate provisions that would "allocate" a load to a nonpoint source, including naturally occurring pollution, or would require a nonpoint source to reach a load allocation. Manage nonpoint sources under Section 319 of the Clean Water Act (CWA) through voluntary, incentive based means. Do not rely on Agricultural Water Quality Management Area (AgWQMA) Plans developed pursuant to ORS 568.900-.933 to meet TMDL loads. (4, 6, 10)
Response	<p>In <i>Pronsolino v. Nastri</i>, 291 F3d 1123 (9th Cir. 2002), the Ninth Circuit Court of Appeals clearly affirmed federal and state authority to regulate nonpoint sources under the TMDL process in Section 303(d) of the CWA. That authority allows states to allocate loads to nonpoint sources, including agricultural sources. In addition, to achieve water quality standards, TMDLs need to address all sources contributing to impairment.</p> <p>To implement TMDLs, DEQ will use existing plans to the extent possible, including AgWQMA Plans, consistent with ORS 568.900 - 568.933.</p> <p>No changes were made in response to these comments.</p>

Comment 4 Sound science	<ul style="list-style-type: none"> Require TMDL determinations to be based on reliable data and on documents based on sound science. Clarify how DEQ will determine whether information is reliable, including the criteria to be used. Include scientific methodologies; require data to meet a 90% sample adequacy test. (4, 6) Use science-based methods to establish TMDL targets, but do not trade measurement for implementation. Use adaptive management to adjust TMDL targets and align water quality standards. (7)
Response	<p>DEQ is committed to maintaining a high level of scientific rigor and credibility in TMDL work. To develop TMDLs, DEQ:</p> <ul style="list-style-type: none"> uses science, data, and modeling that are peer reviewed and the best available information on which to base water quality management decisions; follows the data quality assurance and quality control procedures approved in the Oregon Plan for Salmon and Watersheds for data collection, review, and use; coordinates monitoring and data collection with anticipated water quality and modeling requirements; and follows standard practices for documenting sources in technical reports and publications. <p>The proposed rules do not specify the scientific methods to be used in developing TMDLs. Individual TMDLs describe in detail the data and methods used in their development. Those data and methods are subject to peer and public review and comment and to EPA approval. In addition, TMDLs explicitly acknowledge uncertainty and employ adaptive management to ensure that TMDLs progress while additional data are collected and analyzed to monitor and improve them.</p> <p>No changes were made in response to these comments.</p>

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Comment 5 Intent 0025	Expand the intent statement to include: "It is the intent of the Department that TMDLs be implemented as expeditiously as possible in order that the state's waters attain water quality standards for the support of beneficial uses."
Response	DEQ prefers not to add a statement of intent to implement TMDLs "as expeditiously as possible." DEQ updates the schedule for developing TMDLs every two years when revising the 303(d) list (see response to comment 19), and includes an implementation schedule in every TMDL. DEQ and stakeholders consider a number of factors in preparing reasonably achievable schedules for developing and implementing TMDLs; adding the suggested language would not be helpful. No changes were made in response to this comment.

Definitions

Comment 6 Background sources 0030(1)	<ul style="list-style-type: none"> Clearly limit "background sources" to natural sources and sources from non-Oregon lands. If any legacy sources, such as mercury from abandoned mines, are included, specify those sources and the reasons for including them. (1, 8) Also exclude sources controlled by "local government" from background. (2)
Response	The existing definition of "background" accomplishes the commenters' objectives by including only those anthropogenic sources that DEQ or another state agency does not have authority to regulate. Most of those sources will emanate from non-Oregon lands, but a few activities may be included because they are otherwise beyond the state's jurisdiction (e.g., those regulated by the Nuclear Regulatory Commission). Given DEQ's broad authority to regulate water pollution, this definition of background does not include legacy sources such mine wastes that may not be currently regulated. In addition, because DEQ's regulatory authority extends to polluting activities typically regulated by local government, specifically excluding sources controlled by local government will not further limit background sources. No changes were made in response to these comments.
Comment 7 Water quality limited [formerly - 0030(5), deleted]	Define "water quality limited" as used in the definition of "impaired" or "impairment". (2)
Response	DEQ has deleted the definition of "impaired or impairment" because "impaired" is not used in the proposed rules and a definition of "impairment" is not needed. "Water quality limited" is used once, in proposed OAR 340-042-0025(2), and is defined in OAR 340-041-0006(30), incorporated by reference in proposed OAR 340-042-0030. No changes were made in response to this comment.
Comment 8 Management strategies 0030(6)	Use "management measures" instead of "management strategies" because it is more specific and tangible. (1, 8)

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Response	Use of the terms "strategies" and "measures" may be interchangeable, but the proposed rules retain "strategies" because that term has been commonly used in Oregon's TMDL program to refer to performance-based measures identified in WQMPs. Although TMDLs vary, a WQMP typically describes specific measures in less detail than implementation plans DMAs prepare to carry out those measures. For example, a WQMP may identify a percent increase in effective shading for a sector while the implementation plans describe where and how that increase will be achieved. No changes were made in response to this comment.
Comment 9 Performance monitoring 0030(7)	Management strategies are implemented through management measures, so "performance monitoring" should refer to monitoring of measures, not management strategies. (1, 8)
Response	Performance monitoring is more inclusive than monitoring measures. The definition has been clarified to specify that "performance monitoring" means monitoring the implementation of management strategies, including sector and source-specific implementation plans, and resulting water quality changes.
Comment 10 Pollutant 0030(8)	Provide rather than reference the definition of "pollutant" for convenience. (9)
Response	The definition of "pollutant" is used in many of DEQ's rules and is frequently referenced because of length. No changes were made in response to this comment.
Comment 11 Sector 0030(10)	Remove "stormwater runoff" as an example of a sector; it flows from activities on a sector. (9)
Response	Stormwater runoff has been removed as suggested.
Comment 12 Implementation plan 0030(11)	Further define "implementation plan" to clarify what DEQ intends for those plans. (1, 8)
Response	The following has been added to the definition: "The elements of an implementation plan are described in OAR 340-042-0080."
Comment 13 Source 0030(12)	Add "condition" as a potential source (e.g., previous removal of trees). (2)
Response	DEQ has added "or resulting condition" to the proposed rule to recognize these potential sources.

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Comment 14 Subbasin 0030(13)	Change the definition of "subbasin" to "...means designated by the fourth field." (9)
Response	The definition now clarifies that "subbasin" means the designation in the fourth field of the U.S. Geological Survey Hydrologic Unit Code (HUC).

Comment 15 TMDL 0030(15)	<p>Clarify the definition of "TMDL." (1, 2, 8, 9)</p> <ul style="list-style-type: none"> • Do not include both loading capacity and the amount of that capacity allocated to sources and sectors. (2, 9) • Include the TMDL documents produced in the definition. (1, 2, 8) • Use "the calculated maximum" instead of "a calculation of the maximum." (9) • Use the definition in EPA's July 2000 TMDL rule: "A written quantitative plan and analysis for attaining and maintaining water quality standards in all seasons." (11) • Clarify references to "TMDL" throughout the document. (2) • Clarify whether "TMDL" refers to pollutant quantity, concentration, or both. (9)
Response	<p>The definition of "TMDL" has been revised to clarify that it refers to the integrated plan and analysis for attaining and maintaining water quality standards and includes the elements described in OAR 340-042-0040(4). Those elements include a calculation of the maximum amount of a pollutant a waterbody can receive and still meet water quality standards, allocations of portions of that amount to sources and sectors, and a WQMP to achieve water quality standards. References to "TMDL" have been clarified throughout the division to accurately reflect this definition.</p> <p>Pollutant loading in a TMDL can be expressed in various ways appropriate to the characteristics of the waterbody and pollutant, for example, in terms of mass per time, toxicity, or a quantified modification of riparian habitat to reduce pollutant loading. TMDLs will clarify the expressions used. No changes were made to describe these expressions in the proposed rule.</p>

Comment 16 Water Quality Management Plan 0030(17)	Make the definition of WQMP more inclusive and reference the definition in OAR 340-042-0040(4). (1, 8)
Response	DEQ has added the following to the definition: "The elements of a WQMP are described in OAR 340-042-0040(4)."

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Comment 17 Pollutants in waters 0040(1)	<ul style="list-style-type: none"> • Use "for pollutants in waters of the state" instead of "for waters of the state and pollutants." (4, 6) • Develop subsets of 303(d) listed streams for prioritizing TMDL development. (4, 6)
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Response	<p>The proposed rule has been revised to read "for pollutants in waters of the state" as suggested.</p> <p>Section 2 of the proposed rule describes the groupings of stream segments and other waterbodies that will be used to prioritize and complete TMDLs. No other subsets were added in response to this comment.</p>
Comment 18 Geographic areas 0040(2)	<ul style="list-style-type: none"> • Change "grouping" to "a grouping." (2) • Clarify factors for determining what "another approach is warranted" or delete the phrase. (4, 6)
Response	<p>The proposed rule has been revised to clarify the grouping of stream segments and other waterbodies into subbasins for TMDLs.</p> <p>The proposed rules retain "another approach" to provide flexibility for DEQ to develop TMDLs for areas other than subbasins as appropriate. For example, DEQ has taken advantage of existing efforts to develop TMDLs for parts of a subbasin (e.g., the 5th field HUC designation). In other instances, specific pollutants may be addressed best on a smaller level (e.g., toxics affecting a single lake in a subbasin; or bays and lakes listed for bacteria while the rest of their subbasin is listed for pollutants affecting fish). As a practical matter, DEQ lacks resources to develop many TMDLs for areas smaller than subbasins. No changes were made to further define "another approach."</p>
Comment 19 Prioritization 0040(3)	<ul style="list-style-type: none"> • Clarify how DEQ will prioritize and schedule TMDLs. (4, 6) • Remove the section on priorities; the rules provide no process for establishing priorities. (1, 8)
Response	<p>While DEQ considers all 303(d) listed waters to be important resources and intends to develop TMDLs for all of them, as required by federal law, it cannot address the hundreds of stream segments listed at the same time. After each 303(d) list is developed, DEQ groups listed stream segments and other waterbodies geographically, generally by subbasin, to identify the TMDLs to be developed. DEQ then prioritizes and develops a multi-year workplan to complete those TMDLs as quickly as resources allow. DEQ reviews and updates the prioritization and scheduling process and workplan every two years when revising the 303(d) list, and submits the revised TMDL schedule to EPA as required by 303(e) of the CWA. The proposed factors guide this prioritization and workload planning, but allow flexibility to meet state and local needs over time.</p> <p>With each update, DEQ will explain the basis for prioritizing and scheduling TMDLs. In the past, for example, DEQ has prioritized subbasins that support spawning and rearing for Endangered Species Act (ESA)-listed species or are subject to health advisories for fish consumption. In the same updates, DEQ has also targeted subbasins to address court decisions relating to water quality; to meet immediate program needs, such as wasteload allocations for permits coming up for revisions; to support proposed federal ESA listing of coastal coho salmon; and to satisfy other</p>

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	<p>priorities in the Oregon Coastal Salmon Restoration Plan. And finally, in scheduling DEQ has considered the complexities of TMDL development and internal and external resources available.</p> <p>No changes were made in response to these comments.</p>
Comment 20 Maps 0040(4)(a)	Require maps to depict all relevant land and water features and their relationships in the geographic area of the TMDL (e.g., sensitive uses, culverts, dams, water withdrawals, upstream sources, downstream 303(d) listings). (1, 8)
Response	The TMDLs include maps and other graphics to evaluate and document conditions in subbasins, but mapping all of the features requested may not be possible, productive or the best use of resources for every TMDL. No changes were made in response to this comment.
Comment 21 Pollutant identification 0040(4)(b)	<ul style="list-style-type: none"> • Clarify that a TMDL is calculated for each pollutant. For example, "This element identifies each pollutant for which a TMDL load capacity has been calculated." (2) • Include pollutants related to the impairment, not just pollutants identified on the 303(d) list, to capture additive and synergistic effects. • Include identification of "pollution" as well as "pollutants," since pollution can defeat efforts to restore and protect beneficial uses. (1, 8)
Response	The proposed rule accurately describes pollutant identification. As noted in response to comment 2, TMDLs do address non-listed pollutants that cause or contribute significant amounts of listed pollutants. TMDLs may also address "pollution" such as habitat or flow modification, particularly in management strategies. No changes were made in response to these comments.
Comment 22 Standards 0040(4)(c)	Describe how DEQ will determine when and where water quality standards are appropriate in different areas of the state, and how loading capacity can be determined or allocated if a standard is inappropriate. (4, 6)
Response	The EQC determines the waterbodies and basins to which each water quality standard it adopts will apply. Some standards apply statewide, others to specific basins. TMDLs are developed to attain these water quality standards. The TMDL process may identify areas where standards cannot be met with best management practices. In those or other instances, the EQC may revise water quality standards as appropriate, but standard setting is not part of the TMDL process. No changes were made in response to this comment.
Comment 23 Beneficial uses & ESA	<ul style="list-style-type: none"> • Clarify whether "beneficial uses" includes uses by threatened and endangered (T & E) species. (9) • Consider whether allowing reserve capacity to increase pollutant loads fits with

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0040(4)(c) & (k)	Endangered Species Act (ESA) restrictions on increasing pollutant loads. (9)
Response	As required by the CWA, TMDLs are written to achieve water quality standards that are designed to protect beneficial uses, which may include uses by T & E species. TMDL requirements are separate from the requirements of the ESA. Nevertheless, when a TMDL may affect state or federally listed T & E species, DEQ will work with the National Marine Fisheries Service (NMFS), US Fish and Wildlife Service, and Oregon Department of Fish and Wildlife (ODFW) to ensure the TMDL is not likely to jeopardize the T & E species or adversely affect designated critical habitat. DEQ staff may also discuss with ODFW and NMFS how to meet performance standards under both the ESA and CWA. In addition, EPA may consult with NMFS prior to approving a TMDL that affects ESA-listed species to ensure the TMDL is consistent with species recovery goals. No changes were made in response to these comments.
Comment 24 Loading capacity 0040(4)(d)	<ul style="list-style-type: none"> Clarify how background and unregulated sources included in background will affect the determination of loading capacity and load allocations. (3) Clarify how DEQ will address situations where natural background sources alone exceed standards. (1, 8)
Response	<p>Loading capacity is the sum of background sources (which include sources beyond the state's authority to regulate), wasteload and load allocations, margin of safety, and reserve capacity. The portion of loading capacity consumed by background sources is allocated to background and is unavailable for load or wasteload allocation. Thus the more capacity consumed by background, the less capacity available for load and wasteload allocations.</p> <p>When natural background sources exceed a standard, natural conditions become the standard and loading capacity. In those instances, except for the temperature standard, sources are given zero allocations, and the WQMP provides strategies to reach natural conditions. Under certain circumstances, the temperature standard allows non-anthropogenic increases when the criteria in the temperature standard are violated.</p> <p>Even if a source is given no allocation, DEQ may permit a source to discharge if the source demonstrates that it will not cause loading capacity to be exceeded. For example, discharge of a pollutant could be allowed at or below the concentration used to define loading capacity for that pollutant, in which case the discharge would be considered to be meeting a zero allocation. (Example: if loading capacity is defined as a concentration of 0.07 ppm, discharge of a pollutant at or below 0.07 ppm would not exceed loading capacity.) Sources might also limit discharges to periods when the TMDL does not apply. DEQ's response to comment 30 discusses other options for accommodating future growth.</p> <p>No changes were made in response to these comments.</p>

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Comment 25 Problem assessment 0004(4)(d)-(f)	Include an "assessment of the problem," describing the need for and objectives of the TMDL. (1, 8)
Response	Together the elements of the TMDL, particularly loading capacity, excess load, and sources or source categories, constitute an assessment of the problem. No changes were made in response to this comment.

Comment 26 Sources 0040(4)(f)	Include water withdrawals, culverts and dams as "sources" because they are forms of pollution that affect beneficial uses. (1, 8)
Response	DEQ identifies withdrawals, culverts and dams as sources in individual TMDLs, as appropriate. The proposed rules define "source" and "sector," but do not list the wide variety of potential sources. No changes were made in response to this comment.

Comment 27 Allocation descriptions 0040(4)(g) & (h)	<ul style="list-style-type: none"> • More clearly define "load allocations" and "waste load allocations" (2, 9) and clarify "future nonpoint sources." (2) • Do not allocate to individual future point sources, but account for known future sources when allocating among existing sources. Use reserve capacity to address future point sources. (1, 8) • Clarify whether allocations refer to the amount a source is currently discharging or the discharge allowed under the TMDL. (9) • Require clear identification of sectors and sources so that load allocations are equitable and DMA responsibilities are clear. (7) Identify individual sources whenever possible instead of using source sectors. (1, 8) <i>Require</i> natural, anthropogenic, and unregulated sources to be quantified and distinguished from each other in every case, not just whenever possible. (3, 7) • Define stormwater as a nonpoint source; even if covered by a permit, stormwater is more characteristic of a nonpoint source for TMDL purposes. (9) • Clarify assumptions used in making allocations (e.g., reductions in loading, stream flows). (1, 8) • Use the following text: "In establishing allocations, the Department will identify point sources of pollutants and establish waste load allocations for them. This includes all point source discharges regulated under the FWPCA Section 402 (33 USC Section 1342). Load allocations for each nonpoint source sector will be determined after the determination of background contribution." (4, 6)
Response	<ul style="list-style-type: none"> • The definitions of load and wasteload allocations have been revised to exclude "future sources." • As described in proposed OAR 340-042-0040(4)(k), DEQ uses reserve capacity to accommodate increases in pollutant loads from future growth or new or expanded sources. DEQ works with local advisory groups, DMAs and the public to determine whether to allocate reserve capacity in a TMDL. As discussed in

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	<p>responses to comments 24 and 30, in some cases TMDLs can accommodate future sources without reserve capacity. No changes were made in response to this comment.</p> <ul style="list-style-type: none"> • As described in the proposed rule, allocations are for portions of loading capacity and refer to discharges allowed under a TMDL. For some sources, that will also be current discharge levels. No changes were made in response to this comment. • A TMDL identifies individual sources and source sectors as clearly as possible using the best information and resources available. As described in response to comment 40, DEQ works with advisory groups, federal and state agencies, watershed councils, communities, counties, Soil and Water Conservation Districts, citizens' groups, and others to develop information and TMDLs. DMAs are encouraged to participate in this process to ensure sources and allocations are established as clearly and equitably as practicable. As more data, new control technologies, and other information are developed during implementation, both sources and allocations may be refined to improve a TMDL. <p>In some cases, precise delineations among sources would require monumental, unwarranted undertakings. For example, high levels of natural sedimentation sometimes prevent distinguishing between natural and anthropogenic sources of sediments. In such cases, the TMDL identifies current conditions instead of background. No changes were made in response to this comment.</p> <ul style="list-style-type: none"> • Stormwater sources for which an NPDES permit is not required are treated as nonpoint sources; permitted stormwater sources are treated as point sources. This supports TMDLs' addressing point source allocations through permits and nonpoint source allocations through other management strategies. No changes were made in response to this comment. • Individual TMDLs will clarify the assumptions incorporated for modeling, data analysis, allocations and other elements. Those assumptions cannot reasonably be prescribed by rule. No changes were made in response to this comment. • The suggested replacement text does not clarify the rules and limits flexibility. Allocations of nonpoint sectors may not in all cases follow determination of background (e.g., in cases where background cannot be distinguished). No changes were made in response to this comment.
<p>Comment 28 Margin of safety 0040(4)(i)</p>	<ul style="list-style-type: none"> • In the first sentence, use "loading capacity calculation determination" instead of "TMDL determination," and in the last use "pollutant load allocations" instead of "TMDL determinations." (2) • Require the TMDL to include information relating to any unquantifiable uncertainties. (1, 8) • Describe the criteria to be used in determining margin of safety. (3)

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Response	<p>The first sentence has been revised to clarify that the margin of safety accounts for uncertainty related to the TMDL.</p> <p>Individual TMDLs will explain how the margin of safety was derived and incorporated to appropriately account for uncertainties associated with the TMDL, including uncertainties associated with pollutant loads and modeling and monitoring water quality. The margin of safety may be expressed as unallocated assimilative capacity or conservative analytical assumptions used in establishing the TMDL. The methodologies used will depend on the data and other information available for a particular TMDL and are not prescribed by rule. No changes were made in response to the latter two comments.</p>
Comment 29 Seasonal variations 0040(4)(j)	<ul style="list-style-type: none"> • Clarify that TMDLs can be seasonally adjusted to apply only when needed. (1, 8) • Use: "Seasonal variations will take into account background contributions and natural factors including atmospheric depositions on an annual basis to account for the variations by season in order to ensure that the water quality standards will be attained and maintained for the seasonal beneficial uses appropriate to the time of year." (4, 6)
Response	<p>The proposed rule provides that TMDLs will be seasonally adjusted and better describes the variations and conditions to be considered than the suggested text. No changes were made in response to these comments.</p>
Comment 30 Reserve capacity/growth 0040(4)(k)	<p>Describe more specifically the criteria to be used to determine reserve capacity, how reserve capacity will be allocated over time, and how growth will be accommodated in the WQMP when no reserve capacity is allocated. (3, 9)</p>
Response	<p>DEQ has not developed criteria for determining whether or how to allocate reserve capacity in TMDLs to accommodate increases in pollutant loads from future growth or new or expanded sources. DEQ will work with local advisory groups, DMAs and the public to determine for individual TMDLs whether to allocate reserve capacity.</p> <p>Even without reserve capacity, future growth can occur in a subbasin if does not cause loading capacity to be exceeded. See response to comment 24 for examples. DEQ can also adjust allocations in a TMDL to accommodate growth, after public notice and an opportunity for comment.</p> <p>No changes were made in response to this comment.</p>
Comment 31 WQPM elements 0040(4)(l)	<ul style="list-style-type: none"> • Clarify the first sentence as follows: "This element provides the framework of management strategies to attain and maintain water quality standards. The framework is designed to work in conjunction with detailed plans and analyses provided in the sector or source-specific implementation plans." (4, 6) • <i>Require</i> WQMPs to include the listed elements vs. simply describing them. (1, 8)

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Response	The suggested text has been incorporated, and the proposed rule has been revised to clarify that WQMPs will address all elements.
Comment 32 Multi-basin plans 0040(4)(l)	Specify that DMAs may use multi-basin management plans and develop additional controls as needed. In those instances, do not require calculation of the costs and funding for specific watersheds. (9)
Response	<p>One element of a WQMP is identification of existing sector or source-specific implementation plans. This provision contemplates that DMAs will use a variety of existing plans to implement WQMPs, including multi-basin plans. The commenter references an agreement between DEQ and Oregon Department of Transportation (ODOT) affirming that ODOT's general water quality management plan, formalized in permits, guidance, and directives, will satisfy ODOT's responsibilities for TMDLs for temperature and sediments for most waterbodies. DEQ may use comparable agreements with other DMAs. The proposed rules do not describe these various implementation plans.</p> <p>DEQ requests DMAs to analyze the resources needed for the programs described in implementation plans to demonstrate they can be implemented. DEQ does not intend to require multi-basin management plans to break down costs and funding for individual watersheds or subbasins unless necessary to assure implementation.</p> <p>No changes were made in response to this comment.</p>
Comment 33 Timelines 0040(4)(l)(D), (F) & (l)	<ul style="list-style-type: none"> Consider physical and financial constraints to establish reasonably attainable schedules; recognize firm timelines may be difficult given budget constraints. (9) Specify deadlines for developing implementation plans. (1, 8)
Response	<p>DEQ agrees that successful implementation requires schedules that are reasonably attainable and consider physical, financial, and other constraints. Those schedules must also reflect a commitment to work through obstacles to achieve water quality standards. DEQ will work with advisory groups, DMAs, and the public to develop implementation schedules in WQMPs that are reasonably attainable, and will periodically monitor compliance and support adaptive management to achieve standards as practically as possible.</p> <p>DEQ is not proposing a deadline for developing implementation plans. Each WQMP will describe a schedule for developing and revising implementation plans, which will be subject to public comment. To date, most implementation plans have been submitted within 18 months after issuance of a TMDL.</p> <p>No changes were made in response to these comments.</p>

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Comment 34 Monitoring & evaluation 0040(4)(l)(K)	<ul style="list-style-type: none"> • Include "organizations" as well as "persons." (9) • Limit DMA's responsibilities to their authorities, including funding restrictions. (9) • Clarify whether "revising TMDL determinations" includes allocations, capacity, or both. (2) • Require revisions of WQMPs in addition to management strategies. (1, 8)
Response	<p>"Persons", as defined in ORS 468.005(5) and incorporated in proposed OAR 340-042-0030, includes "associations" and other types of organizations. No changes were made in response to this comment.</p> <p>The definition of "DMAs" in proposed OAR 340-042-0030(2) limits DMAs' responsibilities to their authorities. The proposed rules do not specify financial capacity as part of that authority. Instead, DEQ and DMAs will consider financial constraints in developing reasonably achievable implementation plans and schedules. No changes were made in response to this comment.</p> <p>The proposed rule has been changed to read "revising the TMDL," which includes any element of the TMDL, most typically allocations or management strategies. In some cases, DEQ may revise a WQMP when management strategies change during implementation, but that may not always be necessary and is not required in the proposed rule.</p>
Comment 35 Clarification 0040(5)	Use "TMDL document" instead of TMDL in the first line, and "TMDL source allocation" instead of "TMDL determination" in the last line. (2)
Response	The proposed rule now uses "TMDL" without modifiers in both places, consistent with the revised definition of TMDL, discussed in response to comment 15.
Comment 36 Surrogates 0040(5)(b)	<ul style="list-style-type: none"> • Clarify how surrogates will be used, that more than one surrogate may be used for a pollutant, and that surrogates are developed concurrently with loading capacities. (1, 8) • Allow surrogates only when supported by sound science, not whenever a parameter is difficult to measure or highly variable. (4, 6) • Require surrogates to be "closely associated" instead of "closely related" to a listed pollutant, and state they "should" instead of "may" be easier to monitor and track. (9) • If loads cannot be established without surrogates, do not allocate quantitative loads. Use a qualitative process instead. (10)
Response	Surrogates are used in TMDLs as substitute measures for pollutants when translation will foster better implementation. For example, using effective shade as a surrogate for a solar heat allocation provides an understandable and measurable parameter for evaluating progress toward achieving the allocation and standard. The proposed rule has been edited to clarify that more than one surrogate may be used for a pollutant.

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	DEQ agrees that surrogates should be reliable and useful. Individual TMDLs establish the connection between pollutants and their surrogate measures and are subject to peer and public review and to EPA approval. The edit noted above is the only change made in response to these comments.
Comment 37 Water quantity 0040(5)	Clarify how water quantity will be considered in the TMDL process. The TMDL must account for site-specific flow conditions and should recognize that flow modifications may be an appropriate management strategy. Include Oregon Water Resources Department (OWRD) on the list of agencies with TMDL roles. (3)
Response	Stream flows significantly affect water quality and beneficial uses and are accounted for in individual TMDLs. DEQ encourages flow modification as an implementation measure, and in some instances DMAs or DEQ may apply to OWRD for instream water rights for pollution abatement to protect flow associated with TMDLs. Nevertheless flow modification often involves complex water rights that effectively prevent this management option. DEQ agrees OWRD is an important partner in supporting flow modification, water trading and other strategies to achieve water quality standards and will continue to work with OWRD on the TMDL program. As noted in response to comment 39, DEQ is currently working with OWRD on a water quality trading policy. No changes were made in response to this comment.
Comment 38 Allocation distributions 0040(6)	<ul style="list-style-type: none"> • Describe more clearly the factors to be considered in distributing allocations and how they will be applied. Address how DEQ will assure equity among watershed basins, source sectors, and management strategy resources. (3) • Use the following text: "The Department will consider, but is not limited to, the following factors when developing allocations: contribution from each source, source variations season to season including climatic factors, cost effectiveness of implementation, ease of implementation, timeline for attainment of water quality standards, environmental impact of the allocation, unintended consequences, and reasonable assurance of implementation." (4, 6) • Clarify whether "relative" cost is compared to anticipated benefit and consider absolute costs as well. (9) • Provide steps for reasonable assurance of implementation. (4, 6) • Include enforceability as a factor in distributing allocations. (1, 8)
Response	<ul style="list-style-type: none"> • The factors identified in the proposed rule provide practical guidelines for DEQ and the public to follow to distribute allocations that are fair and will effectively achieve standards. The proposed rule allows flexibility to apply those factors to individual TMDLs using the data and other information available. As discussed in responses to comments 27 and 40, DEQ engages stakeholders, including DMAs, and the general public in developing TMDLs, including source identification and allocations, to help ensure TMDLs are as informed and equitable as possible. DEQ also encourages adaptive management to update allocations and strategies during implementation as new data, management techniques and other information are developed. No changes were made in response to this comment.

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	<ul style="list-style-type: none"> • The proposed rule has been edited to incorporate some of the text suggestions and to eliminate "relative" as a modifier of costs. Absolute costs and costs compared to benefits may be considered. • Reasonable assurance of implementation is defined in proposed OAR 340-042-0030(9). Individual TMDLs will include a description of reasonable assurance that management strategies and implementation plans will be carried out. That assurance will vary with the TMDL and DMAs, but will be subject to peer and public review and EPA review and approval. No changes were made in response to this comment. • Reasonable assurance that management plans will be carried out through regulatory or voluntary actions is a factor to be considered in distributing allocations. That evaluation will address enforceability where appropriate, so a separate factor for enforceability was not added.
Comment 39 Reallocations & trading 0040(6) & 7	<ul style="list-style-type: none"> • Reallocate only after public notice and opportunity for comment. Document any reallocations so that agencies and the public can readily identify the current allocations for a TMDL. (5) • Include water quality trading as a factor in distributing allocations and encourage it elsewhere in the rules where it will speed effective implementation of management strategies. (3) • Allow reallocations from point sources only if a waterbody has attained standards or the transfer will speed attainment. Reductions in loading should improve stream quality. (1, 8) • Require DEQ authorization of all trades by order or written agreement. (1, 8)
Response	<p>As part of the adaptive management process, DEQ may revise TMDL allocations as sources and sectors are better understood or as needs change, and may revise permits and management measures accordingly. The proposed rule has been revised to clarify that public notice and opportunity for comment are required prior to any reallocations. DEQ will document reallocations.</p> <p>DEQ may receive requests to trade allocations. DEQ is currently exploring trading opportunities and issues with stakeholder groups to develop a trading policy pursuant to HB 3956 adopted by the 2001 legislature. DEQ will implement trading under the TMDL process in accordance with trading policies that may be developed. For this reason, references to trading have been deleted from the proposed rules.</p>

Public Participation

Comment 40 Public participation 0050	<ul style="list-style-type: none"> • Include steps to ensure public participation and incorporation of public comment into final TMDL documents. (4, 6) • Clarify that advisory groups or forums representing a watershed's broad interests should be included in development of WQMPs, similar to their involvement with
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	<p>TMDLs. (3) Clarify what advisory committees will assist with (e.g., capacity models, load allocations, WQMPs). (2)</p> <ul style="list-style-type: none"> • Include DMAs in development of TMDLs and load allocations. (9) • Provide an opportunity for DMAs identified in the WQMP to comment on the draft TMDL before the formal public comment period. (3) • Require the public comment period on proposed TMDLs to be at least 60 days. (3) Require the comment period to be 120 days. (10) • Include organizations with a general interest in TMDLs on mailing lists for public participation in the TMDL processes. (1, 8) • Describe how DEQ will cooperate with land owners in gathering data on public and private property. (4, 6)
Response	<p>DEQ agrees that involving stakeholders and the public in developing TMDLs is essential for effective implementation and achieving water quality standards. DEQ has outlined the following approach for establishing TMDLs, particularly those involving nonpoint sources.</p> <p>DEQ will establish the appropriate geographic area and pollutants to be addressed, and will establish a local advisory group or identify an existing stakeholder process to assist in obtaining local input for the TMDL. Advisory group meetings will be open to the public.</p> <p>DEQ will work with the advisory group or identified stakeholder process, federal and state agencies, watershed councils, communities, counties, Soil and Water Conservation Districts, citizens' groups, and others to identify data needs, collect and analyze data, and provide results to the public.</p> <p>DEQ will work with DMAs, the advisory group or stakeholder process, and other members of the public to characterize the water quality problem, determine loading capacity, identify sources, estimate their contributions, and develop load and wasteload allocations, management strategies, and the WQMP. DEQ will take the lead on key technical determinations, such as loading capacity, but will consider recommendations from the advisory group on these and other elements of the TMDL.</p> <p>DEQ has described this approach in a Memorandum of Agreement with EPA and will incorporate it into guidance, but has not included informal information sharing, consultation and collaboration in the proposed rules. That process will be shaped differently with individual TMDLs. The proposed rules address the basic requirements for an advisory group and public notice and opportunity for comment on TMDLs.</p> <p>The proposed rules do not <i>require</i> a 60 day comment period on proposed TMDLs, but DEQ will continue to provide at least 60 days for comment except in unusual circumstances. To obtain as much information as possible, DEQ usually extends comment upon reasonable request.</p> <p>DEQ values the participation of organizations with general interests in TMDLs. Organizations may request to be added to mailing lists for specific or for all TMDLs.</p>

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	<p>DEQ publishes the TMDL schedule, notices of draft TMDLs open for public comment, and final TMDLs at: http://www.deq.state.or.us/wq/TMDLs/TMDLs.htm. Notices of TMDL comment periods are also posted at: http://www.deq.state.or.us/news/publicnotices.</p> <p>DEQ also welcomes participation of landowners and other individuals in TMDLs and will follow established procedures to obtain permission to gather data on private property.</p> <p>No changes were made in response to these comments.</p>
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Issuing and Appealing TMDLs

Comment 41 Notice to DMAs 0060	Notify DMAs identified in the TMDL and WQMP, not one or the other. (2)
Response	The proposed rule has been edited to clarify that all DMAs identified in a TMDL will be notified. This includes those identified in the WQMP, which is an element of the TMDL.
Comment 42 Appeals of TMDL orders 0070	Provide persons responsible for both point and nonpoint sources an opportunity for a contested case hearing on disputed allocations and WQMP strategies. As written, NPDES applicants or permittees may be denied a right to a contested case hearing on a TMDL-related condition included in a permit. (3)
Response	DEQ believes appeals to TMDL orders, which include allocations and WQMPs, will be handled more effectively through requests for reconsideration and judicial review than through contested case hearings. NPDES permittees and applicants retain the right to contested case hearings on their permits. No changes were made in response to this comment.

Implementing TMDLs

Comment 43 Implementation rule title 0080	Consider "Implementing the TMDL WQMP" or "TMDL Order" as more accurate rule titles.
Response	With the revised definition of TMDL, the existing title adequately describes the rule. No changes were made in response to this comment.

Comment 44 Implementation 0080	<ul style="list-style-type: none"> Clarify the responsibilities of federal, state, and local agencies as DMAs, besides the Departments of Forestry and Agriculture. (7) Clarify DEQ's and DMAs' roles during implementation of TMDLs (e.g., monitoring performance, developing and enforcing rules, following up if a DMA fails to
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Agenda Item H, Rule Adoption: Adoption of Total Maximum Daily Loads (TMDL) Rules
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	<p>comply with an order). (4, 6)</p> <ul style="list-style-type: none"> • State explicitly that DMAs will not be responsible for actions outside their authority. (9) • Require DEQ to ensure that TMDL implementation plans for forestry and farming operations are sufficient, are monitored, and are revised as needed. (1, 3, 8) • Provide a process for DMAs and local advisory groups to participate in developing agriculture and forestry plans. (3) • Acknowledge that DEQ lacks authority to approve or require changes to Agriculture Water Quality Management Area (AgWQMA) Plans. (10) • Use adaptive management to adjust TMDL targets and align standards. (7) • Acknowledge that resource limitations may inhibit DEQ's capacity to ensure effective monitoring and adaptive management strategies. (7)
Response	<p><u>Responsibilities of DMAs other than ODF and ODA:</u> DMAs other than ODF and ODA are required to develop and submit implementation plans to DEQ in accordance with WQMPs. DEQ expects those plans to fully describe DMAs' efforts to achieve respective allocations, including best management practices and other measures to achieve load allocations, reasonable assurances that management strategies be successful, implementation schedules, milestones to measure progress, monitoring and evaluation, and reporting to DEQ. DEQ will provide <i>Model Urban Water Quality Management Plan Guidance</i> for developing implementation plans, and will work cooperatively with DMAs to ensure plans address the elements required by a WQMP. DEQ also plans to periodically review the progress of WQMPs and associated implementation plans and their effectiveness in achieving allocations and water quality standards. DEQ and DMAs will use feedback from monitoring and evaluation to adjust TMDLs as useful. WQMPs will provide for public involvement during implementation of management strategies, and implementation plans may include DMA-specific public involvement.</p> <p>DEQ anticipates that collaborative processes used to develop and implement TMDLs will minimize the need for enforcement to achieve their goals. Nevertheless, TMDLs and associated implementation plans are generally enforceable by DEQ, other state agencies and local governments. When problems arise, DEQ expects DMAs to provide education and technical support to land managers, to make appropriate adjustments to implementation plans, and to take enforcement action as needed. If a DMA fails to take reasonable steps to develop or carry out an implementation plan, in many circumstances DEQ can order the DMA to comply with the TMDL and enforce that order</p> <p>The proposed rule describes the general responsibilities of DMAs, other than ODA or ODF. WQMPs will describe more specific responsibilities for individual TMDLs. As defined in OAR 340-042-0030(2), DMAs are responsible only for sources over which they have legal authority. Their responsibilities will be limited by that authority.</p> <p><u>Implementation for forestry and agricultural nonpoint sources:</u> Oregon's Forest Practices Act and Senate Bill 1010 authorize ODF and ODA respectively to develop and implement plans to prevent and control water pollution from state and private forestry and agricultural sources. The proposed rules</p>

recognize those authorities. DEQ has entered Memoranda of Agreement with ODF and ODA further describing coordination of responsibilities for TMDLs involving these lands. The EQC and DEQ roles during implementation are primarily consultative.

ODF implements the forestry component of TMDLs primarily through best management practices for forestry operations (forestry BMPs), adopted as rules by the Board of Forestry. Forestry BMPs generally apply to all forest lands in the state. DEQ reviews those BMPs to determine whether they are sufficient to achieve forestry allocations in applicable TMDLs. If DEQ and ODF agree they are, the BMPs serve as the implementation plan for those TMDLs. If DEQ alone determines those BMPs will not achieve a load allocation, ODF will work with DEQ to design and implement a mutually agreeable monitoring program to develop sufficient information to determine whether current forest BMPs will achieve the allocation. If DEQ and ODF agree that current BMPs will not achieve the allocation, the Board of Forestry, in consultation with the EQC, will create specific rules to establish adequate BMPs for that watershed. The public can participate in development of forestry BMPs and watershed-specific rules. DEQ completed a sufficiency analysis of forestry BMPs in fall 2002 and is currently working with ODF to address areas of potential concern.

ODA implements the agricultural component of TMDLs primarily through watershed or subbasin Agricultural Water Quality Management Area (AgWQMA) Plans, which ODA adopts as rules. DEQ and ODA have agreed to work closely together during development of these Plans to ensure they will meet load allocations for agricultural nonpoint sources. If the Department determines an AgWQMA Plan will not achieve an allocation or water quality standard, the EQC may petition ODA to review the Plan and associated rules pursuant to ORS 568.930. ODA also works with local advisory committees to develop and monitor implementation of AgWQMA Plans, and provides opportunity for public comment on proposed Plans and associated rules.

Both ODF and ODA work proactively with landowners to provide information and technical assistance to implement measures to protect water quality, but also enforce compliance with forestry BMPs and AgWQMA Plans and associated rules as needed.

Although by law ODF and ODA are responsible for achieving TMDL allocations for forestry and agricultural sources, DEQ intends to continue working closely with both agencies to help ensure water standards are achieved. The EQC may also engage the Boards of Forestry and Agriculture to support these efforts and address issues warranting higher level attention.

Adaptive management and resources:

The TMDL process is designed to be adaptive. DEQ and DMAs will structure monitoring to develop information on pollutants, sources, allocations, management techniques, and other factors as needed to evaluate and improve TMDLs as implementation proceeds.

DEQ agrees that all agencies and other DMAs involved with TMDLs, not only DEQ, will require adequate resources to effectively monitor progress and implement adaptive management strategies. DEQ and DMAs will work together to estimate

Agenda Item H, Rule Adoption: Adoption of Total Maximum Daily Loads (TMDL) Rules
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	<p>costs and identify funding to implement WQMPs and associated implementation plans, including potential future funding for projects. They will also coordinate TMDL activities with other related natural resource enhancement efforts in TMDL subbasins to maximize cost-effectiveness.</p> <p>No changes were made in response to these comments.</p>
Comment 45 Land Use Goals 0080	<p>Add the following language: "Implementation plans addressing activities under local land use planning authorities will be developed in compliance with local comprehensive plans, state land use laws and Statewide Planning Goals, in particular the water quality requirements of Goal 6." The language identifies land use authorities as a significant sector in the rules and State Land Use Goals and rules as a legal structure governing local government implementation plans. (2)</p>
Response	<p>Under state land use laws, ORS Chapter 197, both local governments and DEQ are responsible for ensuring that TMDL implementation plans and local comprehensive plans and land use regulations are compatible. The proposed rule addresses DEQ's responsibilities pursuant to ORS 197.180 and OAR Chapter 340, Division 18. DEQ, in turn, will work with local governments to ensure their comprehensive plans and land use regulations are consistent with the TMDL implementation plans to the extent required by Goal 6 or other relevant land use goals and rules. In part, DEQ intends to accomplish this by working with local governments and the Department of Land Conservation and Development to prepare <i>Model Urban Water Quality Management Plan Guidance</i> that will address in more detail these land use planning responsibilities. No changes were made in response to this comment.</p>

List of Commenters

	Name	Organization	Address	Comment Format	Date Received
1	Nina Bell	Northwest Environmental Advocates		e-mail	7/31/2002
2	Nan Evans	Oregon Department of Land Conservation & Development	800 NE Oregon St. #18 Portland, OR 97232	e-mail, FAX, and hard copy letter	7/30/2002
3	Janet Gillaspie	Oregon Association of Clean Water Agencies (ACWA)	537 SE Ash Suite 12 Portland, OR 97214	e-mail and FAX	7/31/2002
4	Brad Harper	Water for Life, Inc.	PO Box 12248 Salem, OR 97309	FAX	7/31/2002

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5	Jannine Jennings	US EPA	Region 10 1200 Sixth Avenue Seattle, WA 98101	Letter	7/25/2002
6	Pat Larson	Oregon Cattlemen's Associations	61931 Cottonwood Rd. La Grande, OR 97850	e-mail	7/31/2002
7	Judy Nelson	US Department of the Interior Bureau of Land Management	Oregon State Office PO Box 2965 Portland, OR 97208	FAX and letter hard copy	7/31/2002
8	Mark Riskedahl	Northwest Environmental Defense Center	10015 SW Terwilliger Blvd. Portland, OR 97219	e-mail	7/31/2002
9	Lori Sundstrom	Oregon Department of Transportation	1158 Chemeketa St NE Salem, OR 97301	FAX	7/31/2002
10	Pete Test	Oregon Farm Bureau	3415 Commercial St SE Suite G Salem, OR 97302	e-mail and FAX	7/31/2002
11	Steve Witbeck	OMI, Inc.	3485 West Goedeck Road Roseburg, OR 97470	FAX	7/31/2002

**Oregon Department of Environmental Quality
 1999-2002 Water Quality Standards Review
Policy Advisory Committee Members**

MEMBERS:	ORGANIZATION
Pat Amedeo	Committee Chair
Nina Bell	Northwest Environmental Advocates
Sharon Beck	Oregon Cattlemen's Association
Bill Gaffi	Clean Water Services
Chris Jarmer	Oregon Forest Industries Council
John Ledger	Associated Oregon Industries
Karen Lewotsky	Oregon Environmental Council
vacant	Tribes
Peter Ruffier	League of Oregon Cities
Aubrey Russell	Oregon Trout
Glen Spain	Pacific Coast Fed. Of Fishermen's Association
Pete Test	Oregon Farm Bureau
Kathryn VanNatta	NW Pulp & Paper Association

Agency Advisors:

Dru Keenan	US Environmental Protection Agency, Region X
Rick Kepler	Oregon Dept. of Fish & Wildlife
David Leland	Oregon Health Services
Jeff Lockwood	National Marine Fisheries Service
Elizabeth Materna	US Fish & Wildlife Service

Department of Environmental Quality (DEQ) Personnel:

Mark Charles	Program Policy & Project Assistance, Manager
Martin Fitzpatrick	WQ Standards Analyst
Rick Hafele	Biomonitoring, Manager
Stephanie Hallock	Agency Director
Mike Llewelyn	Water Quality, Division Administrator
Greg McMurray	Principal Environmental Analyst
Dick Pedersen	Watershed Mgmt, Manager
Manette Simpson	WQ Standards Analyst
Debra Sturdevant	WQ Standards Coordinator
Jennifer Weaver	Administrative Support

Agenda Item H, Rule Adoption: Adoption of Total Maximum Daily Loads (TMDL) Rules
December 13, 2002 EQC Meeting
Attachment D, page 1

State of Oregon

Department of Environmental Quality

Memorandum

To: Dick Pedersen
WQ Watershed Management Section

Date: July 17, 2002

From: Phil Richerson
WQ - Eastern Region

Subject: Presiding Officer's Report for Public Hearing
Hearing Date and Time: July 9, 2002 7:00 PM
Hearing Location: Community Conference Room
Pendleton City Hall
500 SW Dorian
Pendleton, OR 97801
Title of Proposal: Rulemaking Proposal – Adoption of OAR 340-042 Total
Maximum Daily Loads (TMDLs) Rules

The public hearing on the proposed rules regarding Total Maximum Daily Loads was scheduled for July 9, 2002 at 7:00 PM. Only Department staff and family were in attendance. Prior to opening the hearing to receive comments, Dick Pedersen was scheduled to provide an overview of the proposed TMDL rules and answer questions from the audience. However, because there was no audience, there was no overview, no one signed the attendance sheet, and no one signed up to give comments. The hearing was closed at about 8:00 PM.

State of Oregon

Department of Environmental Quality

Memorandum

To: Dick Pedersen
WQ Watershed Management Section

Date: July 15, 2002

From: Karla Urbanowicz
WQ Policy Program and Project Assistance

Subject: Presiding Officer's Report for Public Hearing
Hearing Date and Time: July 15, 2002 2:00 PM
Hearing Location: Room 3A
DEQ Headquarters
811 SW 6th Ave.
Portland, OR 97204
Title of Proposal: Rulemaking Proposal – Adoption of OAR 340-042 Total
Maximum Daily Loads (TMDLs) Rules

The public hearing on the proposed rules regarding Total Maximum Daily Loads was convened on July 15, 2002 at about 2:00 PM. Five people were in attendance in addition to five Department staff. People were asked to sign the attendance form and sign registration forms if they wished to present comments. People were also advised that the formal comment portion of the hearing would be recorded.

Karla Urbanowicz explained the procedures to be followed during the hearing. Prior to opening the hearing to receive comments, Dick Pedersen provided an overview of the proposed TMDL rules and answered questions from the audience.

No one signed up to give comments. At the end of the question and answer session, Karla Urbanowicz asked the audience if anyone wished to provide verbal comments. No one requested to give comments and the hearing was closed at about 3:00 PM.

Attached is the Attendance Form (in files).

Agenda Item H, Rule Adoption: Adoption of Total Maximum Daily Loads (TMDL) Rules
December 13, 2002 EQC Meeting
Attachment D, page 3

State of Oregon

Department of Environmental Quality

Memorandum

To: Dick Pedersen
WQ Watershed Management Section

Date: July 17, 2002

From: Mark Charles
Presiding Officer

Subject: Presiding Officer's Report for Public Hearing
Hearing Date and Time: July 16, 2002 7:00 PM

Hearing Location: EWEB Building
Cafeteria
500 E 4th Ave.
Eugene, OR 97401

Title of Proposal: Rulemaking Proposal – Adoption of OAR 340-042 Total
Maximum Daily Loads (TMDLs) Rules

The public hearing on the proposed rules regarding Total Maximum Daily Loads was scheduled but never convened on July 16, 2002. Although Department personnel, including Mark Charles, Dick Pedersen and Loretta Pickerell, and Environmental Quality Commissioner Deirdre Malarkey attended the session, no members of the public appeared between approximately 7:00 PM and 8:00pm.

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

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

Yes, applicable federal requirements are found in the federal Water Pollution Control Act Section 303(d) (33 USC Section 1313(d)) and implementing regulations in 40 CFR Part 130.

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

Federal requirements specify that TMDLs include wasteload allocations for point sources and load allocations for nonpoint sources that are sufficient to achieve and maintain water quality standards in a water body that currently does not meet those standards. The federal requirements do not specify what strategies must be used to comply with those allocations.

- 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?**

Yes. The federal requirements for TMDLs address procedural and substantive issues of concern to Oregon (e.g., wasteload and load allocations for point and nonpoint sources, natural background sources, margin of safety, reserve capacity, and public involvement). Information reflecting Oregon's water quality situation has been considered in the federal process establishing and revising TMDL requirements.

- 4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?**

The proposed rules clarify for the public and regulated community the procedures and criteria the Department uses to establish TMDLs, including implementation of strategies to achieve wasteload and load allocations.

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

No. EPA revised regulations governing the TMDL program in July 2000, but has delayed the effective date of those revisions until April 2003 to allow reconsideration under the Bush administration. Since then, EPA has signaled intent to repeal those revisions, but has not provided clear direction on timing or alternative approaches. The proposed rules are consistent with both the federal TMDL regulations currently in effect and those scheduled to take effect in April 2003 if not repealed. The Department does not anticipate significant changes in the federal program that would be inconsistent with the rules proposed here.

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

The proposed rules allow reserve capacity to be allocated in a TMDL to provide for future growth and new or expanded sources. TMDLs will explain a decision not to allocate reserve capacity.

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

Yes. The proposed rules describe factors the Department will consider in determining and distributing wasteload and load allocations among sources, and provide for advisory group and public participation to help ensure equity.

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

If pollutant loads from nonpoint sources are not addressed in TMDLs, additional burden and costs for restoring water quality could fall to point sources of pollutants that are regulated through wastewater discharge permits.

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 proposed rules require TMDLs to include management strategies to achieve allocations and water quality standards and a process to implement those strategies, including monitoring and reporting to DEQ. The current federal TMDL rules do not explicitly require implementation plans. Implementation is essential to achieving the goal of TMDLs, to meet water quality standards.

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

Yes. The proposed rules require TMDLs to include management strategies to restore water quality. Those strategies that are technology-based will rely on demonstrated and available technologies.

11. Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

Yes. The proposed rules require TMDLs to include management strategies to reduce pollutant loading from point and nonpoint sources. Those strategies may include measures to prevent pollution and may stimulate additional pollution prevention planning.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Total Maximum Daily Loads (TMDLs) Rules
OAR 340, Division 42

Fiscal and Economic Impact Statement

Introduction

The proposed rules would adopt the procedures and practices the Department currently follows to establish and implement TMDLs for waterbodies that do not meet water quality standards.

Section 303(d) of the Clean Water Act requires the Department to establish TMDLs for waterbodies included on Oregon's 303(d) list of waters that do not meet water quality standards. A TMDL identifies the maximum amount of a pollutant a waterbody can receive and still meet water quality standards and allocates portions of that amount to contributing sources or groups of sources. A TMDL also includes a Water Quality Management Plan (WQPM) describing strategies to achieve the targeted allocations. Federal, state, or local government agencies with authority over contributing sources (called designated management agencies or DMAs) are responsible for implementing the WQMPs through point source permits and nonpoint source implementation plans.

Summary of Fiscal and Economic Impacts

The procedural rules proposed do not have a direct economic or fiscal impact on the public, small or large businesses, local governments, or state agencies. These entities may be affected by TMDLs issued pursuant to the proposed rules, specifically by the wasteload and load allocations for point and nonpoint sources and the management strategies to achieve those allocations. These strategies may require modifications to wastewater discharge permits for point sources and other management strategies to reduce pollutant loading from nonpoint sources. Point sources and nonpoint sources affected may include small and large businesses, individuals, local governments and state agencies.

The indirect fiscal and economic impacts from implementation will vary depending on the management strategies required in a TMDL and the extent to which sources must alter existing practices.

General Public

The rules establish procedures allowing the general public to participate in developing and implementing TMDLs. Public involvement is voluntary; the cost to the general public in terms of voluntary time and effort is not quantifiable, but may be significant depending on the interest and dedication of people choosing to participate.

These rules will indirectly benefit the general public by clarifying the procedures the Department uses to develop and implement TMDLs. Most importantly, successful implementation of TMDLs will restore water quality to support beneficial uses of water resources throughout the state.

Small Business

Impacts on small businesses are discussed in *Summary of Fiscal and Economic Impacts* above. Small businesses could be indirectly affected by the proposed rule if they hold permits for point sources or are responsible for nonpoint sources addressed in a TMDL.

Large Business

Impacts on large businesses are discussed in *Summary of Fiscal and Economic Impacts* above. Large businesses could be indirectly affected by the proposed rule if they hold permits for point sources or are responsible for nonpoint sources addressed in a TMDL.

Local Governments

Impacts on local governments are discussed in *Summary of Fiscal and Economic Impacts* above. Local governments could be indirectly affected by the proposed rule if they hold permits for point sources or are responsible for nonpoint sources addressed in a TMDL.

TMDLs developed under the proposed rules will also affect local governments required to implement the management strategies identified. Specifically, TMDLs will identify designated management agencies (DMAs) responsible for implementing management strategies to control discharges from sources of pollution under their authority. Particularly in urban or rural residential areas, DMAs may be local governments. Examples of implementation options local governments may use include establishing minimum vegetated buffers to shade streams, revising building codes, adopting development guidelines and controlling stormwater discharges.

The fiscal and economic impacts from implementation will vary depending on the management strategies required in a TMDL and the extent to which a local government is already implementing required strategies.

State Agencies

DEQ

The Department has already applied the proposed procedures to establish and implement TMDLs. The proposed rules do not generate revenue for DEQ. Implementation of the rules will not require additional staff or funding.

Other Agencies

Impacts on state agencies are discussed in *Summary of Fiscal and Economic Impacts* above. As described, agencies such as Oregon Department of Transportation or Oregon Department of Fish and Wildlife could be indirectly affected by the proposed rules if they hold permits for point sources, are responsible for nonpoint sources addressed in TMDLs or are designated management agencies for sources under their authority.

As provided by the Forest Practices Act and Senate Bill 1010, the Oregon Department of Forestry (ODF) and Oregon Department of Agriculture (ODA) are responsible for implementing TMDLs for state and private forestry and agricultural sources, respectively. To the extent possible, ODF and ODA will use existing plans governing forest practices and agricultural activities to satisfy TMDL requirements. Both agencies may face additional workloads to evaluate whether existing plans will achieve TMDL allocations and to develop additional plans as necessary.

Assumptions

This analysis is based on existing state and federal laws and regulations that establish requirements for maintaining and restoring water quality.

Housing Cost Impact Statement

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

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Total Maximum Daily Loads (TMDLs) Rules
OAR Chapter 340, Division 42

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rules establish general procedures and practices the Department will use to establish and implement Total Maximum Daily Loads (TMDLs) for waters of the state that do not meet water quality standards.

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

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

The proposed rules require implementation of management strategies to achieve wasteload and load allocations in TMDLs. Designated management agencies achieve wasteload allocations for point sources through wastewater permitting processes and achieve load allocations for nonpoint sources through implementation plans. Both the wastewater permits and implementation plans are considered land use activities.

As appropriate, the Department will require designated management agencies to provide evidence of compliance with land use requirements. Evidence may be in the form of a Land Use Compatibility Statement for permitted sources or other appropriate evidence in an implementation plan for other sources.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes

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c. If no, apply the following criteria to the proposed rules.

Not applicable.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not applicable.

Division

Intergovernmental Coordinator

Date

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State of Oregon
Department of Environmental Quality

Memorandum

Date: November 25, 2002
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item I, Rule Adoption: Oil Spill Contingency Planning and Fees
December 12-13, 2002, EQC Meeting

Department Recommendation The Department recommends the Commission adopt the proposed Oil Spill Planning and Fees rule (a new Division, OAR 340-141) as presented in Attachment A.2, and repeal current planning requirements (OAR 340-047) which are no longer needed.

Need for Rulemaking The 2001 Oregon Legislature passed House Bill 2150 (HB 2150) which modified Oregon Revised Statute (ORS) 468B.300-468B.500 (Oil or Hazardous Material Spillage). HB 2150 required the Environmental Quality Commission (Commission) to adopt rules that define oil spill response zones and identify the type and amount of oil spill response equipment that must normally be resident¹ in each zone. In HB 2150, the Legislature amended and added certain definitions and made other changes to the requirements of ORS 468B.300-468B.500. The proposed rule contains language that implements these changes. Further, this proposed rule is in a new Division that places planning rules in order with emergency response rules (OAR 340-142) to make them easier for the regulated community to use.

Effect of Rule The proposed rule implements HB 2150 by:

1. Adopting standards for oil spill contingency plan approval, including a specific requirement to establish planning zones and define the equipment that must be resident in those zones.
2. Identifying the National Interagency Incident Management System – Incident Command System (NIIMS-ICS) as the standard system for use by the Department and persons responding to a release or threat of release of oil or hazardous materials.
3. Adding language to implement and explain 2001 statutory changes including:

¹ "resident" is an industry term incorporated in this rule to convey statutory expectations that the equipment will be stored close to where it must be used.

- Defining the nature and structure of contract arrangements between plan holders and the service providers used to support an oil spill response;
- Including in the planning regulations liquid product pipelines that connect the major oil producers to the distribution network of storage facilities;
- Naming the Department as the lead agency for oil and hazardous material spills;
- Requiring the Department to appoint a State On-Scene Coordinator (SOSC) for oil and hazardous material spills;
- Adding to the Department's authority to require spill response drills as a part of plan approval; and
- Listing new statutory fees for covered vessels and facilities. Fees are used to support the plan review and drill program functions of the Department.

**Commission
Authority**

The Commission has authority to take action under ORS 468B.350, 468B.370 and 468B.405.

**Stakeholder
Involvement**

The Emergency Response Advisory Committee (ERAC), which includes members of the maritime and petroleum industries, environmental organizations, and representatives of coordinating agencies, was involved in developing the proposed rule. The ERAC was asked to review the current and proposed rule and make recommendations for improvement. The starting point for discussion on the new planning standards was the existing non-rule set of "benchmarks" which have been in use by both Oregon and Washington since 1995. The majority of the ERAC strongly supported adopting the benchmarks into rule.

The proposed rule is a result of the ERAC process and comments received from the public. The ERAC will continue to meet after rule adoption and assist the Department in rule implementation. Since the proposed rule contains essentially the same standards as the 1995 benchmarks, implementation will require only minor adjustments in policy and procedures. Please see Attachment G for the ERAC membership and report.

Public Comment

A public comment period was open from April 1, 2002, to May 15, 2002 and included public hearings in Portland and Coos Bay. A total of thirteen people attended the hearings. Oral comments were provided by two individuals and seven written comments were received. A summary of the public input and Department responses are provided in Attachment B. The Hearing Officer's Report is provided in Attachment C.

Key Issues

Application of oil spill planning requirements to cargo and passenger vessels and hazardous liquid pipelines.

Planning, exercise and response requirements placed on oil tankers by the Oil Pollution Act of 1990 (OPA) do not apply to cargo and passenger vessels or hazardous liquid pipelines. In 1991, the Legislature made the decision to establish an Oregon Oil Spill Contingency Planning Program that includes cargo and passenger vessels. In 2001, the Legislature expanded the universe of regulated facilities by including pipelines which transport hazardous liquids. These proposed rules implement the Legislature's decisions. A number of the comments provided on the rules urged the Department to rely only on the OPA for Oil Spill Planning requirements. To do so, would exclude cargo vessels and pipelines and be contrary to Oregon statute.

Identification of planning zones and equipment requirements.

During the public comment period, concern was expressed that specific types, quantities and capabilities of equipment required in oil spill contingency planning zones are overly protective. Similar practices have long been applied and accepted in Oregon. These practices have been captured in:

- Vessel Contingency Plan Planning Standards for Oregon and Washington – 1995 (Attachment H), jointly published by Oregon and Washington; and
- Oil Containment and Recovery Benchmarks for Facilities – Oil Spill Response Review Benchmarks – 1993.

This proposed rule is consistent with the intent of HB 2150 in maintaining necessary protection.

Coordination with the rules and regulations adopted by the State of Washington and the United States Coast Guard.

ORS 468B.350 requires that oil spill contingency planning rules adopted by the Commission “....shall be coordinated with the rules and regulations adopted by the State of Washington and the United States Coast Guard....” The proposed rule, although more stringent than OPA rules applied by the Coast Guard, is essentially equivalent to the 1993 and 1995 guidance used by Oregon and the State of Washington for facilities and vessels. Reversion to less stringent OPA standards would reduce the protection currently provided to Oregon waters. Because Oregon and Washington share jurisdiction for some waters, relaxing current practice would undercut the oil spill planning program of the State of Washington.

Costs and fees.

Adoption of the proposed rule will not increase costs to industry because the needed equipment and material is already present and being

maintained. With one exception, all facilities and ships meet the requirements of the proposed rule. The 2001 Legislature, with the support of industry, increased fees to maintain the Department's ability to review oil spill contingency plans, conduct drills with facilities and ships and prepare to respond to spills.

Innovative or more efficient approaches.

There was a concern that the proposed rule will stifle innovation and preclude plan holders from finding better and more efficient ways to achieve the same level of environmental protection. To address the concern, the proposed rule contains language allowing the Department to approve an alternate plan that is equally protective of the environment. Proposing an alternative method will require some effort to demonstrate its effectiveness, but will provide an opportunity for increased efficiency and cost savings.

Next Steps

The proposed rule would become effective upon filing with the Secretary of State. A Rule Implementation Plan is available upon request.

Currently approved oil spill contingency plans will remain valid until their expiration. All current plans will expire within the next five years. New plans submitted will be reviewed based on the proposed rule. The Department will supply a guide to plan writers giving the necessary instruction on submitting an approvable plan based on the proposed rule.

Attachments

- A. Proposed Rule
 - 1. Summary of Rule
 - 2. Proposed Rule
- B. Public Input and Department's Response
- C. Presiding Officers' Report on Public Hearings
- D. Relationship to Federal Requirements
- E. Fiscal and Economic Impact Statement
- F. Land Use Evaluation Statement
- G. Advisory Committee Membership and Report
- H. 1995 Vessel Contingency Planning Standards

Available Upon Request

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

Approved: Michael J. Zolotor
Section:
Division:
Report Prepared by: Ed Wilson (503) 229-5373

Attachment A.1

Summary of Rule

The proposed rule includes planning standards and adjusts the fees required for covered vessels and covered facilities (such as bulk storage tanks with docks, interstate pipelines and barge operations) that manage petroleum in Oregon waters. The Department works with approximately two dozen facilities and in the course of a year over three thousand vessel trips are made in Oregon waters.

The proposed rule defines the Department's requirements for a covered vessel or facility to prepare, support and update an approved Oil Spill Contingency Plan prior to transporting and storing bulk petroleum. Contingency plans approvable in Oregon include specific content unique to Oregon. Oregon statutes (ORS 468B) regulates cargo vessels as well as tank vessels. Each year vessels similar to the New Carissa make over 1,600 trips in Oregon. If the state did not include cargo vessels in the contingency plan regulations, these vessels would not be required to have an oil spill contingency plan. Additionally, if cargo vessels were not regulated in Oregon, there would be no incentive to locate response equipment in areas such as Coos Bay.

1. Fees

The changes made in fees by the 2001 Legislature became effective in July 2001 for all covered vessels and facilities. The proposed rules include these fees (see OAR 340-141-0010(2), attachment A-2, page 14). The Department has been collecting fees since they became effective and the fees can only be used to review contingency plans and conduct inspections, exercises, training and activities covered under Oregon Revised Statute 468B.345 to 468B.400.

- The cargo vessel fee is \$48 per trip.
- The facility fee is \$4500 per year.
- The over 300 gross tons self-propelled tank vessel fee is \$836 per trip.
- The 300 gross tons or less self-propelled tank vessel fee is \$42 per trip.
- The tank barge fee if not self-propelled is \$42 per trip.

2. Planning Standards Established

The 2001 Legislature directed the Commission to adopt rules defining oil spill response zones within the navigable waters of the state and the amount of equipment identified in an oil spill contingency plan that is required to be regularly located in those zones. The proposed rules set boundaries for these zones and identify equipment requirements in each zone (see OAR 340-141-0150(3), attachment A-2, page 25). Requirements are tailored to zones based on the potential worst case discharge (facility, vessel or pipeline), the environmental threat posed by a spill and the nature of the product likely to be spilled. The orderly use of resources is a critical feature of a successful spill response and the proposed rule puts resource level requirements into a matrix of timed requirements. Plan holders will be required to demonstrate that they have the ability to respond to spills and recover specific percentages of their worst case potential spill volume. The Columbia River planning

standards incorporated experience from previous spills (An Ping 6, M/V Central, "Kalama mystery spill"), trajectory analysis and the use of geographic response plans. Planning standards for Coos Bay were developed by the Department from a federal trajectory analysis study, field verification and consultation with Coos Bay spill responders.

3. Drills and Exercises

The proposed rule states as a condition of initial and continued approval that the plan will be tested to show how it meets Oregon requirements (see OAR 340-141-0200, attachment A-2, page 38). Plans submitted that include new or unproven response procedures are required to be drilled. The Department may require an annual drill exercise to confirm that plan holders keep employees and contractors ready to respond. In the event a plan holder changes their operation, affecting their ability to respond, the Department may require the plan holder to conduct an exercise or call for a surprise drill. If a drill or an exercise shows the plan is not functional as approved, the Department will direct the plan holder to take extra steps to correct the deficiency or rewrite the plan and submit it for re-approval.

Drills are a normal part of the work calendar for most covered vessels and facilities. The Department included a provision in the proposed rule that allows successful drills conducted to meet other regulatory or training requirements to be credited as equivalent to Department required drills. Further, the Department has included in the proposed rule that members of cooperatives who share resources do not need to conduct drills of all elements of their plan if the specific resource has been part of a successful cooperative drill that year.

Attachment A.2
Proposed Rule

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION 141
OIL SPILL CONTINGENCY PLANNING AND FEES

Contents:

340-141-0001 Purpose and Applicability
340-141-0005 Definitions
340-141-0010 Program Administration and Compliance Fees
340-141-0100 Plan Preparation
340-141-0130 Plan Format Requirements
340-141-0140 Plan Content Requirements
340-141-0150 Oil Spill Contingency Planning Standards
340-141-0160 Prevention Strategies for Facilities
340-141-0170 Prevention Strategies for Vessels
340-141-0180 Plan Submittal
340-141-0190 Plan Review
340-141-0200 Drills, Exercises, and Inspections
340-141-0210 Plan Maintenance and Use
340-141-0220 Plan Update Timeline
340-141-0230 Noncompliance with Plan Requirements
340-141-0240 Equipment Mutual Aid

340-141-0001
Purpose and Applicability

(1) The purpose of these rules is to establish:

- (a) Fees for covered vessels and facilities;
- (b) Contingency preparedness and planning standards for covered vessels and facilities needing approved plans before operating in Oregon; and
- (c) Standards for preparation, management and maintenance of contingency plans.

(2) Applicability:

- (a) The owner or operator of an onshore facility, offshore facility and covered vessel must prepare, submit and use oil spill prevention and emergency response plans in accordance with the requirements of this Division. Federal plans required under 33 CFR 154, 40 CFR 109, 40 CFR 110, or the Federal Oil Pollution Act of 1990 or plans required by other states may be submitted to satisfy plan requirements under this Division, if the

Department deems that such federal or state requirements equal or exceed those of the Department.

Stat. Auth.: ORS 468.020, and ORS 468B.345 - ORS 468B.405

Stats. Implemented: ORS 468B.300 - ORS 468B.500

Hist.: DEQ 22 1992, f. & cert. ef. 8-13-92. renumbered from OAR 340-047-120.

340-141-0005

Definitions

As used in this Division:

- (1) "Average Most Probable" spill, release or discharge means the probable volume of oil that may spill as defined in a plan considering the history of spills from similar facilities or vessels of the same class operating on the west coast of the United States. It may also be defined as the lesser of one percent of the worst case spill, release or discharge, or 50 barrels, when used as a planning volume.
- (2) "Best Achievable Protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures and operational methods that provide the greatest degree of protection available considering:
 - (a) The additional protection provided by the measures;
 - (b) The technological feasibility of the measures; and
 - (c) The cost of the measures.
- (3) "Best Achievable Technology" means the technology that provides the greatest degree of protection, taking into consideration processes that are currently in use, processes that have been developed or processes that could feasibly be developed with reasonable expenditures on research and development. In determining what is best achievable technology, the Director will consider the effectiveness, engineering feasibility and commercial availability of the technology.
- (4) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder or granular form capable of being conveyed by a pipe, bucket, chute or belt system.
- (5) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel of 300 or more gross tons. "Cargo vessel" does not include a vessel used solely for commercial fish harvesting.
- (6) "Columbia River" means the length of the Columbia River from where it enters the State of Oregon from the State of Washington to the point where it leaves the state at river mile zero at the Pacific Ocean.

(7) "Commercial Fish Harvesting" means taking food fish with any gear unlawful for angling under ORS 506.006, taking food fish in excess of the limits permitted for personal use, or taking food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels.

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

(9) "Contingency Plan" or "Plan" means an oil spill prevention and emergency response plan required under ORS 468B.345.

(10) "Contract or other approved means" in a response or a plan means:

(a) A written contract between a covered vessel or facility owner or operator and an oil spill removal organization that identifies and ensures the availability of specified personnel and equipment within stipulated response times in specified oil spill response Zones;

(b) Certification by the vessel or facility owner or operator that specified personnel and equipment are owned, operated or under the direct control of the vessel or facility owner or operator and are available within stipulated response times in specified oil spill response Zones;

(c) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment that are available to respond to an oil spill within stipulated response times in specified oil spill response Zones; or

(d) A written document that:

(A) Identifies personnel, equipment and services capable of being provided by the oil spill removal organization within stipulated response times in specified oil spill response Zones;

(B) Acknowledges that the oil spill removal organization intends to commit the identified resources in the event of an oil spill;

(C) Permits the commission to verify the availability of the identified oil spill removal resources through tests, inspections and exercises; and

(D) Is referenced in an oil spill contingency plan for the vessel or facility.

(11) "Covered vessel" means a tank vessel, self-propelled tank vessel, cargo vessel or passenger vessel.

(12) "Dedicated response vessel" means a vessel that limits service exclusively to recovering and transporting spilled oil, tanker escorting, deploying oil spill response equipment, supplies and personnel, spill response-related training, testing, exercises and research or other oil spill removal and related activities.

(13) "Department" means the Department of Environmental Quality.

(14) "Director" means the Director of the Department of Environmental Quality.

- (15) "Discharge" means any emission other than natural seepage of oil, whether intentional or unintentional. "Discharge" includes but is not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping oil.
- (16) "Drill" means the simulated performance of a spill response or task predicted in a plan.
- (17) "Effective Daily Recovery Capacity" or "EDRC" means the factor used to estimate limitations on equipment efficiency from variables such as sea state, current velocity or visibility.
- (18) "Field Document" means a simplified response plan for onsite use in the event of a spill, summarizing key notification and action elements.
- (19) "Facility" means a pipeline or any structure, group of structures, equipment or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil per day. "Facility" does not include:
- (a) A railroad car, motor vehicle or other rolling stock while transporting oil over the highways or rail lines of this state;
 - (b) An underground storage tank regulated by the Department of Environmental Quality or a local government under ORS 466.706 - 466.882 and 466.994; or
 - (c) Any structure, group of structures, equipment or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting 10,000 gallons or more of oil per day but does not receive oil from tank vessels, barges or pipelines.
- (20) "Initial assessment" is a task assigned to first responders who are participating with the Department in a Unified Command or Incident Command System, and includes the following tasks:
- (a) Verifying the spill location;
 - (b) Establishing the type of incident based on products and conditions;
 - (c) Confirming or correcting the reported quantity released or area extent of the contamination;
 - (d) Reporting the efficacy of the initial containment;
 - (e) Projecting immediate resource needs to control the release; and
 - (f) Reporting local knowledge about the probable impacts of the release.
- (21) "Interim Storage Site" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site. Interim storage sites include trucks, barges and other vehicles used to store recovered oil or oily waste until transport begins.
- (22) "Maritime Association" means an association or cooperative of marine terminals, facilities, vessel owners, vessel operators, vessel agents or other maritime industry groups that

provides oil spill response planning and spill related communications services within the state.

(23) "Maximum Extent Practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures and best achievable technology considering the effectiveness, engineering feasibility, commercial availability, safety and cost of the measures.

(24) "National Interagency Incident Management System" or "NIIMS" means a style of Incident Command (IC). This is the type of organizational structure adopted by the State of Oregon.

(25) "Navigable Waters" means the Columbia River, the Willamette River up to Willamette Falls, the Pacific Ocean and estuaries to the head of tide water.

(26) "Non-Persistent Oil" means those petroleum products with physical characteristics less dense than persistent oils, also referred to as Group I petroleum products.

(27) "Northwest Area Contingency Plan" means the regional emergency response plan developed in accordance with federal requirements and adopted as an annex to the State of Oregon all hazard plan as required by ORS 466.620.

(28) "Offshore Facility" means any facility located in, on or under any of the navigable waters of the state.

(29) "Oil" or "Oils" means oil including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse, and any other petroleum-related product.

(30) "Oil Spill Contingency Response Planning Standards" means the Department's standards for reviewing oil spill contingency plans. The planning standards represent the Department's best general estimate of types and quantities of personnel and equipment required to ensure adequate response to any location.

(31) "Oil Spill Response Planning Zones" are geographic areas of the State for which the Department has established minimum planning standards. The Oil Spill Planning Zones are as follows:

(a) "Columbia River Zone" includes the Columbia River from where it enters the State of Oregon from the State of Washington to the point where it leaves the state at river mile zero at the Pacific Ocean, and extending 25 miles inland adjacent to the waterway. It is divided into four sub-Zones:

(A) "Columbia River, Upper River sub-Zone" means the Columbia River from the point where it enters Oregon from the State of Washington to the Bonneville Dam;

(B) "Columbia River, Portland sub-Zone" means the Willamette River below Willamette Falls, and the Columbia River between the Bonneville Dam and river mile 85 at St. Helens;

- (C) "Columbia River, Rainier sub-Zone" means the Columbia River between river mile 85 at St. Helens and river mile 40 at Bugby Hole; and
- (D) "Columbia River, Astoria sub-Zone" means the Columbia River between river mile 40 at Bugby Hole and river mile zero at the Pacific Ocean.
- (b) "Coastal Bays Zone" means all ports on the Oregon coast where covered vessels make calls and extending inland 25 miles;
- (c) "Open Ocean Zone" is the Pacific Ocean from the mark of average high tide out to the three mile limit of Oregon's authority; and
- (d) "Inland Zone" means areas of Oregon where oil spill risks can be reduced through planning and contingency strategies, and not included in another listed Planning Zone.
- (32) "Oily Waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.
- (33) "Onshore Facility" means any facility, located in, on or under any land of the state, other than submerged land, that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or adjoining shorelines.
- (34) "Owner or Operator" means:
- (a) In the case of an onshore or offshore facility, any person owning or operating the facility.
- (b) In the case of a vessel, any person owning, operating or chartering by demise, the vessel.
- (c) In the case of an abandoned onshore or offshore facility, or vessel, the person who owned or operated the facility or vessel immediately before its abandonment.
- (35) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for compensation.
- (36) "Persistent Oil" means those petroleum products with environmental degradation resistance or viscosity characteristics equal to and greater than fuel oil having a specific gravity of more than 0.8, also referred to as Group II and higher petroleum products.
- (37) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.
- (38) "Person Having Control Over Oil" includes, but is not limited to, any person using, storing or transporting oil immediately prior to entry of such oil into the navigable waters of the state, and specifically includes carriers and bailees of such oil.

- (39) "Pipeline" means a facility, including piping, compressors, pump stations and storage tanks used to transport oil between facilities or between facilities and tank vessels.
- (40) "Primary Response Contractor" means a response contractor that is identified in a required plan and is committed to the plan holder by contract or other approved means.
- (41) "Region of Operation" with respect to the holder of a contingency plan means the area where the operations that require a contingency plan are located.
- (42) "Resident" means that the resource is kept ready for use at an address within the planning Zone (or sub-Zone if planning standards specify) in which the facility or vessel is located.
- (43) "Response Contractor" means an individual, organization, association, or cooperative that provides or intends to provide equipment, personnel for oil spill containment, cleanup or removal activities.
- (44) "Self-propelled tank vessel" means a tank vessel that is capable of moving under its own power.
- (45) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.
- (46) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state, as defined in ORS 468B.005, except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468, 468A, 468B or 469, ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal law or while being stored or used for its intended purpose.
- (47) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue. "Tank vessel" does not include:
- (a) A vessel carrying oil in drums, barrels or other packages;
 - (b) A vessel carrying oil as fuel or stores for that vessel; or
 - (c) An oil spill response barge or vessel.
- (48) "Trip" means travel to the appointed destination and return travel to the point of origin within the navigable waters of the State of Oregon.
- (49) "Waters of the State" includes lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(50) "Worst case spill" means:

- (a) In the case of a vessel, a spill of the entire cargo and fuel of the tank vessel complicated by adverse weather conditions.
- (b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

Stat. Auth.: ORS 468.020, and ORS 468B.345 - ORS 468B.405

Stats. Implemented: ORS 468B.300 - ORS 468B.500

Hist.: DEQ 45, f. 6-15-72, ef. 7-1-72; DEQ 30-1991, f. & cert. ef. 12-20-91; DEQ 22-1992, f. & cert. ef. 8-13-92; DEQ 21-1996(Temp), f. & cert. ef. 10-15-96; DEQ 6-1997, f. & cert. ef. 3-31-97, renumbered from OAR 340-047-0010.

340-141-0010

Program Administration and Compliance Fees

- (1) All offshore and onshore facilities required to develop oil spill prevention and emergency response plans under ORS 468B.345 will be assessed an annual fee of \$4,500. The fee is due in July, and covers the 12 month period commencing July 1.
- (2) Covered vessels and facilities are subject to the following fees:
 - (a) Self-propelled tank vessels of more than 300 gross tons: \$836 per trip;
 - (b) Self-propelled tank vessels of 300 gross tons or less: \$42 per trip;
 - (c) Tank vessels and barges that are not self-propelled: \$42 per trip; and
 - (d) Cargo vessels: \$48 per trip.
- (3) Fees assessed under section (2) must be remitted to the Department within 30 days of the conclusion of each trip.
- (4) Moneys collected under this rule will be deposited in the State Treasury to the credit of the Oil Spill Prevention Fund established by ORS 468B.410.

Stat. Auth.: ORS 468.020, and ORS 468B.345 - ORS 468B.500

Stats. Implemented: ORS 468B.405

Hist.: DEQ 30-1991, f. & cert. ef. 12-20-91; DEQ 21-1996(Temp), f. & cert. ef. 10-15-96; DEQ 6-1997, f. & cert. ef. 3-31-97, renumbered from OAR 340-047-0035.

340-141-0100

Plan Preparation

- (1) The owner or operator of each onshore and offshore facility handling or storing 10,000 gallons of oil or more per day and of each covered vessel must prepare a contingency plan for the prevention, containment and cleanup of oil spills from the facility or vessel into the

navigable waters of the state, and for the protection of fisheries and wildlife, other natural resources and public or private property from such spills.

(2) Plans must be in a form usable for oil spill prevention, control, containment, cleanup and disposal operations and must be capable of being located as required by OAR 340-141-0210 (1) and (2).

(3) Plans must be thorough and contain enough information, analyses, supporting data and documentation to demonstrate the plan holder's ability to meet the requirements of this Division.

(4) Plans must be designed to promptly and properly remove oil and minimize environmental damage to the maximum extent practicable. They must cover a variety of spill sizes, including average most probable spills and worst case spills. At a minimum, plans must meet the plan content criteria specified in OAR 340-141-0140 and meet the planning standards in OAR 340-141-0150.

Stat. Auth.: ORS 468.020 and ORS 468B.395

Stats. Implemented: ORS 468B.355

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0130

340-141-0130

Plan Format Requirements

(1) Plans must be prepared using a combination of narrative and graphic formats that provide both detailed spill response information and quick access to general information needed during an emergency response.

(2) Plans must be divided into a system of chapters and appendices. Chapters and appendices must be numbered. Chapters should be reserved primarily for information on emergency response and cleanup operations, such as notification procedures or description of the spill response organization structure. Appendices should be used primarily for supplemental background information and documentation such as response strategies or descriptions of drills and exercises. The spill prevention strategies may be part of the appendices.

(3) A system of index tabs must be used to provide easy reference to particular chapters and appendices.

(4) Plans must be formatted to allow replacement of revised pages and components without requiring replacement of the entire plan.

(5) Plans must include a simplified field document that summarizes key notification and action elements of the plan and is suitable for onsite use in the event of a spill.

(6) Plans may be submitted and updated electronically if all required plan components are in a form the Department can easily access. The Department will determine which types of electronic media are acceptable for the plan submittal.

(7) Composite plans that rely on standard documents the Department already has on file may incorporate those documents by reference.

Stat. Auth.: ORS 468.020 and ORS 468B.395

Stats. Implemented: ORS 468B.345 - ORS 468B.390

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0140

340-141-0140

Plan Content Requirements

(1) Submittal Agreement. Each plan must contain a submittal agreement that:

(a) Includes the name, address and phone number of the submitting party;

(b) Verifies acceptance of the plan, including any incorporated contingency plans, by the owner or operator of the facility or covered vessel by either signature of the owner or operator or a person with authority to bind the corporation that owns or operates the facility or covered vessel;

(c) Commits to execution of the plan, including any incorporated contingency plans, by the owner or operator of the facility or covered vessel, and verifies authority for the plan holder to make appropriate expenditures in order to execute plan provisions; and

(d) Includes:

(A) In the case of a facility, the name, location including latitude, longitude and river mile, and address of the facility, type of facility, starting date of operations, types of oils (see definition of oil) handled, volume of oil stored and maximum volume of oil capable of being stored.

(B) In the case of a covered vessel, the vessel's name, the name, location and address of the owner or operator, official identification code or call sign, country of registry, common ports of call in Oregon, type of oils (see definition of oil) handled, volume of oil transported as fuel and expected period of operation in state waters.

(C) In the case of a covered vessel enrolled in a cooperative or maritime association plan, the vessel may provide evidence of coverage in lieu of paragraph (B) of this subsection.

(2) Amendments. Each plan must include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must provide for a record of the section amended, the date that the old section was replaced with the amended section, verification that the Department was notified of the amendment pursuant to OAR 340-141-0220(3) and the initials of the individual making the change. A description of the amendment and its purpose must also be included in the log sheet, or filed in the form of an amendment letter immediately after the log sheet.

- (3) Table of Contents. Each plan must include a detailed table of contents based on chapter, section, appendix numbers and titles and tables and figures. If the plan is an integrated plan used to also satisfy USCG and USEPA requirements, a cross reference must be included.
- (4) Purpose and Scope. Each plan must describe the purpose and scope of that plan, including:
- (a) The region of operation covered by the plan;
 - (b) The onshore facility, offshore facility or covered vessel operations covered by the plan;
and
 - (c) The size and type of the average most probable spill and the worst case spill from the facility or covered vessel.
- (5) Updates. Each plan must describe the events or time periods that will trigger updates of the plan.
- (6) Implementation Strategy. Each plan must present a strategy for ensuring use of the plan for spill response and cleanup operations as required by OAR 340-141-0210.
- (7) Spill Response System. Each plan must describe the organization of the spill response system, including all task assignments anticipated by the end of the first full operational period, or necessary to manage the resources required by the 12 hour planning standard, given a response to an Average Most Probable Discharge. Plans must use a National Interagency Incident Management System (NIIMS) type of incident management system, as described in the Northwest Area Contingency Plan (NWACP).
- (8) Contractor Identification. Each plan must identify the primary response contractor and subcontractors (except equipment rentals or supply vendors) whose services are bound to the plan by a contract or other approved means:
- (a) If a plan holder is a member of an oil spill response cooperative and relies on that cooperative to perform or supplement its response operations within the regions of operations covered by the plan, the plan must state the cooperative's name, address, phone number and response capability. The plan must also include proof of cooperative membership; or
 - (b) If a plan holder is not a member of an oil spill response cooperative, for each contractor, the plan must state that contractor's name, address, phone number or other means of contact at any time of the day, and response capability (e.g., land spills only). For each contractor, the plan must include a letter of intent signed by the contractor which indicates the contractor's commitment to respond within the specified time period, with personnel and equipment listed in (12) and (13) of this section. Copies of written contracts or agreements with contractors must be available for inspection, if requested by the Department.

- (9) Relationship to Other Plans. Each plan must briefly describe its relation to all applicable local, state, regional and federal government spill response plans. The plan must describe how the plan holder's response organization will be integrated into the Northwest Area Contingency Plan.
- (10) Spill Detection. Each plan must list procedures that will be used to detect and document the presence and size of a spill, including methods which are effective during low visibility conditions. The plan must also describe the use of mechanical or electronic monitoring or alarm systems (including threshold sensitivities) used to detect oil discharges into adjacent land or water from tanks, pipes, manifolds and other transfer or storage equipment.
- (11) Notifications. Each plan must describe procedures that will be taken to immediately notify appropriate parties that a spill has occurred.
- (a) The plan holder must maintain a notification call out list that must be available for inspection upon the request of the Department, and that:
- (A) Provides a contact at any time of the day for all spill response personnel identified under section (7) of this rule, including the contact's name, position title, phone number or other means of contact for any time of the day, and an alternate contact in the event the individual is unavailable;
- (B) Lists the name and phone number of all government agencies that must be notified in the event of an oil spill pursuant to requirements under ORS 466.635; and
- (C) Establishes a clear order of priority for immediate notifications.
- (b) The plan must identify a central reporting office or individual who is responsible for implementing the call out process.
- (12) Response Personnel. Each plan must describe the personnel, including contract personnel available, to respond to an oil spill, including:
- (a) A job description for each type of spill response position needed as indicated in the spill response organization scheme addressed in section (7) of this rule, or a reference to a recognized NIIMS position;
- (b) The number of personnel available to perform the duties of each type of spill response position;
- (A) This number must be equal to or greater than the number of persons necessary to sustain a response to the worst case spill defined in the plan.
- (B) If 24 hour operations are expected, the number of persons available to staff the ICS must be multiplied by the proposed number of operational periods (shifts).
- (c) Arrangements for pre-positioning personnel at strategic locations that will meet criteria pursuant to OAR 340-141-0190 (3)(d); and

(d) The type and frequency of spill response operations and safety training that each individual in a spill response position receives to attain the level of qualification demanded by their job description.

(13) Equipment and spill response resources. Each plan must describe equipment and spill resources as follows:

(a) Each plan must list all resident equipment and resident dedicated response vessels used for oil containment, recovery, removal, shoreline and adjacent lands cleanup and wildlife rescue and rehabilitation. Each plan must also list all relied upon communication tools. The Department will accept information about equipment by reference if the equipment is being provided through a primary response contractor as part of the plan. The Department may request information about the condition and date of manufacture of any listed and referenced equipment to further evaluate its applicability to the planning standards or a response.

(b) For resident equipment and vessels listed under subsection (a) of this section that are not owned by or available exclusively to the plan holder, the plan must also estimate the extent that other contingency plans rely on the same equipment.

(c) For all resident oil containment and recovery equipment, the plan also must include equipment make and model, the manufacturer's nameplate capacity of the response equipment, the EDRC (in barrels per day) and applicable design limits (e.g., maximum wave height capability, suitability for inland waters or open ocean).

(d) Based on information described in subsection (c) of this section, the plan must state the maximum amount of oil that could be recovered per 24-hour period with the equipment used as it is designed.

(e) For purposes of determining plan adequacy under OAR 340-141-0190, and to assess realistic capabilities based on potential limitations by weather, sea state, and other variables, the Department will use the data presented in subsections (c) and (d) of this section to apply a higher efficiency factor for equipment listed in a plan if that plan holder provides adequate evidence that the higher efficiency factor is warranted for particular equipment or if the United States Coast Guard has approved a higher efficiency rating.

(f) The plan must provide arrangements for pre-positioning of oil spill response equipment at strategic locations that will meet response time criteria pursuant to OAR 340-141-0190(3)(d).

(g) When calculating the delivery time of equipment to a spill staging area, the plan must use travel speeds consistent with federal speed predictions for the equipment being moved.

(14) Communications. Each plan must describe the communication systems used for spill notification and response operations, including:

(a) Communication procedures that identify who will be responsible for the function, to whom and from whom communication will be established and any special instructions;

(b) The communication function (e.g., ground-to-air) assigned to each channel or frequency used;

(c) The maximum geographic range for each type of communications equipment used; and

(d) The communication system compatibility with key spill response agencies.

(15) Response Operation Sites. Each plan must describe the process used by the plan holder to establish sites needed for spill response operations, including location or location selection criteria for an incident command post, a communications center if located away from the command post and equipment and personnel staging areas.

(16) Response Flow Chart or Timeline. Each plan must describe the response process by:

(a) Presenting a flowchart or decision tree describing the procession of each major stage of spill response operations from spill discovery to completion of cleanup. The flowchart or decision tree must describe the general order and priority in which key spill response activities are performed; and

(b) Describing all key spill response operations in checklist forms, to be used by spill response managers in the event of an oil spill.

(17) Authorities. Each plan must describe responsible authorities by:

(a) Listing the local, state and other government authorities responsible for the emergency procedures peripheral to spill containment and cleanup; and

(b) Describing the plan holder's role in these emergency operation procedures before the proper authorities arrive, including but not limited to, control of fires and explosions, rescue activities, access restriction to the spill impact area and site security.

(18) Damage Control. Each plan must describe equipment and procedures to be used by the facility or covered vessel personnel to minimize the magnitude of the spill and minimize structural damage that could increase the quantity of oil spilled.

(a) For facilities, damage control procedures must include methods to slow or stop pipeline, storage tank, and other leaks, and methods to achieve immediate emergency shutdown.

(b) For tank vessels, damage control procedures must include methods and onboard equipment to achieve vessel stability and prevent further vessel damage, slow or stop pipe, tank, and other leaks and achieve emergency shutdown during oil transfer.

(c) For other covered vessels, damage control procedures must address methods to achieve vessel stability and slow or stop leaks from fuel tanks and lines.

(19) Containment. Each plan must describe, in detail, any nonstandard methods specific to the plan to contain spilled oil and recover it from the environment. When a plan calls for the use of methods that have not been expressly approved by the Department, the description of the proposed options must include:

(a) The surveillance methods expected to be used to detect and track the extent and movement of the spill; and

(b) A description of methods to be used to contain and remove oil that will be effective for environmentally sensitive locations included in the Zone, or Zones, for which the plan is written.

(20) Response Time. Each plan must briefly describe initial equipment and personnel deployment activities that will accomplish the response standard listed in OAR 340-141-0190(e)(d) and provide:

- (a) An estimate of the actual execution time;
- (b) The specific location in the Zone where the resident required response equipment is stored; and
- (c) The source and management of personnel to deploy the initial response equipment.

(21) Chemical Agents. If the plan holder proposes to use dispersants, coagulants, bioremediants or other chemical agents for response operations under certain conditions, the plan must describe:

- (a) Type and toxicity of chemicals, supplemented with material safety data sheets (MSDS) for each product;
- (b) The conditions under which the chemicals will be applied, in conformance with all applicable local, state and federal requirements, including the Northwest Area Contingency plan and OAR 340-141-0020;
- (c) Methods of deployment; and
- (d) Location and accessibility of supplies and deployment equipment.

(22) In Situ-Burning. If the plan holder proposes to use in-situ burning for response operations, the plan must describe:

- (a) Type of burning operations;
- (b) Conditions under which burning will be applied in conformance with all applicable local, state and federal requirements, including the Northwest Area Contingency plan and OAR 340-264-0030 to 0040;
- (c) Methods of application; and
- (d) Location and accessibility of supplies and deployment equipment.

(23) Environmental Protection. Each plan must describe how environmental protection will be achieved, including:

- (a) Protection of sensitive shoreline and island habitat by diverting or blocking oil movement;
- (b) Priorities for sensitive area protection in the region of operation covered by the plan as provided in a Geographic Response Strategy of the Northwest Area Contingency Plan, or designated by the Department;
- (c) Rescue and rehabilitation of birds, marine mammals and other wildlife contaminated or otherwise affected by the oil spill; and
- (d) Measures taken to reduce damages to the environment caused by shoreline and adjacent land cleanup operations.

(24) Interim Storage. Each plan that has identified that oil will be recovered must plan for the storage of the oil and combined oily waste material potentially created.

- (a) Each plan must describe site criteria and methods used for interim storage of oil recovered and oily wastes generated during response and cleanup operations, including sites available within the facility. Interim storage methods and sites must be designed to prevent contamination of the storage area by recovered oil and oily wastes.
- (b) If use of interim storage sites will require approval by local, state or federal officials, the plan must include information that could expedite the approval process, including a list of appropriate contacts and a brief description of procedures to follow for each applicable approval process.
- (c) Interim storage and permanent disposal methods and sites must be sufficient to sustain support for oil recovery operations and manage the entire volume of oil recovered and oily wastes generated.
- (d) Interim storage and permanent disposal methods and sites must comply with all applicable local, state and federal requirements.

(25) Health and Safety. Each plan must describe procedures to protect the health and safety of oil spill response workers, and other individuals on-site. Provisions for training, decontamination facilities, safety gear and a safety officer position must be addressed.

(26) Post Spill Review. Each plan must explain post-spill review procedures, including methods to review both the effectiveness of the plan and the need for plan amendments. Post-spill procedures must provide for a debriefing with the Department that will include any newly recognized need to amend the plan and list of any other lessons learned.

(27) Drills and Exercises. All approved plans must be verified by drills and exercises. Each plan must describe the schedule and type of drills and other exercises that will be practiced to ensure readiness of the plan elements, including drills that satisfy OAR 340-141-0200 (3).

- (a) The plan holder must test and document internal call out procedures at least once every 90 calendar days. The plan holder must retain records of these drills for at least three years and make them available for Department review upon request.
- (b) The plan holder must notify the Department of drills and exercises, at least 60 days before full deployment and tabletop drills, and 10 days prior to equipment exercises. Prior notice to the Department is not required before notification drills and internal phone number verification exercises.
- (c) The plan holder must send post drill reports for all tabletop exercises or deployment drills to the Department no later than 60 days after the completion of the drill or exercise. The executive summary from a National Preparedness for Response Exercise Program (N-PREP) report may be submitted to meet this requirement when the exercise has been designed by the N-PREP staff.

(28) Risk Variables. Each plan must list the spill risk variables within the region of operation covered by the plan, including:

(a) Each plan for a facility must list the following:

- (A) Types, physical properties and amounts of oil handled;
- (B) A written description and map indicating site topography, stormwater and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage and transfer sites and operations;
- (C) A written description of sites or operations with a history of or high potential for oil spills, including key areas that pose significant navigation risk within the region of operation covered by the plan; and
- (D) Methods to reduce spills during transfer operations, including overfill prevention.

(b) Each plan for a covered vessel must list the following:

- (A) Types, physical properties and amounts of oil handled;
- (B) A written description and diagram showing cargo, fuel and ballast tanks; and piping, power plants and other oil storage and transfer sites and operations; and
- (C) A written description of operations with a history of or high potential for oil spills, including key areas that pose significant navigation risks within the region of operation covered by the plan.

(29) Environmental Variables. Each plan must list the environmental variables within the region of operation covered by the plan. Facility plans required to include river or coastal areas must identify the environmental variables from the probable point of release to the point the oil could travel in 24 hours in a current of four knots. Vessel contingency plans must encompass the entire length of the Oregon waterway in the Zone or sub-Zone entered. All plans must describe:

- (a) Natural resources, including coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species and presence of commercial and recreational species;
- (b) Public resources, including public beaches, water intakes, drinking water supplies and marinas;
- (c) Seasonal hydrographic and climatic conditions; and
- (d) Physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics. Plans may reference numbered Geographic Response Plan strategies (GRPs) in the Northwest Area Contingency Plan when identifying individual environmental features.

(30) Logistical Resources. Each plan must list the logistical resources within the region of operation covered by the plan, including facilities for fire services, medical services and accommodations; and shoreline access areas, including boat launches.

(31) Response Strategy Outline. Each plan must include a statement of the intended response activities. This statement must describe how the plan resources must be applied to adequately respond during the initial phase of the response to an average most probable and worst case

spill, release or discharge. The Response Strategy Outline must begin with a description of the situation to be managed, and must describe:

- (a) Deployment of resources and estimates of response times;
- (b) The intended result of the activity for each person listed in section (7) and (12) of this section;
- (c) Command and control arrangements;
- (d) Required coordination; and
- (e) Probable obstacles and an estimate of oil movement during the first 72 hours.

(32) Financial Responsibility. Each plan must provide evidence that the facility or vessel is in compliance with federal financial responsibility requirements pursuant to ORS 468B.390.

(33) Technical Terms Glossary. Each plan must include a glossary of technical terms and abbreviations used in the plan.

Stat. Auth.: ORS 468.020 and ORS 468B.395

Stats. Implemented: ORS 468B.345 - ORS 468B.390

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0150

340-141-0150

Oil Spill Contingency Planning Standards

(1) The purpose of this rule is to establish oil spill prevention and emergency response contingency planning standards for onshore and offshore facilities, pipelines and vessels that will, when followed:

- (a) Promote the prevention of oil spills;
- (b) Promote a consistent west coast approach to oil spill prevention and response;
- (c) Maximize the effectiveness and timeliness of oil spill response by responsible parties and response contractors;
- (d) Ensure readiness of equipment and personnel;
- (e) Support coordination with state, federal and other contingency plans in particular the state plan required under ORS 468B.495 - 468B.500; and
- (f) Protect Oregon waters and other natural resources from the impacts of oil spills.

(2) A plan that conforms to the Department's planning standards, or alternative planning standard approved or required by the Department as provided in subsection (2)(a) and (2)(b), may be approved if all other planning requirements in this Division are met:

- (a) Plans submitted that are based on standards that differ from the Department's planning standards must be supported by a detailed analysis that fully supports the methodology proposed. Alternative planning standards proposed by a plan submitter must be consistent with regional goals, be defended by the plan writer during public review of the plan and be approved by the Department.

(b) The Department will apply the applicable planning standard when evaluating the adequacy of a plan submitted to the Department for approval, unless the planning standards do not fully reflect the unique circumstances of a particular facility or vessel. If the Department determines that the plan does not fully protect the environment despite compliance with the general planning standards, the Department will provide a detailed written explanation of its decision outlining the basis for its decision and the specific changes needed in the submitted plan.

(3) Plan writers must identify in their plans adequate resources to protect the areas potentially affected by a spill from their facility or vessel. The plan must state how the Planning Standards, including any performance standards, will be achieved. Required resources are further described in section (4)(a), (4)(b) and (4)(c) of this rule. The lands and waters of the state are divided into Zones and sub-Zones for planning purposes. Planning standards are established for each Zone and sub-Zone covered by this Division:

(a) Facilities located in a sub-Zone of the Columbia River must meet the following planning standards, except as provided in subsections (g) and (h) of this section:

(A) By 1 hour after the discovery of a spill, the facility must have deployed containment boom around the spill source. The length of boom on hand for this purpose must be at least four times the length of the largest vessel, or combined vessel lengths, potentially at that facility. The boom must be placed in the water in a location and fashion so as to contain and facilitate recovery of the greatest amount of oil from the water.

(B) By 2 hours after the discovery of a spill, responders listed in the plan must be prepared to participate in an initial assessment of the release. The amount of boom deployed and available in reserve to be deployed, if needed, must be eight times the length of the largest vessel, or combined vessel lengths, potentially at that facility.

(C) By 6 hours after the discovery of a spill, the facility must arrange for recovery of spilled oil. There must be equipment and personnel on site with the ability to recover the lesser of 12,000 barrels of oil or an amount of oil equal to 10 percent of the facility's worst case spill from the water in the next 24 hours.

(D) By 12 hours after the discovery of a spill, the facility must have 35,000 feet of boom deployed or available at the designated staging area for equipment deployment. Facilities handling only nonpersistent oils need to have 15,000 feet of boom at this time. All facilities must have the ability at or before this time to recover the lesser of 36,000 barrels of oil or 15 percent of the worst case spill volume from the water in the next 24 hours. Facilities must have the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.

(E) By 24 hours after the discovery of a spill, the facility must have in place equipment and personnel with the ability to recover oil from the water to the lesser of 48,000 barrels of oil or 20 percent of the worst case spill volume in the next 24 hours.

(F) By 48 hours after the discovery of a spill, the facility must have in place equipment and personnel with the ability to recover oil from the water to the lesser of 60,000 barrels of oil or 25 percent of the worst case spill volume in the next 24 hours.

(b) Facilities located in the Coastal Bays Zone must meet the following planning standards:

(A) By 1 hour after the discovery of a spill, the facility must have deployed containment boom around the spill source. The length of boom on hand for this purpose must be at least four times the length of the largest vessel, or combined vessel lengths, potentially at that facility. The boom must be placed in the water in a location and fashion so as to contain and facilitate recovery of the greatest amount of oil from the water.

(B) By 2 hours after the discovery of a spill, responders listed in the plan must be prepared to participate in an initial assessment of the release. The amount of boom deployed and available in reserve to be deployed if needed must be eight times the length of the largest vessel, or combined vessel lengths, potentially at that facility.

(C) By 6 hours after the discovery of a spill, the facility must arrange for recovery of spilled oil. There must be equipment and personnel on site with the ability to recover the lesser of 12,000 barrels of oil or an amount of oil equal to 10 percent of the facility's worst case spill from the water in the next 24 hours.

(D) By 12 hours after the discovery of a spill, the facility must have 35,000 feet of boom deployed or available at the designated staging area for equipment deployment. Facilities handling only nonpersistent oils need to have 10,000 feet of boom at this time. All facilities must have the ability to recover oil at or before this time and have in place equipment and personnel with the ability to recover the lesser of 36,000 barrels of oil or 15 percent of the worst case spill volume from the water in the next 24 hours. Facilities must have the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.

(E) By 24 hours after the discovery of a spill, the facility must have deployed or have at the designated staging area for equipment deployment an amount of boom equal to 35,000 feet. Facilities handling only nonpersistent oils need to have 15,000 feet of boom at this time. All facilities must have in place equipment and personnel with the ability to recover from the water the lesser of 48,000 barrels of oil or 20 percent of the worst case spill volume in the next 24 hours.

(F) By 48 hours after the discovery of a spill, the facility must have the ability to recover oil from the water to the lesser of 60,000 barrels of oil or 25 percent of the worst case spill volume in the next 24 hours.

(c) Offshore facilities located in the Open Ocean Zone:

(A) By 1 hour after the discovery of a spill, the offshore facility must have begun deploying the open ocean rated boom required to be at the facility. This must be an amount of boom equal to the full perimeter of the offshore facility plus the length of the largest vessel or barge, or combined vessel lengths, moored at the offshore facility.

- (B) By 6 hours after the discovery of a spill, responders listed in the plan must be prepared to participate in an initial assessment of the release. The offshore facility must also have the ability to begin recovering oil so an amount equal to 10 percent of the worst case spill volume can be recovered in the next 24 hours and stored on site.
 - (C) By 12 hours after the discovery of a spill, the offshore facility must have the ability to deploy protective boom at all sensitive coastal locations within 25 miles of the offshore facility. Facilities must have the ability to recover the lesser of 36,000 barrels of oil or 15 percent of the worst case spill volume from the water in the next 24 hours. Facilities must have the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.
 - (D) By 24 hours after the discovery of a spill, the offshore facility must have the ability to recover oil from the water to the lesser of 48,000 barrels of oil or 20 percent of the worst case spill volume in the next 24 hours.
 - (E) By 48 hours after the discovery of a spill, the offshore facility must have the ability to establish shoreline cleanup resources and wildlife rescue services. The facility must have the ability to recover oil from the water to the lesser of 60,000 barrels of oil or 25 percent of the worst case spill volume in the next 24 hours.
- (d) Covered vessels operating in any sub-Zone of the Columbia River must meet the following planning standards:
- (A) By 2 hours after the discovery of a spill, the responders listed in the operator's plan must be prepared to participate in an initial assessment of the release. Responders listed in the plan must have initiated deployment of containment boom around the source except in the case of passenger vessels, and vessels at risk of exacerbating the situation, where a deflection deployment for safety reasons may be used. The amount of boom being deployed must be the lesser of 1000 feet, or a length equal to four times the length of the vessel. The boom must be placed in the water in a location and fashion so as to safely contain and facilitate recovery of the greatest amount of oil from the water. Additional boom must be available at the staging area equal to the balance of four times the length of the vessel if the vessel is more than 250 feet in length. In all cases the plan must include, by contract or other approved means, a boat crew capable of deploying and tending the required boom to be operating on site at this time.
 - (B) By 6 hours after the discovery of a spill, the vessel operator must have arranged for recovery of spilled oil. There must be equipment and personnel available to be on site at this time with the ability to recover the lesser of 12,000 barrels of oil, or an amount of oil equal to two percent of the vessel's worst case spill, from the water in the next 24 hours. The vessel plan must also provide for the delivery of 10,000 feet of containment boom.
 - (C) By 12 hours after the discovery of a spill, the vessel operator must have the ability to deploy 40,000 feet of boom. There must be a recovery system capable of removing the lesser of 36,000 barrels of oil or five percent of the worst case spill volume from the water in the next 24 hours. Plans must include the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.

- (D) By 24 hours after the discovery of a spill, the vessel operator must have deployed, or have at the designated staging area for equipment deployment, equipment and operators with the ability to recover the lesser of 48,000 barrels of oil or 12 percent of the worst case spill volume from the water in the next 24 hours.
 - (E) By 48 hours after the discovery of a spill, the vessel operator must be able to arrange for an increased ability to recover oil from the water to the lesser of 60,000 barrels of oil or 17 percent of the worst case spill in the next 24 hours.
 - (e) Covered vessels operating in the Coastal Bays Zone must meet the following planning standards:
 - (A) By 2 hours after the discovery of a spill, the responders listed in the plan must be prepared to participate in an initial assessment of the release. Responders listed in the plan must have initiated deployment of containment boom around the source, or in the case of passenger vessels a deflection deployment for safety reasons. The amount of boom being deployed must be the lesser of 1,000 feet, or a length equal to four times the length of the vessel. The boom must be placed in the water in a location and fashion so as to contain and facilitate recovery of the greatest amount of oil from the water. Additional boom must be available at the staging area equal to the balance of four times the length of the vessel if the vessel is more than 250 feet in length. In all cases the plan must include, by contract or other approved means, a boat crew capable of deploying and tending the required boom to be operating on site at this time.
 - (B) By 6 hours after the discovery of a spill, the vessel operator must have arranged for recovery of spilled oil. There must be equipment and personnel on site at this time with the ability to recover the lesser of 12,000 barrels of oil or an amount of oil equal to two percent of the vessel's worst case spill from the water in the next 24 hours. The vessel plan must also have provided for the delivery to the site of 6,500 feet of containment boom.
 - (C) By 12 hours after the discovery of a spill, the vessel operator must have the ability to deploy 9,500 feet of boom. There must be a recovery system on site capable of removing the lesser of 36,000 barrels of oil or five percent of the worst case spill volume from the water in the next 24 hours. Vessels must have the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.
 - (D) By 24 hours after the discovery of a spill, the vessel operator must have 14,000 feet of boom deployed, or at the designated staging area for equipment deployment, and equipment and operators with the ability to recover the lesser of 48,000 barrels of oil or 12 percent of the worst case spill volume from the water in the next 24 hours.
 - (E) By 48 hours after the discovery of a spill, the vessel operator must be able to arrange to recover oil from the water to the lesser of 60,000 barrels of oil or 17 percent of the worst case spill volume in the next 24 hours.
- (f) Covered vessels operating in the Open Ocean Zone:

- (A) By 2 hours after the discovery of a spill, the responders listed in the plan must mobilize personnel, prepare to conduct an initial site assessment and site safety characterization of the spill area and arrange for aircraft for Aerial observations. Transport of appropriate boom must take place in preparation for deployment at the source. In the case of passenger vessels, booming strategies must take into account the safety of passengers. Amount of boom must be the lesser of 1,000 feet, or a length equal to four times the length of the vessel. Booming strategies must maximize containment and facilitate recovery of the greatest amount of oil from the water. Additional boom must be available at the response resource staging area equal to the balance of four times the length of the vessel if the vessel is more than 250 feet in length. In all cases, the plan must have listed by contract or other approved means qualified personnel to accomplish the requirements of this paragraph.
- (B) By 6 hours after the discovery of a spill, the vessel operator must have arranged for recovery of spilled oil. There must be equipment and personnel on site capable of recovering the lesser of 12,000 barrels of oil from the water or an amount of oil equal to two percent of the vessel's worst case spill in the next 24 hours. The vessel plan must also have provided for the delivery to the site of 10,000 feet of containment boom.
- (C) By 12 hours after the discovery of a spill, the vessel operator must have the ability to deploy 40,000 feet of boom. There must be on site a recovery system capable of removing from the water the lesser of 36,000 barrels of oil or three percent of the worst case spill volume in the next 24 hours. Vessel operators must have the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.
- (D) By 24 hours after the discovery of a spill, the vessel operator must have deployed, or have at the designated staging area for equipment deployment, equipment and operators with the ability to recover the lesser of 48,000 barrels of oil or 12 percent of the worst case spill volume from the water in the next 24 hours.
- (E) By 48 hours after the discovery of a spill, the vessel operator must be able to arrange to recover oil from the water to the lesser of 60,000 barrels of oil or 17 percent of the worst case spill volume in the next 24 hours.
- (g) Pipelines located in, or crossing, a planning Zone where there is a potential for spilling or releasing oil to navigable waters of the state must meet the following planning standards:
- (A) By 1 hour after the discovery of a spill, the pipeline operator must completely shutdown the pipeline.
- (B) By 2 hours after the discovery of a spill, the pipeline operator or its dedicated response contractor must have deployed 1,000 feet of containment boom around the spill source entering the water. The boom must be placed in the water in a location and fashion so as to contain and facilitate recovery of the greatest amount of oil from the water.
- (C) By 6 hours after the discovery of a spill, the pipeline operator must have arranged for recovery of spilled oil. There must be equipment and personnel on site capable of

recovering the lesser of 12,000 barrels of oil or an amount of oil equal to 10 percent of the pipeline's worst case spill from the water in the next 24 hours.

(D) By 12 hours after the discovery of a spill, the pipeline operator must have 15,000 feet of boom deployed or at the designated staging area for equipment deployment. All pipelines must have the ability to recover oil at or before this time and have in place equipment and personnel with the ability to recover the lesser of 36,000 barrels of oil or 15 percent of the worst case spill volume from the water in the next 24 hours. The pipeline operator must have the ability to assess the damage potentially done to wildlife and shorelines in the impacted area of the spill.

(E) By 24 hours after the discovery of a spill, the pipeline operator must increase the ability to recover oil from the water to the lesser of 48,000 barrels of oil or 20 percent of the worst case spill volume in the next 24 hours. The pipeline operator must have arranged for sufficient boom of an appropriate design to be deployed for the protection of sensitive wildlife habitats within the potential drift of oil in 24 hours.

(F) By 48 hours after the discovery of a spill, the pipeline operator must increase the ability to recover oil from the water to the lesser of 60,000 barrels of oil or 25 percent of the worst case spill volume in the next 24 hours. The pipeline operator must have arranged for sufficient boom of an appropriate design to be deployed for the protection of sensitive wildlife habitats within the potential drift of oil in 48 hours.

(h) Pipelines located in, or crossing, the Inland Zone must meet the following planning standards:

(A) By 1 hour after the discovery of a spill, the pipeline operator must complete a shutdown of the pipeline.

(B) By 2 hours after the discovery of a spill, the pipeline operator must have assigned personnel and emergency equipment to locate the exact point of release. The pipeline operator must have arranged for the equipment and response personnel necessary to contain the spill.

(C) By 6 hours after the discovery of a spill, the pipeline operator must have the ability to complete the assessment of the spill. The pipeline operator must have the ability to rapidly get resources to the spill location using preplanned caches of materials where no local resources are resident.

(D) By 12 hours after the discovery of the spill, the pipeline operator must have the ability to recover free standing liquid oil from the environment equal to five percent of the worst case spill in the next 24 hours. The pipeline operator must have the ability to assess and mitigate the damage potentially done to wildlife, wildlife habitat and natural resources in the impacted area of the spill.

(E) By 24 hours after the discovery of a spill, the pipeline operator must have deployed or have at the designated staging area for equipment deployment an amount of equipment capable of removing 10 percent of the worst case spill volume from the land and any impacted water in the next 24 hours.

(F) By 48 hours after the discovery of a spill, the pipeline operator must increase the ability to remove oil from the environment to the lesser of 60,000 barrels in the next 24 hours, or 15 percent of the worst case spill volume. The pipeline operator must have arranged for sufficient equipment, of an appropriate design, to be deployed for

the protection of sensitive wildlife habitats within the potential spread or travel of the oil in 24 hours.

(4) Resources identified in a plan to meet planning standards must include these conditions and qualifications:

- (a) The required resources listed in the plans for facilities, not including transmission pipelines or pipeline terminals, must be the property of the plan holder or specifically available to the plan holder through a contract or other approved means. Those resources required for the first and second hours on the Columbia River must be stocks of materials and labor sources resident within the impacted sub-Zone. To meet the six hour planning standards, the resources on the Columbia River may also be those normally resident in an adjacent sub-Zone. To meet the planning standard on the Columbia River at 12 hours, the materials may be from resources resident in the Zone. Those resources required for the first through the sixth hours in a coastal bay must be stocks of materials and labor sources resident within the impacted Zone. To meet the 12-hour planning standards in Coastal and Inland Zones, the resources may be from an adjacent planning Zone.
 - (b) The required resources listed in a covered vessel plan must be the property of the plan holder, or specifically available to the plan holder through a contract or other approved means. Those resources necessary and available to meet planning standards for the initial response, and through the first two hours on the Columbia River must be stocks of materials and labor sources resident within the impacted sub-Zone. To meet the six hour planning standard, the resources may be from an adjacent sub-Zone. To meet the 12 hour planning standards the resources on the Columbia River must be those normally resident in that Zone. To meet planning standards at two hours and six hours in Coastal Bay Zone, the resources must be resident in the specific bay. To meet planning standards at 12 hours in the Coastal Bay Zone, the resources may be from an adjacent Zone.
 - (c) The required resources listed for a pipeline plan must be the property of the plan holder, or specifically available to the plan holder through a contract or other approved means. Those resources required for the first and second hours on the Columbia River must be stocks of materials and labor sources resident within the impacted sub-Zone. To meet the six hour planning standards, the resources on the Columbia River may also be those normally resident in an adjacent sub-Zone. To meet the 12 hour planning standard on the Columbia River, the materials may be from resources resident in the Zone. Those resources required for the first through the sixth hours in a Coastal Bay Zone must be stocks of materials and labor sources resident within the impacted Zone. To meet planning standards at 12 hours in Coastal and Inland Zones, the resources may be from an adjacent planning Zone.
- (5) For all facilities, pipelines and covered vessels subject to planning standards in this rule, if equipment to recover oil from the water is required, the plan must identify interim storage for the recovered oil and oily water. Interim storage qualifications are described in section 0140 (24), the required content of contingency plans section of this rule, and are also addressed in OAR 340-142-0080. The Department will set plan specific interim storage planning standards, or apply a default interim storage capacity equal to three times the effective daily

recovery capacity (EDRC) of the equipment used to achieve the recovery percentages or volumes given in the planning standards of section (3). EDRC is used in planning standards to adjust the total recovery ability of a particular piece of oil spill recovery equipment to a lower value compensating for any incidental water it may recover. Unless otherwise approved by the Department the nameplate efficiency for a piece of equipment will be derated to 20 percent of its manufacturer's claim. Requirements for the 6 to 12 hour planning standards must show how the plan will meet the need for interim storage.

Stat. Auth.: ORS 468.020 and ORS 468B.395

Stats. Implemented: ORS 468B.350

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0100

340-141-0160

Prevention Strategies for Facilities

(1) The owner or operator of each onshore and offshore facility must develop spill prevention strategies that will, when implemented, provide the best achievable protection from damages caused by the discharge of oil into the waters of the state. The strategies may be in the form of:

(a) Appendices to oil spill prevention and emergency response plans required under this chapter; or

(b) A stand alone prevention plan that meets all requirements of OAR 340-141-0100 to 340-141-0230.

(2) Spill Prevention Countermeasure and Control Plans (SPCC), Operation Manuals and other prevention documents prepared to meet federal requirements under 33 CFR 154, 33 CFR 156, 40 CFR 109, 40 CFR 112, or the Federal Oil Pollution Act of 1990 or plans prepared to meet the requirements of other states may be submitted to satisfy requirements under this chapter if the Department deems that such requirements equal or exceed those of the Department, or if the plans are modified or appended to satisfy requirements of this Division.

(3) Spill prevention strategies must at a minimum provide all of the following:

(a) Documentation of types and frequency of spill prevention training provided to applicable personnel;

(b) Evidence that the facility has an operations manual;

(c) A description of a drug and alcohol awareness program that provides training and information materials to all employees on recognition of alcohol and drug abuse treatment opportunities, and applicable company policies;

(d) Evidence of a maintenance and inspection program that includes:

(A) Summary of the frequency and type of all regularly scheduled inspection and preventative maintenance procedures for tanks, pipelines, key storage, transfer, or production equipment including associated pumps, valves, and flanges, and overpressure safety devices and other spill prevention equipment;

(B) Description of integrity testing of storage tanks and pipelines using such techniques as hydrostatic testing and visual inspection, including but not limited to the frequency of tests, means of identifying that a leak has occurred and measures to reduce spill risk if test material is product;

(C) External and internal corrosion detection and repair;

(D) Damage criteria for equipment repair or replacement;

(E) Maintenance and inspection records of the storage and transfer facilities and related equipment will be made available to the Department upon request; and

(F) Documentation required under 40 CFR 112.7(e) or 33 CFR 154, Subparts C and D may be used to address elements of this subsection.

(e) A description of the use of containment boom at facilities transferring persistent oil, including:

(A) Type(s) of boom used based upon the varied conditions within the region(s) of operation; and

(B) Methods of boom placement and anchoring.

(f) Identification of spill prevention technology currently in use, including if applicable:

(A) Tank and pipeline materials and design;

(B) Storage tank overflow alarms, tank overflow cutoff switches, low level alarms and automatic transfer shutdown systems, including methods to alert operators, system accuracy and tank fill margin remaining at time of alarm activation before overflow would occur at maximum pumping rate (documentation required under 40 CFR 112.7(e)(2)(viii) or 33 CFR 154.310(a) (12-13) may be used to address some or all of these elements);

(C) Leak detection systems for both active and nonactive pipeline conditions including detection thresholds in terms of duration and percentage of pipeline flow limitations on system performance due to normal pipeline events, and procedures for operator response to leak alarms (documentation required under 40 CFR 112.7(e)(3) may be used to address some or all of these elements);

(D) Rapid pump and valve shutdown procedures, including means of ensuring that surge and overpressure conditions do not occur, rates of valve closure, sequence and time duration (average and maximum) for entire procedure, automatic and remote control capabilities utilized and visual displays of system status for operator use (documentation required under 40 CFR 112.7(e)(3) may be used to address some or all of these elements);

(E) Minimization of post-shutdown residual drainout from pipes, including criteria for locating valves, identification of all valves (including types and means of operation) that may be open during a transfer process, and any other techniques for reducing drain out;

(F) Means of relieving pressure due to thermal expansion of liquid in pipes during periods of nonuse;

(G) Secondary containment, including contents of the largest tank plus space for precipitation, and material design and permeability of the containment area

(documentation required under 40 CFR 112.7(e)(1) and (2)(ii) - (iv) may be used to address some or all of these elements);

(H) Surge control systems;

(I) Internal and external corrosion control coatings or wrappings and instruments;

(J) Storm water and other drainage retention, treatment and discharge systems, including maximum storage capacities and identification of any applicable discharge permits (documentation required under 40 CFR 112.7(e)(1) and (2)(iii) and (ix) may be used to address some or all of these elements); and

(K) Criteria for suspension of operations while leak detection or other spill control systems are inoperative.

(g) A description of facility site security systems, including:

(A) Procedures for controlling and monitoring facility access;

(B) Lighting (documentation required under 33 CFR 154.570 may be used to address some or all of this element);

(C) Signage; and

(D) Right-of-way identification or other measures to prevent third party damage (documentation required under 40 CFR 122.7(e)(3)(v) and (9) may be used to address some or all of this element).

(h) History of any discharges of oil to the land or waters of the state in excess of 25 barrels (1,050 gallons) which occurred during the five-year period prior to the plan submittal date. For each discharge, describe:

(A) Quantity;

(B) Type of oil;

(C) Geographic area;

(D) Analysis of cause, including source(s) of discharged oil and contributing factors (e.g., equipment failure, employee error, adverse weather, etc.); and

(E) Measures taken to remedy the cause and prevent reoccurrence.

(i) A detailed and comprehensive site risk analysis that:

(A) Evaluates the construction, age, corrosion, inspection and maintenance, operation and oil spill risk of the transfer, production and storage system including piping, tanks, pumps, valves and associated equipment;

(B) Evaluates spill minimization and containment systems;

(C) Incorporates information required in subsection (f) of this section;

(D) Is prepared under the supervision of (and bears the seal of) a licensed professional engineer; and

(E) Includes documentation required under 40 CFR 112.7(b) and (e) may be used to address some or all of the elements in this subsection.

(j) A description of how the facility will incorporate those measures that will provide best achievable protection to address the spill risks identified in the risk analyses required in

subsection (i) of this section. (Information documented pursuant to 40 CFR 112.7(e) and 33 CFR 154.310 may be used to address some or all of the elements of this subsection.)

Stat. Auth.: ORS 468.020 and ORS 468B.395

Stats. Implemented: ORS 468B.345 - ORS 468B.390

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0160

340-141-0170

Prevention Strategies for Vessels

- (1) Each covered vessel must have spill prevention strategies that when implemented will provide the best achievable protection from damages caused by the discharge of oil into the waters of the state.
- (2) Prevention documents prepared to meet federal requirements under the Oil Pollution Act of 1990 or plans prepared to meet the requirements of other states may be used to satisfy the criteria of this section.
- (3) Vessel owners or operators will make maintenance and inspection records, and oil transfer procedures available to the Department upon request.

Stat. Auth.: ORS 468.020 and ORS 468B.395

Stats. Implemented: ORS 468B.345 - ORS 468B.390

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0170

340-141-0180

Plan Submittal

- (1) Before operating in Oregon, facilities must submit plans for review as follows:
 - (a) Except as provided in (c), plans for facilities must be submitted to the Department at least 90 days before oil is moved into or out of the facility.
 - (b) Plans for covered vessels of 300 gross tons or more which transit the Columbia River and Willamette River must be submitted to the Department at least 90 days before that vessel enters navigable waters of the state.
 - (c) Plans for existing pipelines in the Inland Zone must be submitted by June 30, 2003. After June 30, 2003 plans for new pipelines must be submitted 90 days before pipeline operations commence.
- (2) One complete copy of the plan (including appendices) must be submitted to the Department in printed or electronic form. Plans must be submitted to: Department of Environmental Quality, Emergency Response Program, 811 SW 6th Ave., Portland, Oregon 97204. Electronic copies must be sent the Department on either standard computer disk or compact disk. A printed copy of the complete plan showing all revisions may be required during the

public review period. The plan holder may be required to supply up to four printed copies of the final plan.

(3) Onshore and offshore facility plans may be submitted by:

(a) The facility owner or operator; or

(b) An oil spill response cooperative or maritime association in which the facility owner or operator is a participating member.

(4) Tank vessel plans may be submitted by:

(a) The tank vessel owner or operator;

(b) The owner or operator of a facility at which the tank vessel unloads cargo, in conformance with requirements under OAR 340-141-0150(1); or

(c) An oil spill response cooperative or maritime association in which the tank vessel owner or operator is a participating member.

(5) Cargo and passenger vessel plans may be submitted by:

(a) The vessel owner or operator;

(b) The agent for the vessel resident in this state;

(c) An oil spill response cooperative or maritime association in which the tank vessel owner or operator is a participating member; or

(d) A primary response contractor.

(6) Subject to the conditions imposed by the Department, the owner, operator, agent or a maritime association may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(7) A single plan may be submitted for more than one facility or covered vessel owned by the same person, provided that the plan contents meet the requirements of OAR 340-141-0100 to OAR 340-141-0230 for each facility, pipeline or covered vessel listed.

(8) The plan submitter may request that proprietary information be kept confidential under ORS 192.501(2). If a plan submitter wishes to claim that any provision in a plan is a trade secret, the submitter must specifically notify the Department of its claim and identify those provisions in the plan that are claimed to be trade secrets.

Stat. Auth.: ORS 468.020 and ORS 468B.395

Stats. Implemented: ORS 468B.355

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0180

340-141-0190

Plan Review

- (1) Upon receipt of a plan, the Department will promptly evaluate the plan for completeness. If the Department determines that a plan is incomplete, the submitter will be notified of deficiencies. The review period will not begin until the Department receives a complete plan. The Department will allow 30 days for the submitter to supply the missing components of the plan. After 30 days the plan will be returned without approval to the submitter.
- (2) The Department will notify interested persons of any contingency plans under review by the Department, and make such plans available for review to ODFW, DLCD, the State Fire Marshal and any interested person. The Department will provide a 30-day period for agencies and other interested persons to comment on a plan.
- (3) A Plan will be approved if, in addition to meeting criteria in OAR 340-141-0100 through 340-141-0170, it demonstrates that when implemented, it will:
 - (a) Provide for prompt and proper response to and cleanup of a variety of spills, including average most probable spills and worst case spills;
 - (b) Provide for prompt and proper protection of the environment from oil spills;
 - (c) Provide for immediate notification and mobilization of resources upon discovery of a spill; and
 - (d) Provide for initial deployment of response equipment and personnel at the site of the spill within one hour of discovery for facilities and two hours of discovery for covered vessels given suitable safety conditions.
- (4) When reviewing plans, the Department will, in addition to the above criteria, consider the following:
 - (a) The volume and type of oil(s) addressed by the plan;
 - (b) The history and circumstances of prior spills by similar types of facilities, including spill reports by Department spill responders;
 - (c) The presence of operating hazards;
 - (d) The sensitivity and value of natural resources within the Oil Spill Response Planning Zones and geographic area covered by the plan;
 - (e) Any pertinent local, state, federal agency or public comments received on the plan; and
 - (f) The extent that reasonable, cost-effective spill prevention measures have been incorporated into the plan.
- (5) The Department may approve a plan without a full review pursuant to this rule if that plan has been approved by a federal agency or other state using approval criteria that equal or exceed those of the Department.
- (6) The Department will endeavor to notify the facility or covered vessel owner or operator within five working days after the review is completed whether the plan has been approved.
- (7) If the plan is approved, the facility or covered vessel owner or operator will receive a certificate of approval describing the conditions of approval, including an expiration date not to exceed five years.

(8) The Department may approve a plan conditionally by requiring the owner or operator of a facility or covered vessel owner or operator to operate with specific precautionary measures until unacceptable components of the plan are resubmitted and approved.

(a) Precautionary measures may include, but are not limited to, placing spill containment boom around all vessels during oil transfers, reducing oil transfer rates, increasing personnel levels, or restricting operations to daylight hours. Precautionary measures may also include additional requirements to ensure availability of response workers and equipment.

(b) A plan holder will have 30 calendar days after the Department gives notification of conditional status to submit and implement required changes to the Department, with the option for an extension at the Department's discretion. Plan holders who fail to meet conditional requirements or provide required changes in the time allowed will lose conditional approval status.

(c) The Department may use plan approval with conditions as an alternate to rejecting a plan with minor defects.

(9) If plan approval is denied, the owner or operator of the facility or covered vessel will be given a written explanation of the Department's reasons for disapproval and a list of actions needed to gain approval. The facility or covered vessel must not commence or continue oil storage, transport, transfer, production or other operations until a plan for that facility or covered vessel has been approved.

(10) If a plan holder demonstrates an inability to comply with an approved contingency plan or otherwise fails to comply with requirements of this Division, the Department may, at its discretion:

(a) Place conditions on approval pursuant to section (8) of this rule; or

(b) Revoke its approval.

(11) Approval of a plan by the Department does not constitute an express assurance regarding the adequacy of the plan or constitute a defense to liability imposed under state law.

(12) A plan holder may request a hearing on the Department's decision under OAR Chapter 340, Division 11.

Stat. Auth.: ORS 468.020 and ORS 468B.390

Stats. Implemented: ORS 468B.365

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0130

340-141-0200

Drills, Exercises, and Inspections

- (1) The Department may require plan holders of approved plans to participate in one announced drill or one unannounced limited drill annually.
- (2) As a condition of plan approval, the Department may require that the plan holder successfully conduct drills of the elements of a plan submitted for approval.
- (3) Requirements under sections (1) and (2) of this rule may be met:
 - (a) By drills led by other state, local or federal authorities, if the Department finds that the criteria for drill execution and review equal or exceed those of the Department;
 - (b) By drills initiated by the plan holder, if the Department participates, reviews and evaluates the drill, and if the Department finds that the drill adequately tests the plan; or
 - (c) By responses to actual spill events, if the Department participates, reviews and evaluates the spill response, and if the Department finds that the spill event adequately tests the plan.
- (4) The Department may excuse a primary response contractor from full deployment participation in more than one drill if, in the past 12 months, the primary response contractor has performed to the Department's satisfaction in a full deployment drill in an exercise listed in section (3) of this rule or has satisfactorily responded to a significant spill event in Oregon.
- (5) The Department may require the facility or covered vessel owner or operator to participate in additional drills beyond those required in section (1) of this rule if the Department is not satisfied with the adequacy of the plan or plan implementation during exercises or spill response events.
- (6) The Department will review the degree to which the specifications of the plan are implemented during the drill. The Department will endeavor to notify the facility or covered vessel owner or operator of the review results within 30 calendar days following the drill. If the Department finds deficiencies in the plan, the Department will report those deficiencies to the plan holder and require the plan holder to make specific amendments to the plan pursuant to requirements of OAR 340-141-0220.
- (7) The Department may publish an annual report on plan drills, including a summary of response times, actual equipment and personnel use, recommendations for plan requirement changes and industry response to those recommendations.
- (8) The Department may require the plan holder to publish an annual report on plan drills including a summary of response times, active equipment and personnel use and recommendations for improvement.
- (9) The Department may verify compliance with this Division by unannounced inspections in accordance with ORS 468B.370.

Stat. Auth.: ORS 468.020 and ORS 468B.390

Stats. Implemented: ORS 468B.370 - ORS 468B.380

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0200

340-141-0210

Plan Maintenance and Use

- (1) At least one copy of the plan must be kept in a central location accessible at any time by the incident commander or spill response manager named in accordance with OAR 340-141-0140(7). Each facility covered by the plan must possess a copy of the plan and keep it in a conspicuous and accessible location.
- (2) A field document prepared under OAR 340-141-0130(5) must be available to all appropriate personnel. Each covered vessel covered by the plan must possess a copy of the field document and keep it in a conspicuous and accessible location.
- (3) A facility or covered vessel owner or operator or their designee must implement the plan in the event of a spill. The owner or operator of the facility or covered vessel must receive approval from the Department before it conducts any major aspect of the spill response contrary to the plan unless:
 - (a) Such actions are necessary to protect human health and safety;
 - (b) Such actions must be performed immediately in response to unforeseen conditions to avoid additional environmental damage; or
 - (c) The plan holder has been directed to perform such actions by the Department or the United States Coast Guard.

Stat. Auth.: ORS 468.020 and ORS 468B.345 - ORS 468B.390

Stats. Implemented: ORS 468B.345 - ORS 468B.390

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0210

340-141-0220

Plan Update Timeline

- (1) The Department must be notified in writing as soon as possible and within 24 hours of any significant change that could affect implementation of the plan, including a significant decrease in available spill response equipment or personnel. Decreases are significant if they prevent the owner or operator from carrying out the requirements of the plan in the time specified in the Oil Spill Contingency Response Planning Standards for the Zones or sub-Zones of operation. The plan holder must also provide a schedule for the prompt return of the plan to full operational status. A receipt confirmed e-mail or facsimile will be considered written notice for purposes of this section. Changes that are not considered significant include minor variations in equipment or personnel characteristics, call out lists or operating procedures. Failure to notify the Department of significant changes constitutes

noncompliance with this rule as well as an inability to comply with an approved plan under OAR 340-141-0210(3).

- (2) If the Department finds that, as a result of a change, the plan no longer meets approval criteria pursuant to OAR 340-141-0190, the Department may, in its discretion, place conditions on approval, require additional drills or inspections or revoke approval in accordance with OAR 340-141-0190(8). Plan holders are encouraged to maintain backup response resources in order to ensure that their plans can always be fully implemented.
- (3) Within 30 calendar days of an approved change in the plan, the owner or operator of the facility or covered vessel must distribute the amended pages of the plan to the Department and other plan holders.
- (4) Plans must be reviewed by the Department every five years pursuant to ORS 468B.345(3). Plans must be submitted for reapproval unless the plan holder submits a letter requesting that the Department review the plan already in the Department's possession. The plan holder must submit the plan or such a letter at least 90 calendar days before expiration of the plan.
- (5) The Department may review a plan following any spill for which the plan holder is responsible.
- (6) The Department may require plan holders of approved plans to renew the signed letter of intent required by OAR 340-141-0100 annually to confirm that there has been no change to the plan or the plan holder's commitment to its use.

Stat. Auth.: ORS 468.020 and ORS 468B.345 - ORS 468B.390

Stats. Implemented: ORS 468B.345 - ORS 468B.365

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0220

340-141-0230

Noncompliance with Plan Requirements

- (1) No person may cause or permit the operation of an onshore or offshore facility in the state, or a covered vessel within the navigable waters of the state without a properly implemented oil spill prevention and emergency response plan approved by the Department.
- (2) No person may cause or permit the operation of a facility or covered vessel without proof of financial responsibility in compliance with ORS 468B.390, which requires the equivalent of the federal requirement.
- (3) Any violation of this division will be subject to the enforcement and penalty provisions of ORS 468.140, and OAR 340 division 012.

Stat. Auth.: ORS 468.020 and ORS 468B.345 - ORS 468B.390

Stats. Implemented: ORS 468B.345 - ORS 468B.390

Hist.: DEQ 22-1992, f. & cert. ef. 8-13-92, renumbered from OAR 340-047-0230

340-141-0240

Equipment Mutual Aid

(1) The Department may preapprove the transfer of equipment, materials or personnel by a plan holder to another plan holder, or person, when necessary to assist in response to an oil discharge.

(2) The Department's preapproval may include:

(a) Waiver of response times specified in a plan; or

(b) Conditions specified by the Department regarding, but not limited to, notification to the Department, return or replacement of equipment, materials or personnel and measures necessary to prevent or reduce the potential for discharges during the period of reduced response capability.

(3) Preapproval under this rule does not require plan modification or update.

Stat. Auth.: ORS 468.020 and ORS 468B.345 - ORS 468B.390

Stats. Implemented: ORS 468B.365

Hist.: DEQ 21-1996(Temp), f. & cert. ef. 10-15-96; DEQ 6-1997, f. & cert. ef. 3-31-97, renumbered from OAR 340-047-0240

Attachment B
Public Input and Department's Response
For
Oil Spill Contingency Planning and Fees

Overview of Comment Period

A public comment period was held from April 1, 2002, to May 15, 2002, and included public hearings in Portland and Coos Bay. A total of thirteen people attended the hearings. Two people submitted testimony. Seven comment letters were received.

Support for the planning standards as well as the stakeholder involvement process was expressed by representatives of the following organizations:

- Maritime Fire and Safety Association
- Columbia River Steamship Operators Association
- Coos Bay Response Cooperative
- Sause Brothers Ocean Towing Company
- Tidewater Barge Lines
- Clean Rivers Cooperative

Oral Comments Received and Department Responses

At the public hearing held in Portland, comments were provided by Rick Harshfield, representing Marine Spill Response Corporation (MSRC) an emergency response service provider, and by Jerry Engelhardt, representing Kinder Morgan (addresses are listed below) the organization responsible for management of the largest pipeline in Oregon.

Comment:

Mr. Harshfield voiced two concerns. He feels the Department needs to clearly indicate that the planning standards we propose are not performance standards. He and his organization worry that they will be held to the commitments made by clients in contingency plans without latitude for deviation if safety or circumstances beyond their control exist at the time of the incident.

Response:

The purpose of the rule is to provide a basis for approving contingency plans. Mr. Harshfield's concern has been addressed in the final draft rule by clarifying a section covering response times in open ocean spill conditions. This change will reduce the possibility of mistaking planning requirements for performance standards.

Comment:

Mr. Harshfield's second point addresses the Department's requirements for drills and inspections, which he states should apply to all response organizations equally. He believes that a potential exists for the Department to place a requirement on a specific response organization to drill a client's plan while exempting other response organizations from this requirement. Mr. Harshfield points out that the Department accepts response work conducted by local organizations in lieu of drills, but not the work done by some response organizations at spill responses outside Oregon. This policy creates an inequity in the competition for Oregon clients by non-local companies.

Response:

The Department does not agree that the situation described by Mr. Harshfield is the intent of the Department. When testing or drilling facilities, it is not productive or efficient to have the responders repeatedly demonstrate skills that have already been demonstrated to the Department's satisfaction at a drill held by another plan holder, or during an actual response.

In Oregon, the most frequently active responders are Clean Rivers Cooperative and FOSS Environmental Services. The cooperative provides oil spill response equipment, services and management for most of the ships and facilities covered by Department required oil spill contingency plans. During the course of a year, the Department will usually have occasion to work with the cooperative, or FOSS, at a drill or on a real oil spill.

If spill response organizations that do not normally work with the Department at drills or on real spills seek credit for their out of region actions, the Department will consider the request on a case by case basis.

Comment:

Mr. Engelhardt made several points that are reiterated in a two part letter received April 30, 2002 and May 16, 2002.

Response:

The Department responded to Mr. Engelhardt's suggestions in the response to written comments report below (see "KM" comments on pages 53 and 54). His testimony and his letters cover the same issues.

**Providing Written
Comment**

The following organizations and individuals provided written comments to the Department on the proposed Oil Spill Contingency Planning and Fees rule:

Schwabe, Williamson & Wyatt, P.C. ("SWW")
1211 SW 5th Avenue.
Portland, Oregon 97204
(Representing the Maritime Fire Safety Association and Clean Rivers Cooperative.)

Marine Spill Response Corporation ("MSRC")
1105 13th St.
Everett, Washington 98201

Pacific Terminal Services, Inc. ("PTSI") and Olympic Tug and Barge (OTB) (both companies are divisions of Harley Marine)
910 S.W. Spokane St.
Seattle, Washington 98124-0005

Kinder Morgan Energy Partners, L.P. ("KM")
1100 Town & Country Rd.
Orange, California 92868

American Waterways Operators ("AWO")
801 North Quincy Street
Arlington, Virginia 22203

FOSS Maritime (FOSS)
660 West Ewing Street
Seattle, Washington 98119-1587

**Written Comments
and Response**

Foss Maritime (FOSS), Pacific Terminal Services, Inc. (PTSI) and Olympic Tug and Barge (OTB) submitted nearly identical letters. Where the same comment was made by more than one commenter, each is listed. Most of the letters addressed more than one point and have been presented here in a point by point outline with responses placed at each comment. The outline of this section of the staff report follows the order of the proposed rule to help the reader follow the comments.

General suggestions about the proposed rule.

FOSS, AWO, OTB, and PTSI comment:

Recommended that the proposed rules include a provision for exemptions or alternative compliance, similar to the U.S. Coast Guard/Oil Pollution Act of 1990 (USCG /OPA-90) regulations. This would

allow the Department to approve written requests for exemptions under certain circumstances.

Response:

The draft rule, at 340-141-0150 (2) allows for the submission of alternative methods of achieving the same level of environmental protection called for by the Department's proposed standards. Alternative methodologies must be supported by a full analysis demonstrating their equivalency.

FOSS, AWO, OTB, and PTSI comment:

The comment states that planning standards must be practical and realistic and voices the opinion that the proposed standards are not.

Response:

As discussed in the Key Issues section of this report (see page 3), current benchmarks used by Oregon and Washington to approve oil spill contingency plans were used by the Emergency Response Advisory Committee (ERAC) and Department staff as the basis for drafting the proposed rule.

FOSS was represented on the ERAC and the smaller group which worked through the details of each standard. With the exception of Legislatively directed zones and dedicated equipment, the rules are not very different from the benchmarks in place since 1995. Clean Rivers Cooperative, which provides oil spill response services for the majority of facilities and ships covered by oil spill contingency planning requirements, indicated during rule drafting that they could meet the standards proposed and supported their adoption. It is the Department's position that the proposed rules are both practical and realistic as a means of preserving and protecting the fragile environment of the Oregon Coast and the Columbia and lower Willamette rivers.

FOSS, AWO, OTB, and PTSI comment:

The large stockpiles of spill response equipment in Puget Sound, less than six hours away, cannot be counted towards meeting the 12-hour planning standard. This is viewed as being excessive – to the point of being punitive.

Response:

Two factors argue against counting stocks of oil spill response

equipment found in Puget Sound as available along the Columbia River or Oregon Coast within 12 hours.

Much of the equipment in Puget Sound area is dedicated to oil spill response in Puget Sound under oil spill contingency plans approved by the State of Washington. While simultaneous events are not as likely as single events, the likelihood that equipment located in Puget Sound will already be in use in Puget Sound is not so remote that it can be ignored. Removal of dedicated response equipment will require coordination with the Washington Department of Ecology and plan holders to whom response equipment is committed before it can be released. Assuming that this can be done and the equipment can be moved to Oregon in 12 hours requires that every aspect of the process work flawlessly. That is not a safe assumption upon which to plan for responding to an event which could alter the ecology of Oregon for many years to come.

- Transportation of large quantities of equipment from Puget Sound to Oregon within 12 hours down Interstate Highway 5 (I-5) can not be assured. In winter, I-5 is prone to flooding and landslides. At any time of year, traffic accidents can close the highway for hours at a time. Equipment itself must be assembled, vehicles fueled and married up with equipment, drivers mobilized and briefed, exact destinations identified, routes planned and mapped and finally the move must be executed without accident or breakdown.
- The proposed standards allow for the importation of equipment from other locations but do not allow planning for the deployment of critical equipment from out of the regions within the first 12 hours of a spill.

FOSS, AWO, OTB, and PTSI comment:

There is no value or rationale for requiring the storage amount to be three times the recovery amount as proposed in OAR 340-141-0150 (5). The Coast Guard's standard of two times the recovery amount is more than adequate.

Response:

The Department proposes more protective standards because of the problems experienced when responding to spills in the Columbia River over the past 10 years. Wind patterns and high velocity currents complicate containment and recovery of spilled oil on the Columbia River. The baseline applied to the development of federal planning standards is not applicable. Further, federal plans do not require

contingencies for local wildlife rescue actions that are included in the proposed rule. There are an ever increasing number of threatened and endangered species living on or in the Columbia River. If an imperiled species is seriously injured, the impact on the economy and use of the river could be large.

Adequate storage for the large amount of oil and oil contaminated water which would be collected during the recovery operations associated with a large spill is a critical factor in effective spill response. The nationwide standards developed by the Coast Guard are not sufficient to respond to a large spill in the complex and delicate Columbia River system. The Department supports the higher protective levels, which are technically feasible.

FOSS, AWO, OTB, and PTSI comment:

A suggestion is made that an exemption to the rules be included that is fashioned after the federal rule 33 CFR 154.108. This federal rule allows the Captain of the Port to exempt from planning a facility that for economic and practical reasons can not plan, or presents a low risk of spilling.

Response:

Oregon Statute (ORS 468B) does not provide exemptions to the requirement to do oil spill planning if a vessel or facility meets the definition of a covered vessel or facility. Therefore, the Department is not able to provide the requested exemption in rule.

FOSS, AWO, OTB, and PTSI comment:

A difference between the Coast Guard requirements and those of Oregon is noted and challenged. A reference is made to the Oregon law (ORS 183.332) requiring consideration for other laws. Specifically identified is the higher level of response equipment required in the Columbia River compared to the federal resource levels recommended for a non-high volume port system, and the differences observed between the federal recovered oil storage requirement and Oregon's requirement are mapped out. The commenter(s) ask for justification for the differences in Oregon planning rules from those of the Coast Guard.

Response:

While it is correct that there are differences between the federal regulations and Oregon regulations, these differences are to protect Oregon's unique environment. Federal regulations do not preclude a

state from developing better resource protection planning strategies. As with the threat posed by invasive species in ballast water, Oregon, Washington and California have chosen to protect their environment at a level higher than the Coast Guard's national standard. As discussed above, there are unique and important reasons to protect the environment of Oregon at the levels provided in these rules.

Department staff researched the differences in the two rules. Based on port traffic, the Coast Guard does not rate the risk to the Columbia River high enough to protect it at the maximum planning level. Facilities using the federal formula for risk assessment on the Columbia may be able to calculate that their responsibility for planning for a response ends 15 or 20 miles from the facility. Modeling and experience have shown that an oil spill in the Columbia River can close the 108 mile waterway to traffic and contaminate many miles of beaches. The Department has very carefully chosen planning standards to achieve the best possible outcome after a spill event.

ORS 468B.350 requires that oil spill contingency planning rules adopted by the Commission "...shall be coordinated with the rules and regulations adopted by the State of Washington and the United States Coast Guard...." The proposed rule is more stringent than Coast Guard rules and equivalent to the standards used by the State of Washington. Reversion to the lower Coast Guard standard would reduce the protection currently provided to the Columbia and lower Willamette rivers and undercut the regulatory program of the State of Washington.

Definitions in the proposed rule. (OAR 340-141-0005)

SWW comment:

A suggestion that the phrase "per day" be added to the definition of "Facility" to clarify which pipelines are covered.

Response:

The Department agrees and has added the suggested words to definition (19).

Sections of the proposed rule.

SWW comment:

A question about the proposed rule draft is asked relating to an early draft section covering the intended use of the fees collected. The section was dropped from the final draft and SWW feels it should be reinstated.

Response:

The Department recognizes the point being made and has reinstated the section as OAR 340-141-0010(4) in the proposed rule.

SWW comment:

The deleted phrase "to the maximum extent practicable" should be reinserted in the first sentence of the proposed rule OAR 340-141-0100(4).

Response:

The Department agrees and has reinserted the phrase.

SWW comment:

A suggestion is made to reword section OAR 340-141-0140(13) subparts because the draft rule is confusing about "dedicated equipment", an undefined term, in relation to the required resources being resident in the planning zone where they are listed.

Response:

The Department has determined that by using the defined terms "resident" and "dedicated response vessel" in this proposed rule section the intent is clear.

FOSS, AWO, OTB, and PTSI comment:

A suggestion is made that section 340-141-0140(13)(b), regarding a plan content requirement that plan writers must list joint users of equipment listed in a plan, is "superfluous." Commenter(s) state that the Department already knows who is jointly listing spill resource equipment.

Response:

The Department disagrees that the requirement is unnecessary. Each plan's equipment list is presumed to be fully dedicated to the plan unless otherwise noted.

FOSS, AWO, OTB, and PTSI comment:

A suggestion is made that section 340-141-0140(13)(c), regarding a

plan content requirement where plan writers must list the rating of the equipment, it should read "manufacturer's nameplate capacity 'or' EDRC" for recovery equipment listed in a plan. The proposed rule reads 'and' at this place.

Response:

The Department agrees and has revised the proposed rule.

FOSS, AWO, OTB, and PTSI comment:

A suggestion is made that section 340-141-0140(13)(e), regarding a plan content requirement that realistic equipment capabilities must be listed, be revised so that the Department can be flexible and allow Coast Guard ratings to be used.

Response:

The Department agrees that Coast Guard rates for equipment, if higher, can be used to determine the net ability of the equipment. The proposed rule has been edited to include reference to the Coast Guard approval of equipment.

SWW comment:

At section 141-0140-(17)(b) of the proposed rule the phrase "before proper authorities arrive" needs to be placed so it modifies the obligation to provide security.

Response:

The Department agrees and has moved the phrase to the suggested location in the proposed rule.

FOSS, AWO, OTB, and PTSI comment:

A suggestion is made that section 340-141-0140(19) is asking for too much unnecessary information about standard practices. Commenter(s) feel the proposed rule is too much of a "how-to manual".

Response:

The Department agrees and has revised the proposed rule to read that "non-standard" methods must be described.

FOSS, AWO, OTB, and PTSI comment:

A suggestion is made that section 340-141-0140(19)(a) on surveillance methods is covered in another section and is unnecessary.

Response:

The Department has addressed this point by making the change noted after the previous comment. The proposed rule requires surveillance methods to be specifically reported for non-standard methods of spill response to assure that any non-standard methods are effective.

SWW comment:

Language added to early drafts of the rule changed the requirements for Interim Storage in 141-0140 (24). It is less clear now that all oil and oily recovered materials must be stored during the response.

Response:

The Department has added "oil and " to the referenced part of the proposed rule to keep the meaning clear.

SWW comment:

Section 141-0150 (3), covering planning standards has been changed from previous drafts. It is now less clear that the rule is applied to planning standards alone.

Response:

The Department has added text to this part of the rule to achieve the clarity SWW suggests has been lost in later draft revisions. "The plan must state how the Planning Standards, including any performance standards, will be achieved."

FOSS, AWO, OTB, and PTSI comment:

A suggestion is made that section 340-141-0150 (3)(d), regarding covered vessels and boom deployment, be revised to emphasis safety. Commenter(s) feels there is a possibility that boom around a vessel may cause problems with its ability to maneuver.

Response:

The Department has determined that this proposed rule applies at two hours after the detection of the spill. Given that timeframe, it is unlikely that the vessel would be continuing underway while leaking. Historic

spills have been by vessels at anchor. The Department has revised the proposed rule to allow for safety concerns to be addressed during the containment of a spill source.

KM comments:

Regarding section 340-141-0150(3)(h), the suggestion is made to revise the required planning standard for recovered percentages of spilled oil to 5%, 10%, and 15% in the 12 through 48 hour steps. Further in section (3)(h)(D) it is suggested that the Department recognize the difference between recovering free liquid and removing saturated soils at the site of a spill on land.

Response:

The Department has reconsidered the levels of response the planning standards outline and revised them to the levels suggested. This is a reduction of the quantity of oil expected to be removed from a spill site in the short time period after a spill, however it is a more realistic prediction of the maximum response potential in spill conditions where oil floating in a large body of water is not a consideration. In addition, the Department has inserted the qualification that it is free liquid petroleum and not the total volume of the worst case spill that is the recovery percentage objective.

SWW comment:

The terms Transmission Pipeline and Pipeline Terminal are used in the draft of OAR 340-141-0150(4)(c) but are not defined.

Response:

The Department has determined that the definition of "Pipeline" is descriptive enough and has removed the undefined terms in the proposed rule.

SWW comment:

A question about whether barges are allowed as storage options by OAR 340-141-0150(5) needs to be addressed. This comment includes a reiteration of an earlier point on "dedicated" equipment requirements in OAR 340-141-0140(13).

Response:

The Department has determined that the storage options for recovered oil, oily water, and oily debris don't need to be limited to fixed site

facilities. Barges and vacuum trucks are acceptable interim storage options by definition. The listing of 'storage' in the requirement for resident equipment section of the proposed rule has been removed to further clarify this option. However, plans must list storage as a resource at sufficient levels, as given in OAR 340-141-0150(5).

SWW comment:

The addition of an oil transfer requirement in draft OAR 340-141-0170(4) may conflict with applicable federal law.

Response:

The Department has determined that this element in the draft rule was developed prior to the federal rule implementation to achieve the same level of safety that the federal law intends. Though there is not a conflict with the federal law, it is not necessary to restate the federal intent. The subsection (4) has been dropped from the proposed rule.

FOSS, AWO, OTB, PTSL, and KM comment:

A suggestion is made that section 340-141-0200(1), regarding frequency of drills be made to read "or" instead of "and" in relation to announced and unannounced drills.

Response:

The Department agrees and has made the proposed change.

SWW comment:

The reference in OAR 340-141-0200(4) to "a significant spill event in Oregon" should be changed so that the primary response contractor will receive credit for a satisfactory response in an "Oil Spill Response Planning Zone," as defined in the draft rules.

Response:

The Department has determined that this change will not beneficially alter the rule. Recent Legislative changes in ORS 468B have resulted in planning zones being created anywhere in Oregon where covered vessels and facilities are located, therefore, a significant event will be in a planning zone.

FOSS, AWO, OTB, and PTSL comment:

A suggestion is made that section 340-141-0220(1) be allowed to include e-mail notices when plans are modified and updated.

Response:

The Department agrees and has revised the proposed rule to include *"receipt confirmed e-mail or facsimile."*

SWW comment:

The word "cooperative" should be included in OAR 340-141-0240(1) after the phrase "plan holder."

Response:

The Department has determined that this proposed rule applies to a "person" required to prepare plans. The proposed rule defines "Person," and a cooperative as an association or non-profit corporation is a "person." No change in the proposed rule has been made in response to this comment.

Attachment C

Presiding Officers' Report on Public Hearings

State of Oregon

Department of Environmental Quality

Memorandum

To: Environmental Quality Commission
From: Ed Wilson, Land Quality Division - Emergency Response Program.
Date: July 22, 2002
Subject: Presiding Officer's Report for Rulemaking Hearings on May 2nd and 3rd, 2002
Title of Proposal: Oil Spill Contingency Planning and Fees

Overview of Public Hearing Locations, Times and Presiding Officers

Presiding Officer	Ed Wilson	Ed Wilson
Date and Time	May 2, at 4 PM.	May 3, at 4 PM
Place	DEQ HQ, Rm 3A 811 SW 6 th Ave. Portland, OR	Port of Coos Bay 125 Central Ave.#300 Coos Bay, OR

Portland Hearing

The rulemaking hearing was convened at 4:10 p.m. and closed at 6:30 p.m. A brief explanation of the rulemaking proposal and hearing procedures was provided. Thirteen people were in attendance: Keith Pensom - SeaRiver Maritime, Rick Harshfield - Marine Spill Response Corporation, Brent Way - Clean River Cooperative, Liz Wainwright - Maritime Fire and Safety Association, Pete Murphy - Kinder Morgan, Jerry Engelhardt - Kinder Morgan, Mike Zollitsch - DEQ, Stephen Hill - V Ships UN, Jon Waldum - Lasco Shipping Co. Two individuals provided testimony for the record.

Coos Bay Hearing

The rulemaking hearing was convened at 4:15 PM and closed at 6:30 PM. There were four people in attendance: Mike Gaul - Port of Coos Bay, Sen. Ken Messerle - Oregon Senate, John Lemos - Sause Brothers Ocean Towing, Ruben Kretzschmar - DEQ. There was no testimony on this proposed rule.

Attachment D

Relationship to Federal Requirements

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?
 - Federal law includes regulation of oil storage facilities in 40 CFR 112.
 - The Oil Pollution Act of 1990 sets base planning levels nationally.
2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?
 - Federal requirements are related to technological solutions to potential risk of spills. They are technology based, relying on rating devices and designs to justify acceptable risks posed by transfer and storage of bulk oil.
3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?
 - No. Federal requirements do not include Oregon's need to protect wildlife and Oregon's need to protect unique state resources. Oregon's needs were not specifically considered when national requirements were designed. To receive the highest level of risk protection, the Columbia River would need to be rated as a "High Volume Port" by the USCG. Federal ratings do not include rating factors that consider the long river passage from the ocean to the ports along the Columbia, or the dangerous passage across the Columbia Bar. Federal ratings also do not include factors that consider threatened or endangered species.
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?
 - No. The proposed rule will not reduce costs already experienced by the industry. The changes will improve uniformity in compliance.
5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?
 - No. Federal regulations are already in place.

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

- Yes. The proposed rules are flexible and match levels of planning and preparedness to the activity of the facility.

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

- The proposed rules maintain an existing level of equity in the regional community of regulated operators, and the Department believes this level to be reasonable. These rules are consistent with the State of Washington's rules.

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

- No. A more stringent rule will not increase costs to those not covered by these rules. Costs of compliance and costs of spill cleanup are the responsibility of the responsible party.

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

- Yes. The proposed rule requires the operator of a covered vessel or facility to prepare additional documents. Cargo ships must prepare contingency plans, or purchase membership in an approved plan prepared by a cooperative. Tank vessels are required to enhance their federal plans to meet Oregon requirements. Federal planning requirements are not as protective of the environment as are Oregon requirements. Differences in requirements are acknowledged by the federal government and are allowed under the federal law.

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. This revision to Oregon rules will increase the level of protection for the waters of the state, and add protection to inland areas crossed by petroleum pipelines. Drills of the required plans contribute to higher levels of awareness and accident prevention. A poorly managed cleanup of a spill is far more expensive than a response that has been planned for and is properly implemented.

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Oil Spill Contingency Planning and Fees
(Chapter 340 Division 141)

Fiscal and Economic Impact Statement

Introduction

This proposed rule implements House Bill 2150, amendment to ORS 468B, "Oil or Hazardous Material Spillage":

The 2001 Legislature made significant changes in planning requirements for vessels and facilities that store or transport oil in Oregon waters and expanded the planning requirement to include inland liquid petroleum pipelines. The proposed rules implement those changes. These proposed rules incorporate planning benchmarks long used by Oregon and Washington as the basis for approving facility and vessel plans. The legislature required the designation of oil spill response zones and the amount of response equipment such as boom, skimmers and storage to be located in those zones would be determined. Equipment needs are difficult to determine. The vessels and facilities regulated under these rules have worked under the "benchmarks" established by guidance for a number of years and have the equipment that will be required by rule.

General Public

These rules will have no fiscal or economic impact on the general public.

Small Business

These proposed rule revisions will have no new fiscal or economic impact on small businesses.

Large Business

These proposed rules may increase the cost of compliance for some regulated large businesses because their spill response resources will be required at more locations. The net amount of materials required may not change regionally, but there may be a need to reallocate existing supplies to new less centralized storage sites. This may be accomplished by physical relocation of some supplies and/or the development of mutual aid agreements pledging resources to more than one user. At this time, it is not possible to estimate with precision either the amount or incidence of any additional costs.

Local Governments

This rule will have no fiscal or economic impact on local governments.

State Agencies

Only the Department is affected by this proposed rule:

- There are no FTE increases associated with this rule.
- There are fee increases for the covered vessel and facility operators, and the new Department maximum limit for fee collection is set at \$208,280 for the 2001-2003 biennium. The prior fee limit was \$153,600 per biennium.

Assumptions

In making this impact prediction, the Department assumes:

- There are no changes in the number of covered vessel or facilities.
- There are no new resources for which the contingency planning must account.
- The associations and cooperatives currently in place will remain an effective means to minimize costs of compliance.

Housing Cost Impact Statement

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

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

These rule revisions correct the schedule of fees to match the fees determined by the 2001 legislature. These revisions also include planning standards to be used when approving an oil spill contingency plan. The existing rule (Chapter 340-047) that is not modified is renumbered as Chapter 340 Division 141.

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

Yes X

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

OAR 340-018-0030(5)(1) - State Agency Coordination Program/Land Quality Division/Development of Oil Spill Regulations.

- b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes X Affected local governments and agencies will receive notice of the hearings.

- c. If no, apply the following criteria to the proposed rules.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Intergovernmental Coordinator [signed by Roberta Young] [03/14/02]

Attachment G

State of Oregon **DEPARTMENT OF ENVIRONMENTAL QUALITY**

Advisory Committee Membership and Report

In the summer of 2001 a group of interested parties and stakeholders were invited to become the Emergency Response Advisory Committee (ERAC). The ERAC's duties included advising the Department on the development of administrative rules covering; Oil Spill Planning, Emergency Response and Reportable Quantities, Ballast Water Management and Reporting, and the amendments to the Enforcement and Compliance rules as related to these topics. The ERAC is comprised of 15 appointed members and a variable number of guest members depending on the subject of discussion. The ERAC, chaired by Frank Burg, Trumbull Asphalt, is further organized into a main body and a small workgroup of planning experts to efficiently review material given to them by the Department. The ERAC continues to function as a standing committee offering opinions on a number of environmental issues related to shipping and spill response.

Members:

Chair - Frank Burg, Trumbull Asphalt

Members - Bob Albers, Office of the State Fire Marshal
John Crawford, FOSS Maritime
Dave Godel, Tidewater Barge
Paul Heimowitz, Oregon State University
Jerry Holmes, Chevron Petroleum
Linda Pilky-Jarvis, Washington Department of Ecology
Gail McEwen, Oregon Department of Fish and Wildlife
Doug McGillivray, Multnomah. Co. Emergency Manager
Peter Murphy, Kinder Morgan Energy Partners
Bob Sallinger, Portland Audubon Society
Erika Ohm, Oregon Trucking Association
Rick Sloane, Union Pacific RR
Capt. Jim Townley, Columbia River Steamship Operators
Liz Wainwright, Merchants Exchange of Portland

Over the course of the past year, the committee reviewed and discussed multiple drafts of the proposed rules. Their interest ranged from style issues to specific technical terminology. In all areas, they provided useful comments as the rule development progressed. Individual members of the ERAC represent an array of perspectives on the subjects covered in the proposed rule. Not all of the members concur on the details of the final draft of the proposed rules, but all are supportive of the collaborative process the Department applied during the development.

Issues Specific to the Proposed Oil Spill Contingency Planning and Fees Rule.

During the first meeting of the ERAC, members determined that a key issue to be resolved would be terminology differences between regulators and industry. To address this issue, a small group of committee representatives and interested stakeholders formed a subcommittee of the ERAC and named themselves the "Harmonizing Committee." This group met frequently and discussed at length the wording of the proposed rule with emphasis on maritime industry terms. They proposed and reviewed possible language in an effort to have the final rule be clear to the regulated community. This group also served as a sounding board for drafts of the proposed planning standards developed by Department staff.

Members of the Harmonizing Committee are:

Frank Burg, Trumbull Asphalt
John Crawford, FOSS Maritime
Dave Godel, Tidewater Barge
Liz Wainwright, Merchants Exchange of Portland
Frank Pellegrini, Marine Spill Response Corporation
Brent Way, Clean Rivers Cooperative

Vessel Contingency Plan Planning Standards

For Oregon and Washington States

July 1995

INTRODUCTION

What are the planning standards?

Washington and Oregon require the owners or operators of tank, cargo and passenger vessels 300 gross tons or larger to submit oil spill contingency plans before entering state waters. (Washington also requires tank vessels smaller than 300 gross tons to submit plans). These plans ensure that the plan holder will be capable of removing oil and minimizing damage to the environment in the event of a spill.

The Oregon State Department of Environmental Quality (DEQ) and the Washington State Office of Marine Safety (OMS) evaluate the effectiveness of contingency plans by using response planning standards. The planning standards ensure vessel owners and operators have appropriate resources available to provide an effective and timely response to a worst case spill (a spill of the vessel's entire cargo and fuel in adverse weather).

These standards are for planning purposes only and are not performance standards or guarantees of actual performance. Actual response to a spill incident must be tailored to the event based upon the circumstances of the incident and the directives of the Unified Command. This publication describes the planning standards and explains how they help protect Northwest resources.

A Joint Publication of:



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Office of Marine Safety
711 State Avenue
P.O. Box 42407
Olympia, WA 98504-2407
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OREGON STATE
Department of
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OVERVIEW

In 1993, the Washington State Office of Marine Safety (OMS) and the Oregon State Department of Environmental Quality (DEQ) published draft planning standards for reviewing vessel oil spill contingency plans, subject to public review and comment. These planning standards are now being published in final form. The planning standards are designed to help the states evaluate the effectiveness of contingency plans by determining whether sufficient resources have been identified to respond to the vessel's worst case spill. The goals of the planning standards are (1) to ensure consistent review of all plans, and (2) to protect the Northwest marine environment. The planning standards vary depending upon the region (or Response Zone) covered. The waterways of Oregon and Washington are divided into five Response Zones to ensure all resources are appropriately addressed in the event of a worst-case spill.

COMMONLY ASKED QUESTIONS ABOUT THE PLANNING STANDARDS

Why were the planning standards developed?

The planning standards were developed to provide plan reviewers with a systematic and objective means of reviewing each oil spill contingency plan and to ensure plans comply with Oregon and Washington rules. The planning standards provide consistency during the review process by ensuring that all owners or operators of vessels are able to provide the same level of spill response. The planning standards also allow for review consistency between Washington and Oregon to protect the shared resources of the Columbia River.

How were the planning standards developed?

The planning standards were developed in cooperation with DEQ, OMS, and Washington's Department of Ecology, and were reviewed by industry and environmental representatives. The availability of response equipment, sensitivity of natural resources, frequency and type of vessel traffic, and potential for a marine incident in Washington and Oregon waterways were evaluated to determine the appropriate planning standards for specific response zones.

What do the planning standards require?

- ☐ Mechanical oil recovery equipment
- ☐ Boom
- ☐ Interim storage capability
- ☐ The ability to meet response time requirements for the five response zones

How do the planning standards protect the resources of the Northwest?

The planning standards ensure response equipment will be staged throughout the waterways of the Northwest to enable a fast and effective response. Without the planning standards, some resources may be left unprotected or under-protected.

Oregon and Washington Vessel Oil Spill Contingency Plan

	2 Hours	6 Hours	12 Hours\15 Hours (Zone 3)
ZONE 1 (Puget Sound)			
Oil recovery rate ¹	None	2% (not to exceed 12,000 bbls/24 hr)	5% (not to exceed 12,000 bbls/24 hr)
Boom	4 x largest vessel	20,000 feet	40,000 feet
Interim storage capacity	None	1 x oil recovery amount	1.5 x oil recovery amount
ZONE 2 (Strait of Juan de Fuca)			
Oil recovery rate	None	2% (not to exceed 12,000 bbls/24 hr)	5% (not to exceed 12,000 bbls/24 hr)
Boom	4 x largest vessel	10,000 feet	40,000 feet
Interim storage capacity	None	1 x oil recovery amount	1.5 x oil recovery amount
ZONE 3 (Coast and 3 miles)			
Oil recovery rate	None	None	3% (not to exceed 12,000 bbls/24 hr) ²
Boom	Overflight assessment	4 x largest vessel	40,000 feet
Interim storage capacity	None	None	1 x oil recovery amount
ZONE 4 (Coastal Harbors)			
Oil recovery rate	None	2% (not to exceed 12,000 bbls/24 hr)	5% (not to exceed 12,000 bbls/24 hr)
Boom	4 x largest vessel	10,000 feet	40,000 feet
Interim storage capacity	None	1 x oil recovery amount	1.5 x oil recovery amount
ZONE 5 (Columbia River Sys.)			
Oil recovery rate	None	2% (not to exceed 12,000 bbls/24 hr)	5% (not to exceed 12,000 bbls/24 hr)
Boom	4 x largest vessel	10,000 feet	40,000 feet
Interim storage capacity	None	1 x oil recovery amount	1.5 x oil recovery amount

¹ Sufficient equipment (derated capacity) must be staged to recover the given percentage of the vessel's worst case spill, provided the spill is contained within the zone.

² If tank ships voluntarily remain 50 miles off the coast, and tank barges and cargo and passenger vessels voluntarily remain 25 miles off the coast, the contingency plan for these vessels shall be the same as for Zone 3.

♦ Shaded areas indicate the minimum amount of equipment that is required to be staged within the zone. For Zones 1 and 2, the minimum amount of equipment is indicated in the shaded areas.

Why are the states involved if the Oil Pollution Act of 1990 has already established national response standards?

The Oil Pollution Act of 1990 (OPA 90) created a national baseline for oil spill response and authorized states to establish more stringent requirements. The Northwest is home to many of the nation's threatened and endangered species and several areas have been designated as either National Wildlife Refuges or National Marine Sanctuaries. The Northwest economy is highly dependent upon the natural resources of its waters and both the Columbia River and Puget Sound are essential waterways for world trade. Recent research for the region's Geographic Response Plans (GRPs) has demonstrated that the Northwest's sensitive resources can only be adequately protected by a quicker and more effective response than is mandated by OPA 90.

Will the planning standards prevent oil spills?

No, meeting the planning standards will not prevent oil spills, but will mitigate damage to the environment if a spill occurs. By ensuring that appropriate response equipment is available and strategically positioned before a spill occurs, the degree of environmental damage caused by a spill will be reduced.

Planning Standards Response Zones

ZONE 1:

All waters of Puget Sound, east of a line between Discovery Island and New Dungeness Light.

ZONE 2:

The waters of the Strait of Juan de Fuca, west of a line between Discovery Island and New Dungeness Light and east of a line between Cape Alava and Nitinat Inlet.

ZONE 3:

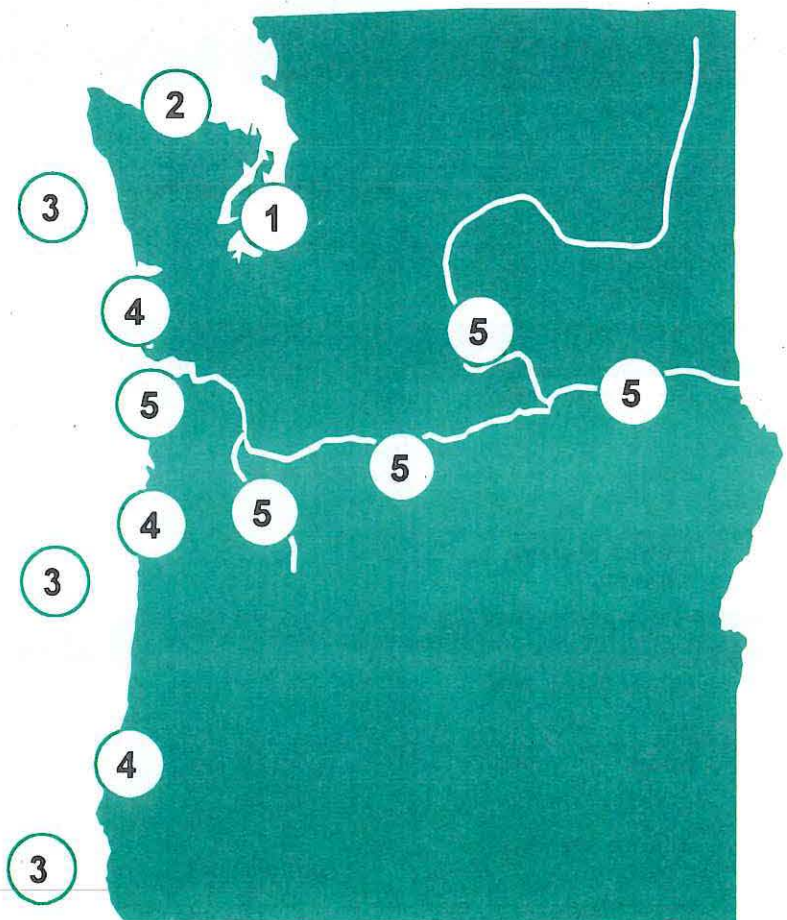
All other waters (out to three nautical miles) of the western coast of Washington and Oregon, not included in Zones 2 or 4.

ZONE 4:

The waters of Grays Harbor, Willapa Bay, Yaquina Bay, and Coos Bay (out to three nautical miles off the coast).

ZONE 5:

The Columbia River (and three nautical miles west of river mile zero), Snake River, and Willamette River.



Washington

Emergency Planning Standards

	24 Hours	48 Hours	72 Hours
36,000	12% (not to exceed 48,000 bbls/24 hr)	17% (not to exceed 60,000 bbls/24 hr)	20% (not to exceed 72,000 bbls/24 hr)
	Additional boom as response dictates	Additional boom as response dictates	Additional boom as response dictates
Amount	2 x oil recovery amount	2 x oil recovery amount	Additional storage to prevent waste stream bottlenecks
36,000	12% (not to exceed 48,000 bbls/24 hr)	17% (not to exceed 60,000 bbls/24 hr)	20% (not to exceed 72,000 bbls/24 hr)
	Additional boom as response dictates	Additional boom as response dictates	Additional boom as response dictates
Amount	2 x oil recovery amount	3 x oil recovery amount	Additional storage to prevent waste stream bottlenecks
36,000	8% (not to exceed 48,000 bbls/24 hr)	14% (not to exceed 60,000 bbls/24 hr)	17% (not to exceed 72,000 bbls/24 hr)
	Additional boom as response dictates	Additional boom as response dictates	Additional boom as response dictates
Amount	2 x oil recovery amount	3 x oil recovery amount	Additional storage to prevent waste stream bottlenecks
36,000	12% (not to exceed 48,000 bbls/24 hr)	17% (not to exceed 60,000 bbls/24 hr)	20% (not to exceed 72,000 bbls/24 hr)
	Additional boom as response dictates	Additional boom as response dictates	Additional boom as response dictates
Amount	2 x oil recovery amount	3 x oil recovery amount	Additional storage to prevent waste stream bottlenecks
36,000	12% (not to exceed 48,000 bbls/24 hr)	17% (not to exceed 60,000 bbls/24 hr)	20% (not to exceed 72,000 bbls/24 hr)
	Additional boom as response dictates	Additional boom as response dictates	Additional boom as response dictates
Amount	2 x oil recovery amount	2 x oil recovery amount	Additional storage to prevent waste stream bottlenecks

and suitable safety conditions exist. The amount of equipment does not have to exceed the given equipment cap.
 miles off the coast, the 12-hour requirement in Zone 3 will be extended to 15 hours.
a minimum amount of equipment may be staged in the combined zones.

EQUIPMENT REQUIREMENTS

Why are the response requirements unique for each of the five zones?

Response requirements reflect the type of traffic in each zone and its unique environmental constraints. Thus, the waterways of Washington and Oregon are divided into five Response Zones (refer to page 3) to ensure all the states' resources are appropriately protected from a worst-case spill. For example, Zone 1 (Puget Sound) has higher initial Planning Standards than Zone 3 (Washington and Oregon Coast) because the frequency of spills is greater in the internal waters where transfer operations are performed. The Planning Standards are different in Zone 3 because few good staging locations exist along the coast, and the distance of the vessels transiting along the coast will generally allow more time to respond to spills.

What type of response equipment do the planning standards require?

Mechanical recovery equipment is required under the planning standards, but the specific types of equipment to be located in each zone are not identified. Due to the variable environmental conditions in the Northwest and different products carried for each transit, a variety of equipment should be available to respond to different types of oils. The plan holder and primary response contractor are responsible for deciding the types of equipment to be used. This decision should be based on the area of operation and type of product carried. However, DEQ and OMS strongly recommend the plans include a variety of resources to ensure that the most effective response can be enacted under almost any circumstance.

Why do the planning standards only give credit for mechanical response equipment and not equipment for in-situ burning or dispersant use?

Mechanical response remains the only proven method to recover oil once it has entered the water. The use of non-mechanical response in the Northwest is permitted by the Unified Command on a case-by-case basis. Washington and Oregon along with federal and local agencies are developing an Area Contingency Plan to determine effective response strategies for the Northwest. Under this Area Committee, two subcommittees are evaluating the use of dispersants and in-situ burning as response tools. Once these subcommittees conduct additional research, analyze results, and develop policies, in-situ burning and dispersant use may be considered as additional response tools.

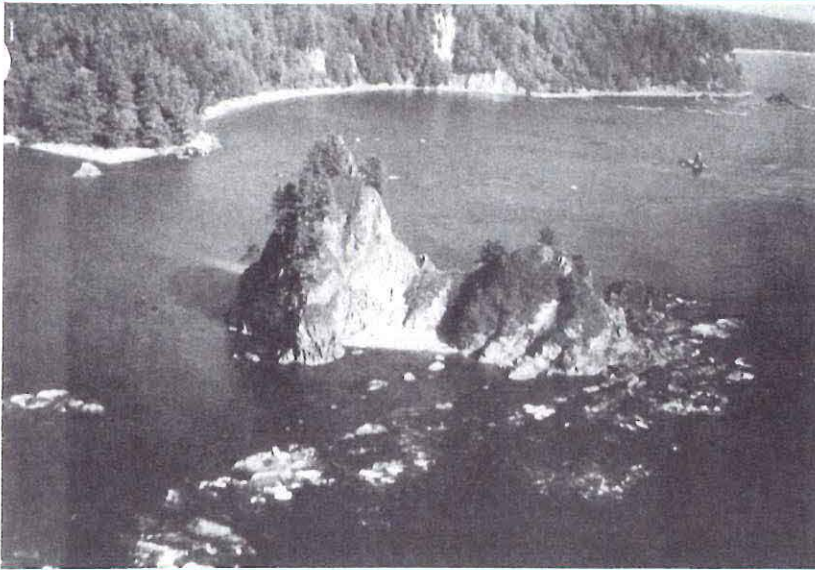
Can equipment that is not dedicated to spill response be identified to meet these standards?

DEQ and OMS recognize that equipment may not always be dedicated for spill response use. Equipment not dedicated to spill response but available in the event of a spill can be credited to meet the requirements of the planning standards. Non-dedicated equipment is credited with half the value allowed dedicated response equipment.



Spill drills are a valuable component in the planning process to ensure that response systems are effective.

PHOTO BY ROLAND MILLER, CLEAN SOUND



The planning standards will protect the unique Northwest environment for many generations to come.

PHOTO BY DICK LOGAN, DEPARTMENT OF ECOLOGY

ZONES (see page 3)

Must the planning standards be met by staging all of the equipment in the zone in which it will be used?

No. A minimum amount of equipment is required to be staged in the zone in which it will be used. The remaining equipment may be staged elsewhere and cascaded into the zone as needed to meet the planning standards. The minimum amount of equipment required to be staged in each zone is shaded on the enclosed table. No equipment needs to remain within Zone 3 due to the lack of adequate staging locations. Equipment cascaded into the zones must be capable of being deployed at a spill within the time specified by the planning standards.

Can equipment stationed in one zone be moved to another area?

Yes, as long as the required minimum amount of equipment (shaded in the table) remains within the zone. Two exceptions for moving the required minimum of equipment are (1) for training, and (2) by request of the Federal or State On-Scene Coordinator in the Unified Command of a spill. If advance notice is given to the states, some of the required minimum of equipment may be moved out of the zone for training purposes or to respond to a spill in another location. These requests will be evaluated on a case by case basis.

How is it determined where to position equipment in each zone?

Equipment must be positioned in each zone so that sensitive resources will be protected from a spill. The equipment should be positioned to meet the time requirements of the planning standards for any area of vessel operation within the zone.

How do the planning standards compare to the Geographic Response Plans?

The Geographic Response Plans (GRPs) provide strategies that prioritize protection of the most sensitive areas. The GRPs contain recommended types and quantities of response equipment necessary to effectively carry out the strategies. The planning standards are based on the GRPs, although meeting the requirements of the planning standards may not provide sufficient equipment to enact every GRP strategy. This is why the planning standards state "additional boom (after 12 hours) or interim storage (after 48 hours) as response dictates."



Department of
Environmental Quality

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ENFORCEMENT

How are the planning standards enforced?

The planning standards are used during plan review. Plan approval will not be granted for plans that significantly deviate from the planning standards. Response to a spill must follow approved plans. Performance when responding to a spill or a drill may affect the re-evaluation and future approval of the plan.

As required by state law, the planning standards include one performance requirement. This regulation requires plans to demonstrate that response equipment and personnel will be on-scene within *two hours* of the planholder's awareness that a spill has occurred, given suitable safety conditions. This capability is a requirement, *not* a planning standard.

Are the planning standards flexible?

OMS and DEQ encourage innovative approaches to spill response. Plan holders are encouraged to take advantage of best achievable practices and technology to perform the most effective spill response. Regardless of the technology used, the same level of protection required by the planning standards must be provided.

When must the planning standards be met?

Each situation will be evaluated on a case-by-case basis. DEQ and OMS will work with industry to meet the planning standards as soon as possible to protect the Northwest Environment.

For more information contact:

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Environmental Quality ADA Coordinator:
(503) 229-5696

12/12-13/02 EOC Meeting. Testimony provided at 12/13/02 Public Forum.



13 December 2002

COMMENTS PREPARED FOR PUBLIC FORUM

From: John Crawford
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To: Oregon Environmental Commission (meeting)
Portland, Oregon

Re: Agenda Item I / Rule Adoption (OAR 340-141)
Oil Spill Contingency Planning and Fees

Good morning....

Thank you for the opportunity to express some concerns I have about the proposed rule making "process", or lack of process, on Agenda Item I / Oil Spill Contingency Planning and Fees.

By way of introduction and background, I am responsible for all contingency plans and plan implementation at Foss Maritime Company. This includes 10 international, federal and state plans. Foss Maritime operates a large fleet of vessels, including tank barges, throughout the Pacific Rim. We have regional offices in Seattle, Portland, San Francisco, and LA / Long Beach, as does our sister company, Foss Environmental Services (FES). FES is a privately owned spill response contractor providing emergency response services up and down the West Coast of North America.

On the personal side, I have been doing this type of work at Foss for over 12 years. Prior to that, I served for 28 years in the United States Coast Guard.

In September 2001, I was honored at the invitation to serve on the Rule Advisory Committee for this particular issue. Much of the package before you represents a cooperative effort by DEQ and industry to improve the contingency planning regulations.

I particularly commend DEQ for recognizing the need to move from subjective standards, like "describe and explain" to more objective, quantifiable standards. This proposed change will reduce the size of our plans by more than 50%, without any degradation of readiness. It should also reduce the time required to review and maintain the plans. This is a welcomed improvement, for everyone.

However, before you adopt this rule, I believe you should be fully informed about the proposed planning standards in Section 340-141-0150. These particular standards specify the amount of containment boom, recovery (or skimming system) capability, and temporary storage capacities that plan holders must have within certain time frames.

Since my comments about the excessive nature of the proposed standards (3 x the federal requirements in OPA-90) are already a matter of record, I would like to deal with the issue of process, and justification.

First, it is important to understand that these planning standards are the keystone of this proposed rule. That is why it is so critical that they be realistic and practical.

Imagine my surprise during the Rule Advisory Committee when they were removed from the table for discussion. When I asked "why," I was told that DEQ would do their own independent research on the subject. Outside the meeting, I tried to engage DEQ staff in a discussion of the issue, to no avail. The next time I saw the planning standards, they were distributed for public comment. Now, on page 2 (Stakeholder Involvement, first paragraph, last sentence), they are telling you that, "The majority of the ERAC strongly supported adopting the benchmarks into rule." I ask you: how can this be a correct statement?

As I read DEQ's comments to the EQC, dated 25 November 2002, I determined that you might want to see this picture from another perspective, before you make an informed decision.

I would like to begin with the first paragraph on page 3, at the bottom, where it states:

"A number of the comments provided on the rules urged the Department to rely only on the OPA for Oil Spill Planning requirements. To do so, would exclude cargo vessels and pipelines and be contrary to Oregon statute."

I believe the recommended intent was to use the OPA-90 standards as a "baseline" in the Oregon rule for everyone. To do so would not exclude cargo vessels and pipelines. Furthermore, using OPA-90 as a baseline would still provide a parallel standard for resident equipment, as set forth in the Oregon statute.

The next issue, beginning in the next paragraph, is very contentious, so please bear with me on this.

The "Vessel Contingency Plan Planning Standards for Oregon and Washington – 1995 (Attachment H), jointly published by Oregon and Washington" was an internal policy decision that was enforced as a regulation by both states – without the benefit of public rule making, i.e. pursuant to the Administrative Procedures Act. By letter dated 10 May 1995, I challenged both WDOE and OR-DEQ about this issue, but was privately assured that since it wasn't really a regulation – they could be more flexible in the application. To the best of my knowledge, this never happened. It was, in fact, enforced as a regulation.

Now they are telling you that since they got everyone to comply with an illegal action, they want to use that as a justification for adoption! In criminal law, isn't that like using the fruit from the poisoned tree?

There has been another interesting development on this same issue. It stemmed from a water rights case in Eastern Washington where WDOE was basically enforcing internal policy as regulation. The Washington State Supreme Court in *Hillis v. Department of Ecology*, March 1997 (131 Wn 2d 373, 932 P. 2d 139) ruled, among other things, that: "Ecology's decisions, made without rule making, must be invalidated." I know this is Oregon, not Washington, but I believe that the same principle of law applies in every state.

In the next to last paragraph on page 3, it reads: "ORS 468B.350 requires that oil spill contingency planning rules adopted by the Commission '...shall be coordinated with the rules and regulations adopted by the State of Washington and the United States Coast Guard....' (emphasis added)" DEQ's comments continue, "...relaxing current practice would undercut the oil spill planning program of the State of Washington."

As a point of information, WDOE is currently chairing a Rule Advisory Committee to update their contingency planning regulations, and incorporate some definitive planning standards – to be determined. Part of this is driven by the Hillis decision, because the entire department (WDOE) got the word about enforcing policies as regulation. I applaud this action, and I am actively participating as a member on WDOE's Rule Advisory Committee.

I do not know what the outcome, in Washington, will be – but the process and discussion has been open and forthright. I trust this process will produce some realistic and practical standards, based on factual evidence and an accurate cost-benefit analysis. DEQ should not be allowed to imply that their proposal standards match Washington's, because they don't. Washington does not yet have any new planning standards, but they are honestly and openly working on same.

The very last paragraph on page 3 states that this proposed rule will not increase costs to industry.... This is not accurate. Because these planning standards are so steep for the first 12 hour mark, where equipment must be "resident" on the river – it will cost Foss Environmental almost \$250,000 to comply. However, if the "resident" equipment requirement was for the 6 hour mark, instead of 12 hours, it would be more reasonable and would not increase the cost to industry.

Since the implementation of OPA-90, oil spills have decreased by 80%. This is documented by various sources. The economy is in a downturn, and it is nearly impossible to justify a capital expenditure for something like this, especially when spills are so few and far between.

Couple this factor with FES' (Tier 2) equipment, pre-staged for prompt mobilization in Tacoma and Seattle to meet or supplement any 12 hour response planning standard between the Washington Coast, Canadian border and the Columbia River, but can't be counted or used under this proposed regulation, and you perhaps can understand industry's frustration.

DEQ is so insistent that FES can't respond from Tacoma / Seattle within 12 hours (see pages 46 and 47), it defies logic. How quickly they have forgotten that FES responded to the NEW CARISSA spill down in Coos Bay (8 February 1999) with this same (Tier 2 response) equipment, from Tacoma / Seattle – within 12 hours. And, in the process, no other area in Oregon, Washington, or California, was stripped of their Tier 1 response equipment to meet this emergency.

OAR section 340-141-0140(13) states:

"When calculating the delivery time of equipment to a spill staging area, the plan must use travel speeds consistent with federal speed predictions for the equipment being moved."

At the prescribed 35 mph via highway, that's less than 5 hours from Tacoma to Portland, at 35 mph – on Interstate 5! It's even quicker and easier to reach Rainier, from Tacoma / Seattle. Also, exactly how many times (days) has I-5 flooded over in the past 10 years, as DEQ contends (see page 47)? It's not that common.

You must be wondering, by now, what I'm driving at – besides 35 mph!

UNREALISTIC STANDARDS CREATE UNREALISTIC EXPECTATIONS.

DEQ must do a better job of justifying their numbers, and listening to all of industries' input. Yes, they are entitled to exceed the OPA-90 numbers – but they need to do a better job in balancing the environmental, operational and economic impact. Why and how are the OPA-90 numbers inadequate, as a baseline? What is Oregon's "compelling reason" or justification for exceeding the USCG / OPA-90 planning standards by almost three (3) times?

You might find it interesting that the Coast Guard recently determined that, as part of a study mandated by the original OPA-90 regulations, (required by 1 February 2003):

“Based on the conclusions in the Caps Report and Regulatory Analysis for this rule, the Coast Guard is not proposing an increase in the mechanical response equipment requirements levels....”
Federal Register / Vol. 67, No. 198, Friday,
11 October 2002 (page 63335, column 1).

If DEQ cannot produce a better justification and cost-benefit analysis for this requirement, then I propose that they let Washington take the lead, then follow suit. In retrospect that would probably be a better option because of the shared jurisdiction on the Columbia River.

This analogy springs to mind.... Everyone in the country is driving a car with a single spare tire. But, Oregon requires three spare tires. Oregon's justification has gone from 'because we said so' to 'oh, we've experienced three flat tires in the last 10 years' (see page 6, first 3 lines). This presents no correlation to the planning standards. Show me the numbers – the scientific data, the historical case studies, and a directly related cost-benefit analysis.

This is what went into developing the OPA-90 planning standards, which have proven more than effective for the past decade. Experts from around the country participated in the reg-neg committee, including representatives from the States of Alaska and California. How can Oregon DEQ disregard such expertise and research by substituting someone's personal opinion or “feeling” – and arbitrarily TRIPLE the OPA-90 standards?

On page 46 (second response, second paragraph, lines 3 and 4), DEQ is also telling you that, “...the rules are not very different from the benchmarks in place since 1995.” I believe when you raise the storage requirements from 1 and 1.5 times the recovery amount to 3 times the recovery amount – that's a substantial, and unnecessary, increase.

The Coast Guard or OPA-90 storage standard is 2 times the recovery amount – across the board. I feel that “2x” is more than adequate and appropriate – especially when there is no evidence to the contrary, and this includes spills from around the country for the past decade.

Moving on.....

On page 48 (first full comment and response), I believe that DEQ misread or misunderstood the recommendation. FOSS, AWO, OTB and PTSI were not requesting an exemption to the rules. What we recommended was a provision for making application for exemptions or alternative compliance. Examples were even included: 33 CFR 154.108 for facilities, and 33 CFR 155.130 for vessels.

These regulations set out certain provisions and conditions to be met, procedures for application, etc. Most importantly, it would allow DEQ to review and approve or disapprove the application on a case-by-case basis. It is not a blanket exemption. In fact, based on my experience over the years, it is a good management practice.

In Section 340-141-0150(3), the second sentence has been added since the proposed final rule (4-1-02): "The plan must state how the Planning Standards, including any performance standards, will be achieved." This was in response to SWW's comment on page 52.

I'm not certain this clarifies anything, and it adds "performance standards" – something industry was concerned about from the very start of the Rule Advisory Committee. See Mr. Harshfield's comments on page 43, and more importantly DEQ's response. Especially note the last sentence: "This change will reduce the possibility of mistaking planning requirements for performance standards."

Finally, there is one small but important typographical error on page 19, in Section 0140(13)(c). The words "the EDRC" should read "or EDRC" – per DEQ's first response (and agreement) on page 51.

In closing, I want to thank the commission for allowing me the opportunity make these comments this morning. I hope they are helpful in developing some realistic and practical regulations, for now, and for future generations. While our primary emphasis remains PREVENTION of oil spills, we must always be prepared to respond. Contingency plans and objective, quantifiable, practical and realistic planning standards are critical tools for ensuring readiness and preserving our environment. And for that, you have industry's whole-hearted support.

Thank you.




State of Oregon
Department of Environmental Quality

Memorandum

Date: November 25, 2002

To: Environmental Quality Commission

From: Stephanie Hallock, Director 

Subject: Agenda Item J, Rule Adoption: Enforcement Procedure and Civil Penalties
December 12-13, 2002 EQC Meeting

Department Recommendation The Department recommends the Commission adopt proposed rule amendments to Division 012, Enforcement Procedure and Civil Penalties, as presented in Attachment A.

Need for Rulemaking New and amended rules relating to ballast water management, oil spill contingency planning and fees and oil and hazardous materials emergency response requirements have been developed as a result of revisions to Oregon Revised Statutes made by the 2001 Legislature. These proposed rule amendments are necessary to update the Department's Enforcement Procedure and Civil Penalties policies in Division 012 to make them consistent with these new and amended rules.

Effect of Rule Amendments to Division 012 address administrative rule requirements included in three new Department rules. These are the essential elements of the rule stated as direct and enforceable requirements. The specific rules addressed are:

- Oil and Hazardous Materials Emergency Response Requirements
Adopted by the Commission on October 4, 2002.
- Ballast Water Management
Adopted by the Commission on October 4, 2002.
- Oil Spill Contingency Planning and Fees
Proposed for adoption in December, 2002.

The amendments create a separate topic section in Division 012 with enforcement procedures for each of the three new rules, including classifications for different violations and modifiers for certain circumstances to allow for enforcement and penalty assessment. The amendments also create a revised penalty magnitude category section for the Oil and Hazardous Materials Emergency Response Requirements rule. Specific classes of potential violations are based on the required actions identified in the rules listed above. Attachment H provides additional sections of Division 012 that are part of the process of calculating an appropriate penalty.

Commission Authority	<p>The Commission has authority to take this action through these statutes:</p> <ul style="list-style-type: none">• Emergency Response - ORS 466.625• Oil Spill Planning - ORS 468B.350• Ballast Water Management - ORS 783.640• General authority to adopt rules - ORS 183.310 to ORS 183.550
Stakeholder Involvement	<p>An advisory committee has been involved in developing the three new rules on which the proposed amendments to this division are based. The Emergency Response Advisory Committee (ERAC) reviewed the draft language of the new rules and the Department's proposed wording of the amended sections of the Division 012 rule. Attachment G provides the advisory committee's membership and report.</p>
Public Comment	<p>A public comment period from May 1, 2002 to June 21, 2002 was provided and included public hearings in Portland, Bend, Pendleton and Newport. A total of six people attended the hearings, however, no oral comments were provided. Two comment letters expressing concerns about the scope of the proposed rule and that there was an appearance of duplication in the proposed text were received during the comment period.</p> <p>Results of public input and the Department's responses are in Attachment B.</p>
Key Issue	<p>Stakeholders raised no key issues related to the development of this proposed rule amendment. Issues brought to the attention of the Department were in relation to language used in the proposed amendment. Specifically in the way the Department has chosen to summarize the requirements found in the ballast water, emergency response and the planning rules forming the basis of this Division 012 amendment. This amendment to Division 012 follows a wording pattern consistent with the unchanged sections of the rule. Stakeholders recommended that a different format be applied that provides cites to the exact sections of each rule as a way to assure the violations are precisely what the associated rule requirement states.</p> <p>Advice provided by stakeholders that is not, or can not be, addressed in the wording of the proposed amendments at this time will be available to a Division 012 rule revision team as they evaluate the need to change the rule on a larger scale in 2003.</p>
Next Steps	<p>The rules would become effective upon filing with the Secretary of State. The Rule Implementation Plan is available upon request.</p> <p><u>Regulated Community Implementing and Assistance Actions</u></p> <p>The Department anticipates that during discussions with the regulated community on the new and amended rules (if adopted) each potential violation will also be discussed. The Department has three positions available to participate in this activity with local government and emergency responders.</p>

Staff Implementing and Training Actions

The Department conducts briefings and training for both regional and headquarters staff on a flexible schedule of normally monthly sessions to keep them current on a myriad of coordination and emergency response technical issues. Types of training include meetings with regional staff and with state and federal agencies. The correct use of a new enforcement tool will be included in this training.

Attachments

- A. Proposed Rule
 - 1. Summary of Rule
 - 2. Proposed Rule
- B. Public Input and Department's Response
- C. Presiding Officers' Report on Public Hearings
- D. Relationship to Federal Requirements
- E. Fiscal and Economic Impact Statement
- F. Land Use Evaluation Statement
- G. Advisory Committee Membership and Report
- H. Rule sections 0042 and 0045, not amended, as reference on the penalty calculation process.

**Available Upon
Request**

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

Approved:

11/12/02 Section: Michael J. Zeltick for Chuck Donaldson

Division: Dunkley

Report Prepared by: Ed Wilson

Phone: (503) 229-5373

Attachment A.1
Summary of Rule

The proposed rule amendment addresses violations of Ballast Water Management rules (Division 143), Oil and Hazardous Materials Emergency Response Requirements (Division 142), and Oil Spill Contingency Planning and Fees (Division 141). These violations are set out in proposed new sections of Division 012 by subject, and assigned a classification level to be used when determining enforcement or penalties. The proposed new sections:

1. Place in the Department's enforcement rule classes of violations based on statute as revised by the 2001 Legislature.

These include potential violations of:

- New oil spill contingency planning requirements;
- Requirements related to the management of ballast water by vessels; and
- Emergency response required actions and spill reporting.

2. Create a classification level for each listed violation.

The proposed rule amendment creates three new sections and renumbers the current Oil and Hazardous Material Spill and Release Classification of Violations. In each of the new sections, the violations of the supported rules are listed in classes. The Department evaluated the current regulated community compliance with existing rules and matched the new classes with a level of severity found in the current enforcement. Violations with the greatest potential consequences are assigned the highest class. Where new classes were developed based on new statute, the class level was set by comparison with other Department enforcement policy.

3. Include modifiers to determine penalties.

In order to conduct a fair review of identified violations, the proposed rule includes a process to modify the assigned value of the violation (see OAR 340-012-0090, pages 9 to 14). This process of introducing mitigating and compounding circumstances adjusts the enforcement or penalty assessment to a fair outcome. Reasons to modify a penalty might include the environmental impact, recidivism or cooperation from the violator. Ballast water management violations leading to civil penalties are capped at specific dollar amounts by statute. A violation calculation for "failure to correct the cause of a spill or release", which is based on OAR 340-142-0030, would be as listed in OAR 340-012-0081(1)(j) a Class one violation, and fall within the \$10,000 penalty matrix.

Attachment A.2

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340 DIVISION 12
ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0045

Civil Penalty Determination Procedure

- (1) When determining the amount of civil penalty to be assessed for any violation, other than violations of ORS 468.996, which are determined according to the procedure set forth below in OAR 340-012-0049(8), the Director shall apply the following procedures:

- (a) Determine the class and the magnitude of each violation:

(A) The class of a violation is determined by consulting OAR 340-012-0050 to 340-012-~~0073~~ 340-012-0083;

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 454.635, ORS 454.645, ORS 459.376, ORS 459.995, ORS 465.900, ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.090 - ORS 468.140, ORS 468.992, ORS 468A.990, ORS 468B.025, ORS 468B.220 & ORS 468B.450

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0049

Additional Civil Penalties

In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below:

- (1) Any person who willfully or negligently causes an oil spill shall incur a civil penalty commensurate with the amount of damage incurred. The amount of the penalty shall be determined by the Director with the advice of the Director of *the Department of* Fish and Wildlife. In determining the amount of the penalty, the Director may consider the gravity of the violation, the previous record of the violator and such other considerations the Director deems appropriate.

Stat. Auth.: ORS 459.995, ORS 466, ORS 467, ORS 468.020 & ORS 468.996

Stats. Implemented: ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.996, ORS 468A.990, ORS 468A.992, ORS 468B.220 & ORS 468B.450

Hist.: DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92;
DEQ 9-2000, f. & cert. ef. 7-21-00

~~340-012-0069~~

340-012-0081

Oil and Hazardous Material Spill and Release Classification of Violations

Violations pertaining to spills or releases of oil or hazardous materials shall will be classified as follows:

(1) Class One:

- (a) Violation of a requirement or condition of a Commission or Department Order;
- (b) Failure to provide access to premises or records when required by law, rule, permit or order;
- (c) Failure by any person having ownership or control over oil or hazardous materials to immediately clean up spills or releases or threatened spills or releases;
- (d) Failure by any person having ownership or control over oil or hazardous materials to immediately report all spills or releases or threatened spills or releases in amounts equal to or greater than the reportable quantity;
- (e) Any violation related to the spill or release of oil or hazardous materials which causes a major harm or poses a major risk of harm to public health or the environment;
- ~~(g) Failure to have a spill response or contingency plan; or failure to follow emergency procedures contained in a spill response or contingency plan when the plan is required by permit, rule, or order; or failure to follow emergency requirements at OAR 340-108-0020(2); when failure could result in serious harm;~~
- (d) Failure to immediately notify the Oregon Emergency Response System (OERS) of the type, quantity and location of a spill of oil or hazardous material, and corrective and cleanup actions taken and proposed to be taken if the amount of oil or hazardous material released exceeds the reportable quantity, or will exceed the reportable quantity within 24 hours;
- (e) Failure to immediately stop any spill that has entered or may enter waters of the state;
- (f) Any spill or release of oil or hazardous materials which enters waters of the state;
- (g) Failure to identify the existence, source, nature and extent of a hazardous materials spill or release, or threatened spill or release;
- (h) Failure to activate alarms, warn people in the immediate area, contain the oil or hazardous material or notify appropriate local emergency personnel;
- (i) Failure to immediately implement a required plan;
- (j) Failure to immediately correct the cause of the spill or release;
- (k) Use of chemicals to disperse, coagulate or otherwise treat a spill or release of oil or hazardous material spills without prior Department approval;
- (l) Failure to obtain Department approval before conducting any major aspect of the spill response contrary to a Department approved plan for the site or spiller;
- (m) Intentional dilution of wastes during a spill response;
- (n) Knowingly submitting false information to the Department;
- (o) Failure to take immediate preventative, repair, corrective or containment action in the event of a threatened spill or release;
- (p) Improper characterization of drug lab waste during disposal or recycling; or
- (q) Disposal of spilled oils and oil contaminated materials resulting from control, treatment and cleanup in a manner not approved by the Department.

(2) Class Two:

- (a) Failure to submit a complete and detailed written report to the Department of a spill of oil or hazardous material for which the person is responsible describing all aspects of the spill and steps taken to prevent a recurrence if required by the Department to make a report;
- (b) Failure to use the required sampling procedures and analytical testing protocols for oil and hazardous materials spills or releases;
- (c) Failure of a responsible party to coordinate with the Department during the emergency response to a spill after being notified of the Department's jurisdiction;
- (d) Failure to immediately report spills or releases within containment areas when reportable quantities are exceeded and exemptions are not met under OAR 340-142-0040; or
- (2) (e) Any violation related to the spill or release of oil or hazardous materials which is not otherwise classified in these rules is a Class Two violation.

(3) Class Three:

- (a) Failure to provide maintenance and inspections records of the storage and transfer facilities to the Department upon request; or
- (b) Failure of vessel owners or operators to make maintenance and inspection records, and oil transfer procedures available to the Department upon request.

Stat. Auth.: ORS 466.625 & ORS 468.020

Stats. Implemented: ORS 466.635 - ORS 466.680, ORS 466.992, & ORS 468.090 - ORS 468.140

Hist.: DEQ 18-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98, DEQ 6-2001, cert. ef. 7-1-01. Renumbered from 340-012-069

340-012-0082

Contingency Planning Classification of Violations

Violations pertaining to contingency planning shall be classified as follows:

(1) Class One:

- (a) Violation of a requirement or condition of a Commission or Department Order;
- (b) Failure to immediately implement the required oil spill prevention and emergency response contingency plan;
- (c) Failure to immediately implement the site's applicable contingency plan;
- (d) Operation of an onshore or offshore facility without an approved or conditionally approved oil spill prevention and emergency response contingency plan;
- (e) Entry into the waters of the state by a covered vessel without an approved or conditionally approved oil spill prevention and emergency response contingency plan or

purchased coverage under an umbrella oil spill prevention and emergency response contingency plan;

(f) Entry into the waters of the state by any covered vessel after the Department has denied such entry;

(g) Failure to maintain equipment, personnel and training at levels described in an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(h) Knowingly submitting false information to the Department;

(i) Failure to establish and maintain financial assurance as required by statute, rule or order; or

(j) Failure by the owner or operator of an oil terminal facility, or covered vessel, to take all appropriate measures to prevent spills or overfilling during transfer of petroleum or hazardous material products.

(2) Class Two:

(a) Failure to pay the annual fee for all offshore and onshore facilities required to develop oil spill prevention and emergency response plans;

(b) Failure to pay the per trip fee for all regulated vessels or barges within thirty (30) days of conclusion of each trip;

(c) Failure by any onshore or offshore facility or covered vessel to submit an oil spill prevention and emergency response contingency plan to the Department at least 90 calendar days before beginning operations in Oregon;

(d) Failure, in the event of a spill, to have prepared and have available on-site a simplified field document summarizing key notification and action elements of a required vessel or facility contingency plan;

(e) Failure by a plan holder to submit and implement required changes to a required vessel or facility contingency plan that has received conditional approval status from the Department within thirty (30) calendar days of conditional approval;

(f) Failure of a covered vessel or facility contingency plan holder to submit the required vessel or facility contingency plan for re-approval at least ninety (90) days before the expiration date of the required vessel or facility contingency plan;

(g) Failure to obtain Department approval of the management or disposal of spilled oil or hazardous materials, or materials contaminated with oil or hazardous material, that are generated during spill response; or

(h) Any violation related to required contingency plans that is not otherwise classified in these rules is a Class Two violation.

(3) Class Three:

(a) Failure to provide maintenance and inspections records of the storage and transfer facilities to the Department upon request;

(b) Failure of a vessel owner or operator to make maintenance and inspection records and oil transfer procedures available to the Department upon request;

(c) Failure to have at least one copy of the required vessel or facility contingency plan in a central location accessible at any time by the incident commander or spill response manager;

- (d) Failure to have the covered vessel field document available to all appropriate personnel in a conspicuous and accessible location;
- (e) Failure to notify the Department within 24 hours of any significant changes that could affect implementation of a required vessel or facility contingency plan; or
- (f) Failure to distribute amended page(s) of the plan changes to the Department within thirty (30) calendar days of the amendment.

Stat. Auth.: ORS 468B.350

Stats. Implemented: ORS 468B.345

Hist:

340-012-0083

Ballast Water Management Classification of Violations

Violations pertaining to ballast water management shall be classified as follows.

(1) Class One:

- (a) Violation of a Commission or Department Order;
- (b) Failure to provide access to premises or records when required by law, rule, permit or order;
- (c) Unauthorized discharging of ballast water; or
- (d) Knowingly submitting false information.

(2) Class Two:

- (a) Failure to report ballast water management information to the Department at least 24 hours before entering the waters of this State;
- (b) Failure to file an amended ballast water management report after a change in the vessel's ballast water management plan; or
- (c) Any violation of these rules related to ballast water management, or ballast water reports and reporting, that is not otherwise classified in these rules is a Class Two violation.

Stat. Auth.: ORS 783.600 to ORS 783.992

Stats. Implemented: ORS 783.620

Hist:

340-012-0090

Selected Magnitude Categories

(1) Magnitudes for select violations pertaining to Air Quality may be determined as follows:

(a) Opacity limitation violations:

- (A) Major - Opacity measurements or readings of more than 40 percent opacity over the applicable limitation;

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- (B) Moderate - Opacity measurements or readings between greater than 10 percent and 40 percent or less opacity over the applicable limitation;
- (C) Minor - Opacity measurements or readings of ten percent or less opacity over the applicable limitation.

(b) Steaming rates, performance standards, and fuel usage limitations:

- (A) Major - Greater than 1.3 times any applicable limitation;
- (B) Moderate - From 1.1 up to and including 1.3 times any applicable limitation;
- (C) Minor - Less than 1.1 times any applicable limitation.

(c) Air contaminant emission limitation violations for selected air pollutants:

(A) Magnitude determination shall be made based upon the following table: [Table not included. See ED. NOTE.]

(B) Major:

- (i) Exceeding the annual amount as established by permit, rule or order by more than the above amount;
- (ii) Exceeding the monthly amount as established by permit, rule or order by more than ten percent of the above amount;
- (iii) Exceeding the daily amount as established by permit, rule or order by more than 0.5 percent of the above amount;
- (iv) Exceeding the hourly amount as established by permit, rule or order by more than 0.1 percent of the above amount.

(C) Moderate:

- (i) Exceeding the annual amount as established by permit, rule or order by an amount from 50 up to and including 100 percent of the above amount;
- (ii) Exceeding the monthly amount as established by permit, rule or order by an amount from five up to and including ten percent of the above amount;
- (iii) Exceeding the daily amount as established by permit, rule or order by an amount from 0.25 up to and including 0.50 percent of the above amount;
- (iv) Exceeding the hourly amount as established by permit, rule or order by an amount from 0.05 up to and including 0.10 percent of the above amount.

(D) Minor:

- (i) Exceeding the annual amount as established by permit, rule or order by an amount less than 50 percent of the above amount;
- (ii) Exceeding the monthly amount as established by permit, rule or order by an amount less than five percent of the above amount;
- (iii) Exceeding the daily amount as established by permit, rule or order by an amount less than 0.25 percent of the above amount;
- (iv) Exceeding the hourly amount as established by permit, rule or order by an amount less than 0.05 percent of the above amount.

(d) Asbestos violations:

- (A) Major - More than 260 lineal feet or more than 160 square feet or more than 35 cubic feet of asbestos-containing material;
- (B) Moderate - From 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet or from 17 cubic feet up to and including 35 cubic feet of asbestos-containing material;
- (C) Minor - Less than 40 lineal feet or 80 square feet or less than 17 cubic feet of asbestos-containing material;
- (D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(e) Open burning violations:

- (A) Major - Initiating or allowing the initiation of open burning of material constituting more than five cubic yards in volume;
- (B) Moderate - Initiating or allowing the initiation of open burning of material constituting from one up to and including five cubic yards in volume, or if the Department lacks sufficient information on which to base a determination;
- (C) Minor - Initiating or allowing the initiation of open burning of material constituting less than one cubic yard in volume;
- (D) For the purposes of determining the magnitude of a violation only, five tires shall be deemed the equivalent in volume to one cubic yard.

(2) Magnitudes for select violations pertaining to Water Quality may be determined as follows:

(a) Violating wastewater discharge limitations:

(A) Major:

- (i) Discharging more than 30% outside any applicable range for flow rate, concentration limitation, or mass limitation, except for toxics, pH, and bacteria; or
- (ii) Discharging more than 10% over any applicable concentration limitation or mass load limitations for toxics; or
- (iii) Discharging wastewater having a pH of more than 1.5 above or below any applicable pH range; or
- (iv) Discharging more than 1,000 bacteria per 100 milliliters (bact./100 mls) over the effluent limitation; or
- (v) Discharging wastes having more than 10% below any applicable removal rate.

(B) Moderate:

- (i) Discharging from 10% to 30% outside any applicable range for flow rate, concentration limitation, or mass limitation, except for toxics, pH, and bacteria; or
- (ii) Discharging from 5% to 10% over any applicable concentration limitation or mass load limitations for toxics; or
- (iii) Discharging wastewater having a pH from 0.5 to 1.5 above or below any applicable pH range; or

- (iv) Discharging from 500 to 1,000 bact./100 mls over the effluent limitation; or
- (v) Discharging wastewater having from 5% to 10% below any applicable removal rate.

(C) Minor:

- (i) Discharging less than 10% outside any applicable range for flow rate, concentration limitation or mass limitation, except for toxics, pH, and bacteria; or
- (ii) Discharging less than 5% over any applicable concentration limitation or mass load limitations for toxics; or
- (iii) Discharging wastewater having a pH of less than 0.5 above or below any applicable pH range; or
- (iv) Discharging less than 500 bact./100 mls over the effluent limitation; or
- (v) Discharging wastewater having less than 5% below any applicable removal rate.

(b) Causing violation of numeric water-quality standards:

(A) Major:

- (i) Reducing or increasing any criteria by 25% or more of the standard except for toxics, pH, and turbidity;
- (ii) Increasing toxics by any amount over the acute standard or by 100% or more of the chronic standard;
- (iii) Reducing or increasing pH by 1.0 pH unit or more from the standard;
- (iv) Increasing turbidity by 50 nephelometric turbidity units (NTU) or more of the standard.

(B) Moderate:

- (i) Reducing or increasing any criteria by more than 10% but less than 25% of the standard, except for toxics, pH, and turbidity;
- (ii) Increasing toxics by more than 10% but less than 100% of the chronic standard;
- (iii) Reducing or increasing pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard;
- (iv) Increasing turbidity by more than 20 but less than 50 NTU over the standard.

(C) Minor:

- (i) Reducing or increasing any criteria by 10% or less of the standard, except for toxics, pH, and turbidity;
- (ii) Increasing toxics by 10% or less of the chronic standard;
- (iii) Reducing or increasing pH by 0.5 pH unit or less from the standard;
- (iv) Increasing a turbidity standard by 20 NTU or less over the standard.

(D) The magnitude of the violation may be increased one level if the reduction or increase:

- (i) Occurred in a stream which is water-quality limited for that criterium; or
- (ii) For oxygen or turbidity in a stream where salmonids are rearing or spawning; or

(iii) For bacteria in shell-fish growing waters or during period June 1 through September 30.

(3) Magnitudes for select violations pertaining to Hazardous Waste may be determined as follows:

(a) Failure to make a hazardous waste determination:

- (A) Major - Failure to make the determination on five or more waste streams;
- (B) Moderate - Failure to make the determination on three or four waste streams;
- (C) Minor - Failure to make the determination on one or two waste streams;
- (D) The magnitude of the violation may be increased by one level, if more than 1,000 gallons of hazardous waste is involved in the violation;
- (E) The magnitude of the violation may be decreased by one level, if less than 250 gallons of hazardous waste is involved in the violation.

(b) Hazardous Waste disposal violations:

- (A) Major - Disposal of more than 150 gallons of hazardous waste, or the disposal of more than three gallons of acutely hazardous waste, or the disposal of any amount of hazardous waste or acutely hazardous waste that has a substantial impact on the local environment into which it was placed;
- (B) Moderate - Disposal of 50 to 150 gallons of hazardous waste, or the disposal of one to three gallons of acutely hazardous waste;
- (C) Minor - Disposal of less than 50 gallons of hazardous waste, or the disposal of less than one gallon of acutely hazardous waste when the violation had no potential for or had no more than de minimis actual adverse impact on the environment, nor posed any threat to public health, or other environmental receptors.

(c) Hazardous waste management violations:

- (A) Major - Failure to comply with hazardous waste management requirements when more than 1,000 gallons of hazardous waste, or more than 20 gallons of acutely hazardous waste, are involved in the violation;
- (B) Moderate - Failure to comply with hazardous waste management requirements when 250 to 1,000 gallons of hazardous waste, or when 5 to 20 gallons of acutely hazardous waste, are involved in the violation;
- (C) Minor - Failure to comply with hazardous waste management requirements when less than 250 gallons of hazardous waste, or 10 gallons of acutely hazardous waste are involved in the violation.

(4) Magnitudes for select violations pertaining to Solid Waste may be determined as follows:

(a) Operating a solid waste disposal facility without a permit:

- (A) Major - If the volume of material disposed of exceeds 400 cubic yards;
- (B) Moderate - If the volume of material disposed of is between 40 and 400 cubic yards;
- (C) Minor - If the volume of materials disposed of is less than 40 cubic yards;

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste received.

(A) Major - If the amount of solid waste is underreported by more than 15% of the amount received;

(B) Moderate - If the amount of solid waste is underreported by from 5% to 15% of the amount received;

(C) Minor - If the amount of solid waste is underreported by less than 5% of the amount received.

(5) Magnitudes for select violations pertaining to spills of oil or hazardous materials may be adjusted when a violation listed in subsection (a) or (b) has been determined. Further, any overdue notification violation under subsection (b) is raised in significance as indicated in subsection (c) if the amount of the material involved equals or exceeds the reportable quantity (RQ) set by OAR 340-142:

(a) Failure to clean up spills involving the following quantities spilled to land and not threatening waters of the State.

(A) Major – Greater than 10 times the RQ

(B) Moderate – From the RQ to 10 times the RQ

(C) Minor – Less than the RQ

(b) Overdue notification violations.

(A) Major – Notifying more than one week after the spill or release.

(B) Moderate – Notifying from 48 hours to one week after the spill or release.

(C) Minor – Notifying between 24 and 48 hours after the spill or release.

(c) Overdue notification violations are raised in relation to RQ.

(A) A spill or release of greater than 10 times the RQ increases minor or moderate magnitude violations in section (5)(b) to major magnitude violations.

(B) A spill or release equal to twice the RQ, or to 10 times the RQ, increases a minor magnitude violation in section (5)(b) to a moderate magnitude violation.

Stat. Auth.: ORS 466.625 , ORS 468.065 & ORS 468A.045

Stats. Implemented: ORS 466.635, ORS 468.090 - ORS 468.140 & ORS 468A.065

Hist.:DEQ 21-1992, f & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

Attachment B
Public Input and Department's Response
For
Enforcement Procedure and Civil Penalties

**Overview of
Comment Period.** A public comment period from May 1, 2002 to June 21, 2002 was provided and included public hearings in Portland, Bend, Pendleton and Newport. A total of six people attended the hearings, however no oral comments were provided for the record. Two comment letters were received during the comment period.

**Written
Comments:** The following organizations provided written comment to the proposed rule amendments:

Schwabe, Williamson & Wyatt, P.C. ("SWW")
1211 SW 5th Avenue.
Portland, Oregon 97204
(Representing the Maritime Fire Safety Association and Clean Rivers
Cooperative.)

Marine Spill Response Corporation ("MSRC")
1105 13th St.
Everett, Wash. 98201

**Comments
Received and
Department
Response**

MSRC comment:

In a comment on the sum of amendments to 340-012-0081 and 0082, the MSRC is concerned that the proposed rules do not limit the violations to the "responsible person." MSRC is concerned that someone other than, or in addition to, the responsible person may be covered by these described violations if the wording of the violations is not more specific.

Response:

The Department has determined that there is not a need to include additional qualifiers in the Division 012 rules because the requirements potentially violated are adequately described in other rules indicated by the proposed rule section titles. None of the Division 012 violations (listed as Classes) are independent rules requiring action by a regulated person. Providers of service (such as MSRC) may actually be in violation of Department rules if their services are contrary to Oregon requirements during an emergency response

event. The client of a service provider (the responsible person) is not required by Department rules to indemnify the contractors when they hire them to address a spill. Only members, employees, agents, and officers, of maritime associations providing services under an approved plan are protected from responsibility for errors.

SWW comment:

In a general comment on 340-012-0081 an objection is made to the non-specific relationship between Division 012 classes of violations and sections of specific administrative rules. The point is made that a cross-reference to an applicable OAR should be designated.

Response:

The Department has worded the classifications in the proposed amended sections of Division 012 in succinct terms to allow simple statements to describe what constitutes a violation. The rule is too complex in its sum total to allow for cross-referenced cites to specific administrative rules other than the titling of each subsection of the Division 012 rule. It is important to recognize that a violation of a particular requirement is not fully defined until all of Division 012 processes are applied. The main three subsections proposed for revision at this time represent only one piece of the Compliance and Enforcement process to determine exactly what Department action will result. Attachment H of this report can be used to illustrate in further detail how a penalty determination is conducted. Further, with respect to uniformity in the final rule, the Department needs to remain consistent in writing amendments to the rule with all of the Department's programs covered by the Division 012 rule.

SWW comment:

The comment asserts that 340-012-0081(1) is too broad and confusing about which plans may be involved. An objection is made to use of similar phrases (initial plan, contingency plan, SPCC plan) "...without having a specific definition of when RP's are required to carry or implement those plans."

Response:

The Department agrees the use of the term "plan" is not limited. The proposed final rule has been revised to combine the draft subsections so it is clear that only required plans are covered. The Department can not, however, restrict the potential violation of "failure to implement the required [plan]" to only be those plans covered by OAR 340-141. The proposed rule subsection in question relates to statewide oil and hazardous materials emergency response. Though it is not within the jurisdiction of the Department to enforce federal plans such as SPCC, it is a potential that as part of a permit or other Department requirement (e.g. an oil spill prevention plan) a person will be obligated to follow specific steps during an

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emergency. Therefore, the "plan" by whatever name, may become an enforceable requirement of the Department.

SWW comment:

In subsection 0081(1)(c) and 0081(1)(o), they suggest that a duplication has occurred.

Response:

The Department agrees and has determined that these are two different enforceable violations. The first relates to the immediate response to a real event. The second requires that there be an immediate response to a threatened spill or release event. To address the point made by SWW, the Department has removed the words "or threatened" from the subsection (1)(c) .

SWW comment:

Continuing their position from the 340-012-0081 proposed rule about response violations to the 340-012-0082(1)(c), (d), (e), and (g) proposed rule on planning, an objection is made to the use of the term "plan" without a definition, and lack of cross references.

Response:

The Department is not able to accommodate this suggested change in the Division 012 proposed amendment. The definitions included in Division 012 are for the ascertaining of the proper enforcement levels after a violation. Definitions of technical terms and other rule specific terms are found in the rule on that subject. "Plan" and "Contingency Plan or Plan" are defined term in 340-142 and proposed 340-141.

SWW comment:

A suggestion is made about improving the clarity of 340-012-0082(1) because "umbrella" plans are referenced and not defined. The suggestion is that the term "by a maritime association" be used in subsection *(e) Entry into the waters of the state by a covered vessel without an approved or conditionally approved oil spill prevention and emergency response contingency plan or purchased coverage under an umbrella oil spill prevention and emergency response contingency plan.*

Response:

ORS 468B.355 lists several means through which compliance with required planning can be handled. The term "umbrella" plan used in this proposed rule is a maritime industry recognized term, but it does not preclude the development of contingency plan services by non-maritime association sponsors.

SWW comment:

A criticism is made of the use of the term "all appropriate measures" in the proposed rule subsection 340-012-0082(1)(j). The term is labeled as subjective and ambiguous, and potentially in conflict with approved prevention plans for facilities.

Response:

The Department has determined that the dictionary definition of "appropriate" (which reads 'especially suitable or compatible') is what is meant by the Department in the proposed rule. No change in the proposed rule has been made.

SWW comment:

The comment relates to 340-012-0082(2)(g) of the proposed rule where approval is required for disposal of spill generated wastes. The objection is to the Department setting special approval regulations for disposal of spill generated wastes.

Response:

The Department does have special regulations for management of waste oil in OAR 340-111. No change in the proposed rule is needed.

SWW comment:

A criticism is made of the requirement in 340-012-0082(3)(d) that a field document be "available" to appropriate personnel. It is suggested that this violation description could lead to documents being held in remote locations and not on the bulletin boards of vessels as is the practice of the client SWW represents.

Response:

Field documents for some vessel operators are much larger than the laminated callout list envisioned by SWW. Such field documents can be pocket guide books or copies of the Oregon specific chapters of the approved plans. In some cases where the total plan is a small document, a copy of the entire plan is carried by the person who may need to use it. The violation of not having such a document available is committed when the person is unable to properly conduct a response, as the plan requires in the planned timeframe, because they did not have the proper information.

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SWW comment:

An objection is made to 340-012-0082(3)(e), which covers the possibility that a plan holder must notify the Department if there are "significant" changes to the approved plan. The comment questions whether an employee being ill constitutes a "significant" change in the status of the approved plan.

Response:

The Department allows plan holders the latitude to write their plans so they can match their resources to their intended response actions to meet state standards for approved plans. The violation of failure to notify the Department of a "significant" plan change is defined by the inability of the plan holder to do what they claim they will do in their plan. If a plan is so weak that the illness of a single employee makes it impossible to implement, then that illness is "significant" and will require notification.

Attachment C
Presiding Officer's Report on Public Hearings

State of Oregon

Department of Environmental Quality

Memorandum

To: Environmental Quality Commission Date: September 30, 2002
From: Ed Wilson, Land Quality Division - Emergency Response Program
Subject: Presiding Officers' Report for Rulemaking Hearings
Title of Proposal: Enforcement Procedure and Civil Penalties

Overview of Public Hearing Locations, Times and Presiding Officers

Presiding Officer	Ed Wilson	Ed Wilson
Date and Time	June 4, at 4 PM.	June 5, at 4 PM
Place	DEQ HQ, Rm 3A 811 SW 6 th Ave. Portland, OR	Bend DEQ 2146 NE 4 th , #104 Bend, OR

Ed Wilson	Ed Wilson	Ed Wilson
June 6, at 4:00 PM	June 11, at 4 PM.	June 12, at 4 PM
Pendleton DEQ 700 Emigrant Pendleton, OR	Medford DEQ 201 W. Main Street Medford, OR	Lincoln County Courthouse 225 W. Olive St. Newport, OR

Portland Hearing

The rulemaking hearing was convened at 4:00 p.m. and closed at 6:30 p.m. A brief explanation of the rulemaking proposal and hearing procedures was provided. Three people were in attendance: John Sherman - Tosco, Mike Zollitsch - DEQ, and Jack Wylie - DEQ. No one provided oral comment on this rule.

Bend Hearing

The rulemaking hearing was convened at 4:00 PM and closed at 6:30 PM. One person attended, Mike Renz - DEQ. No one provided oral comment on this rule.

Pendleton Hearing

The rulemaking hearing was convened at 4:00 PM and closed at 6:00 PM. One person attended, Dan Duso - DEQ. No one provided oral comment on this rule.

Medford Hearing

The rulemaking hearing was convened at 4:00 PM and closed at 6:30 PM. One person attended, Rai Peterson - DEQ. No one provided oral comment on this rule.

Newport Hearing

The rulemaking hearing was convened at 4:00 PM and closed at 6:00 PM. No one attended.

Attachment D
Relationship to Federal Requirements

Questions to be Answered to Reveal
Potential Justification for Differing from Federal Requirements.
OAR 340 Division 012, Enforcement Procedures and Civil Penalties.

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

The proposed rules establish procedures for state enforcement of state oil and hazardous materials, oil spill planning, and ballast water reporting rules. No federal enforcement procedures govern enforcement of these state rules.

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

NA

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?

NA

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?

NA

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

NA

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

NA

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

The proposed rule maintains the equity in requirements.

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

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NA

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

NA

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

NA

11. Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

NA, the rules this Enforcement Procedure and Civil Penalties rule supports achieve the gains.

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
Revisions to the Department's Compliance and Enforcement rules.
(Chapter 340 Division 012)
Fiscal and Economic Impact Statement

Introduction

The Department's Compliance and Enforcement rules are being amended so they will remain consistent with changes in the Department's Emergency Response and Reporting rules (OAR 340-142), Oil Spill Contingency Planning rules (OAR 340-141), and Ballast Water Management rules (OAR 340-143). The compliance and enforcement rules establish enforcement procedures, including assessment of civil penalties for violations of spill, planning, and ballast water rules.

General Public

Nothing in this revision will change the compliance and enforcement process as it currently applies to the general public or increase costs for the general public. Civil penalties assessed for violations of these rules may change under the proposed rules.

Small Business

Nothing in this revision will change the compliance and enforcement process as it currently applies to small business or increase costs for small businesses. Civil penalties assessed for violations of rules may change under the proposed rules to be more appropriate, or to address new statutes.

Large Business

Nothing in this revision will change the compliance and enforcement process as it currently applies to large businesses or increase costs for large businesses. Civil penalties assessed for violations of rules may change under the proposed rules to be more appropriate, or to address new statutes.

Local Governments

Nothing in this revision will change the compliance and enforcement process as it currently applies to local government or increase costs for local government. Civil penalties assessed for violations of rules may change under the proposed rules to be more appropriate, or to address new statutes.

State Agencies

Nothing in this revision will change the compliance and enforcement process as it currently applies to state agencies or increase costs for state agencies. Civil penalties assessed for violations of rules may change under the proposed rules to be more appropriate, or to address new statutes.

Assumptions

The Department assumes persons affected by these rules will continue to conduct their activities as before. The amendment of these rules is a continuation of the basic purpose of Division 012 rules to lay out enforcement procedures and criteria.

Housing Cost Impact Statement

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

Attachment F
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for
REVISIONS TO OAR 340-012
Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The Department is amending its Compliance and Enforcement rules so they will remain consistent with changes in other rules. In separate rule making the Department is also proposing to amend the Emergency Response and Reporting rules (OAR 340-142) and Oil Spill Contingency Planning rules (OAR 340-141) and to establish new rules for Ballast Water Management (OAR 340-143). The Department's Compliance and Enforcement rules establish the appropriate enforcement for violations of these other rules.

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

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):

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The Department has determined its enforcement and compliance rules 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.

NA

Intergovernmental Coordinator [signed by Roberta Young] [04/15/02]

Attachment G

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Advisory Committee Membership and Report

In the summer of 2001, a group of interested parties and stakeholders were invited to become the Emergency Response Advisory Committee (ERAC). ERAC's duties included advising the Department on the development of administrative rules covering; Oil Spill Planning, Emergency Response and Reportable Quantities, Ballast Water Management and Reporting, and the amendments to the Enforcement and Compliance rules as related to these topics. ERAC is comprised of 15 appointed members and a variable number of guest members depending on the subject of discussion. The ERAC, chaired by Frank Burg, Trumbull Asphalt, is further organized into a main body and a small workgroup of planning experts to efficiently review material given to them by the Department. The ERAC continues to function as a standing committee offering opinions on a number of environmental issues related to shipping and spill response.

ERAC Membership:

Chair - Frank L. Burg, Trumbull Asphalt
Members - Bob Albers, Office of the State Fire Marshal
John C. Crawford, FOSS Maritime
Dave Godell, Tidewater Barge
Paul Heimowitz, Oregon State University
Jerry Holmes, Chevron Petroleum
Linda Pilky-Jarvis, Washington Department of Ecology
Gail McEwen, Oregon Department of Fish and Wildlife
Doug McGillivray, Multnomah County Emergency Manager
Peter Murphy, Kinder Morgan Energy Partners, LP.
Bob Sallinger, Audubon Society of Portland
Erika Ohm, Oregon Trucking Association
Rick Sloane, Union Pacific RR
Capt. James Townley, Columbia River Steamship Operators
Elizabeth Wainwright, Merchants Exchange

Over the course of the past year, the committee reviewed and discussed multiple drafts of the proposed rules. Their interest ranged from style issues to specific technical terminology. In all areas, they provided useful comments as the rule development progressed. Individual members of the ERAC represent an array of perspectives on the subjects covered in the proposed rule. Not all of the members concur on the details of the final draft of the proposed rules, but all are supportive of the collaborative process the Department applied during the development.

Advisory Committee Membership and Report (continued)

Issues Specific to the proposed amendments to Enforcement Procedure and Civil Penalties.

During the past year, the ERAC received periodic reports from Department staff that included the status of Division 012 rules development. The committee was informed of the role the enforcement policies play in the Department's regulatory activities. In December of 2001, the Department staff provided copies of the draft proposed additions to division 012. The final draft of the proposed rule was posted to the internet based bulletin board available to the ERAC.

Response to the Department staff from the ERAC included editorial suggestions and questions about the basis for listed violations. During the development of the proposed rule the committee's advice and questions were considered while establishing levels of violation classes. In some cases, the Department was required to adopt suggested language offered by the Department of Justice in lieu of suggestions by the committee.

Attachment H
(selected rule sections as examples of penalty calculation process)

340-012-0042

Civil Penalty Schedule Matrices

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Commission's or Department's statutes, rules, permits or orders by service of a written notice of assessment of civil penalty upon the Respondent. Except for civil penalties assessed under OAR 340-012-0048 and 340-012-0049, the amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in OAR 340-012-0045:

(1)

(a) \$10,000 Matrix: [Matrix not included. See ED. NOTE.]

(b) No civil penalty issued by the Director pursuant to this matrix shall be less than \$50 dollars or more than \$10,000 dollars for each day of each violation. This matrix shall apply to the following:

- (A) Any violation related to air quality statutes, rules, permits or orders, except for the selected open burning violations listed in section (3) below;
- (B) Any violation related to ORS 164.785 and water quality statutes, rules, permits or orders, violations by a person having or needing a Water Pollution Control Facility Permit, violations of ORS Chapter 454 and on-site sewage disposal rules by a person performing sewage disposal services;
- (C) Any violation related to underground storage tanks statutes, rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;
- (D) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;
- (E) Any violation related to oil and hazardous material spill and release statutes, rules, or orders, except for negligent or intentional oil spills;
- (F) Any violation related to polychlorinated biphenyls management and disposal statutes;
- (G) Any violation of ORS Chapter 465 or environmental cleanup rules or orders;
- (H) Any violation of ORS Chapter 467 or any violation related to noise control rules or orders;
- (I) Any violation of ORS Chapter 459 or any violation related to solid waste statutes, rules, permits, or orders;
- (J) Any violation of ORS Chapter 459A, except as provided in section (4) of this rule and except any violation by a city, county or metropolitan service district of failing to provide the opportunity to recycle as required by law; and

(2) In addition to any other penalty provided by law, any person causing an oil spill through an intentional or negligent act shall incur a civil penalty of not less than \$100 dollars or more than \$20,000 dollars. The amount of the penalty shall be determined by doubling the values contained in the matrix in section (1) of this rule in conjunction with the formula contained in OAR 340-012-0045.

(3)

(a) \$2,500 Matrix: [Matrix not included. See ED. NOTE.]

(b) No civil penalty issued by the Director pursuant to this matrix shall be less than \$50. The total civil penalty may exceed \$2,500 for each day of each violation, but shall not exceed \$10,000 for each day of each violation. This matrix shall apply to the following:

(A) Any violation related to on-site sewage statutes, rules, permits, or orders, other than violations by a person performing sewage disposal services or by a person having or needing a Water Pollution Control Facility permit;

(B) Any violation of the Department's Division 23 open burning rules, excluding all industrial open burning violations, and violations of OAR 340-023-0042(2) where the volume of the prohibited materials burned is greater than or equal to twenty-five cubic yards. In cases of the open burning of tires, this matrix shall apply only if the number of tires burned is less than fifteen. The matrix set forth in section (1) of this rule shall be applied to the open burning violations excluded from this section.

(4) \$1,000 Matrix: [Matrix not included. See ED. NOTE.]

(a) No civil penalty issued by the Director pursuant to this matrix shall be less than \$50 or more than \$1,000 for each day of each violation.

(b) This matrix shall apply to any violation of laws, rules or orders relating to rigid plastic containers; except for violation of the labeling requirements under OAR 459A.675 through 459A.685 and for rigid pesticide containers under OAR 340-109-0020 which shall be subject to the matrix set forth in section (1) of this rule.

(5)

(a) \$500 Matrix: [Matrix not included. See ED. NOTE.]

(b) No civil penalty issued by the Director pursuant to this matrix shall be less than \$50 dollars or more than \$500 dollars for each day of each violation. This matrix shall apply to the following types of violations:

(A) Any violation of laws, rules, orders or permits relating to woodstoves, except violations relating to the sale of new woodstoves;

(B) Any violation by a city, county or metropolitan service district of failing to provide the opportunity to recycle as required by law; and

(C) Any violation of ORS 468B.480 and 468B.485 and rules adopted thereunder relating to the financial assurance requirements for ships transporting hazardous materials and oil.

[ED. NOTE: The matrices referenced in this rule are not printed in the OAR Compilation.

Copies are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468.090 - ORS 468.140

Stats. Implemented: ORS 459.995, ORS 459A.655, ORS 459A.660, ORS 459A.685 & ORS 468.035

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98

Civil Penalty Determination Procedure

- (1) When determining the amount of civil penalty to be assessed for any violation, other than violations of ORS 468.996, which are determined according to the procedure set forth below in OAR 340-012-0049(8), the Director shall apply the following procedures:

- (a) Determine the class and the magnitude of each violation:

(A) The class of a violation is determined by consulting OAR 340-012-0050 to 340-012-0073;

(B) The magnitude of the violation is determined by first consulting the selected magnitude categories in OAR 340-012-0090. In the absence of a selected magnitude, the magnitude shall be moderate unless:

(i) If the Department finds that the violation had a significant adverse impact on the environment, or posed a significant threat to public health, a determination of major magnitude shall be made. In making a determination of major magnitude, the Department shall consider all available applicable information including such factors as: The degree of deviation from the Commission's and Department's statutes, rules, standards, permits or orders, concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In making this finding, the Department may consider any single factor to be conclusive for the purpose of making a major magnitude determination;

(ii) If the Department finds that the violation had no potential for or actual adverse impact on the environment, nor posed any threat to public health, or other environmental receptors, a determination of minor magnitude shall be made. In making a determination of minor magnitude, the Department shall consider all available applicable information including such factors as: The degree of deviation from the Commission's and Department's statutes, rules, standards, permits or orders, concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In making this finding, the Department may consider any single factor to be conclusive for the purpose of making a minor magnitude determination.

- (b) Choose the appropriate base penalty (BP) established by the matrices of OAR 340-012-0042 after determining the class and magnitude of each violation;

- (c) Starting with the base penalty, determine the amount of penalty through application of the formula: $BP + [(1 \times BP) \times (P + H + O + R + C)] + EB$, where:

(A) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. A violation is deemed to have become a Prior Significant Action on the date of the issuance of the first Formal Enforcement Action in which it is cited. For the purposes of this determination, violations that were the subject of any prior significant actions that were issued before the effective date of the Division 12 rules as adopted by the Commission in March 1989, shall be classified in accordance with the classifications set forth in the March 1989 rules to ensure equitable consideration of all prior significant actions. The values for "P" and the finding which supports each are as follows:

- (i) 0 if no prior significant actions or there is insufficient information on which to base a finding;
- (ii) 1 if the prior significant action is one Class Two or two Class Threes;
- (iii) 2 if the prior significant action(s) is one Class One or equivalent;
- (iv) 3 if the prior significant actions are two Class One or equivalents;
- (v) 4 if the prior significant actions are three Class Ones or equivalents;
- (vi) 5 if the prior significant actions are four Class Ones or equivalents;
- (vii) 6 if the prior significant actions are five Class Ones or equivalents;
- (viii) 7 if the prior significant actions are six Class Ones or equivalents;
- (ix) 8 if the prior significant actions are seven Class Ones or equivalents;
- (x) 9 if the prior violations significant actions are eight Class Ones or equivalents;
- (xi) 10 if the prior significant actions are nine Class Ones or equivalents, or if any of the prior significant actions were issued for any violation of ORS 468.996;
- (xii) In determining the appropriate value for prior significant actions as listed above, the Department shall reduce the appropriate factor by:

(I) A value of 2 if the date of issuance of all the prior significant actions are greater than three years old; or

(II) A value of 4 if the date of issuance of all the prior significant actions are greater than five years old.

(III) In making the above reductions, no finding shall be less than zero.

(xiii) Any prior significant action which is greater than ten years old shall not be included in the above determination;

(xiv) A permittee, who would have received a Notice of Permit Violation, but instead received a civil penalty or Department Order because of the application of OAR 340-012-0040(2)(d), (e), (f), or (g) shall not have the violation(s) cited in the former action counted as a prior significant action, if the permittee fully complied with the provisions of any compliance order contained in the former action.

(B) "H" is Respondent's history in correcting prior significant actions or taking reasonable efforts to minimize the effects of the violation. In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:

(i) -2 if Respondent took all feasible steps to correct the majority of all prior significant actions;

(ii) 0 if there is no prior history or if there is insufficient information on which to base a finding.

(C) "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows:

(i) 0 if the violation existed for one day or less and did not recur on the same day, or if there is insufficient information on which to base a finding;

(ii) 2 if the violation existed for more than one day or if the violation recurred on the same day.

(D) "R" is whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act of the Respondent. The values for "R" and the finding which supports each are as follows:

- (i) 0 if an unavoidable accident, or if there is insufficient information to make a finding;
- (ii) 2 if negligent;
- (iii) 6 if intentional; or
- (iv) 10 if flagrant.

(E) "C" is the Respondent's cooperativeness and efforts to correct the violation. The values for "C" and the finding which supports each are as follows:

- (i) -2 if Respondent was cooperative and took reasonable efforts to correct a violation, took reasonable affirmative efforts to minimize the effects of the violation, or took extraordinary efforts to ensure the violation would not be repeated;
- (ii) 0 if there is insufficient information to make a finding, or if the violation or the effects of the violation could not be corrected;
- (iii) 2 if Respondent was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.

(F) "EB" is the approximated dollar sum of the economic benefit that the Respondent gained through noncompliance. The Department or Commission may assess "EB" whether or not it applies the civil penalty formula above to determine the gravity and magnitude-based portion of the civil penalty, provided that the sum penalty does not exceed the maximum allowed for the violation by rule or statute. "EB" is to be determined as follows:

- (i) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable;
- (ii) The Department need not calculate nor address the economic benefit component of the civil penalty when the benefit obtained is de minimis;
- (iii) In determining the economic benefit component of a civil penalty, the Department may use the U.S. Environmental Protection Agency's BEN computer model, as adjusted annually to reflect changes in marginal tax rates, inflation rate and discount rate. With respect to significant or substantial change in the model, the Department shall use the version of the model that the Department finds will most accurately calculate the economic benefit gained by Respondent's noncompliance. Upon request of the Respondent, the Department will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect that Respondent's actual circumstance. Upon request of the

Respondent, the Department will use the model in determining the economic benefit component of a civil penalty;

(iv) As stated above, under no circumstances shall the imposition of the economic benefit component of the penalty result in a penalty exceeding the statutory maximum allowed for the violation by rule or statute. When a violation has extended over more than one day, however, for determining the maximum penalty allowed, the Director may treat the violation as extending over at least as many days as necessary to recover the economic benefit of noncompliance. When the purpose of treating a violation as extending over more than one day is to recover the economic benefit, the Department has the discretion not to impose the gravity and magnitude-based portion of the penalty for more than one day.

(2) In addition to the factors listed in section (1) of this rule, the Director may consider any other relevant rule of the Commission and shall state the effect the consideration had on the penalty. On review, the Commission shall consider the factors contained in section (1) of this rule and any other relevant rule of the Commission.

(3) In determining a civil penalty, the Director may reduce any penalty by any amount the Director deems appropriate when the person has voluntarily disclosed the violation to the Department. In deciding whether a violation has been voluntarily disclosed, the Director may take into account any conditions the Director deems appropriate, including whether the violation was:

(a) Discovered through an environmental auditing program or a systematic compliance program;

(b) Voluntarily discovered;

(c) Promptly disclosed;

(d) Discovered and disclosed independently of the government or a third party;

(e) Corrected and remedied;

(f) Prevented from recurrence;

(g) Not repeated;

(h) Not the cause of significant harm to human health or the environment; and

(i) Disclosed and corrected in a cooperative manner.

(4) The Department or Commission may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the Department or Commission documentary evidence concerning Respondent's inability to pay the full penalty amount:

(a) When the Respondent is currently unable to pay the full amount, the first option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Department or Commission may reduce the penalty only after determining that the Respondent is unable to meet a long-term payment schedule;

(b) In determining the Respondent's ability to pay a civil penalty, the Department may use the U.S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, the Department shall use the version of the model that the Department finds will most accurately calculate the Respondent's ability to pay a civil

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penalty. Upon request of the Respondent, the Department will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model;

(c) In appropriate circumstances, the Department or Commission may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding the ability or incentive to remain in compliance.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 454.635, ORS 454.645, ORS 459.376, ORS 459.995, ORS 465.900, ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.090 - ORS 468.140, ORS 468.992, ORS 468A.990, ORS 468B.025, ORS 468B.220 & ORS 468B.450

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

Department of Environmental Quality

Memorandum

Date: November 25, 2002
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item K, Temporary Rule Adoption: Asbestos Requirements
December 13, 2002 EQC Meeting

Department Recommendation The Department recommends the Commission adopt proposed temporary rule revisions for handling asbestos-containing materials as presented in Attachment A.

Need for Rulemaking The Department considers a temporary rule necessary to provide immediate relief from asbestos requirements that are causing implementation problems for some Oregon businesses. While developing amendments to the asbestos rules adopted in January 2002, the Department inadvertently neglected to involve the Oregon Refuse and Recycling Association, the Oregon Building Industry Association and the Oregon Remodelers Association.¹ These associations were not on mailing lists maintained by the Air Quality Program and did not learn of the rulemaking in time to comment. These associations identified a number of concerns with the recent rule changes that the Department agrees should be carefully considered. The temporary rule reflects the Department's commitment to resolve these concerns. (See Attachment B, the Statement of Need and Justification, for more information.)

The temporary rule will be followed by an identical permanent rule that will be proposed for consideration by the Commission in Spring 2003. After completing these rulemakings, the Department will start fresh and work with an advisory committee representing all interested stakeholders to resolve interpretation and enforcement concerns the Department had hoped to resolve in the January 2002 rulemaking. The Department will form the advisory committee and begin work on a second permanent rulemaking effort in the Fall

¹ Instead of using an advisory committee for the January 2002 rulemaking, the Department conducted workshops in Medford, Bend, Salem and Portland during August 2001. The Department provided notice of the workshops to the asbestos industry, building management firms, and landfill operators in addition to the general public but did not have all of the associations on the mailing list.

of 2003.

Effect of Rule

Asbestos is a hazardous air pollutant and a known carcinogen with no known safe level of exposure. The Department regulates the abatement and disposal of asbestos-containing materials from any public or private building involving demolition, renovation, repair, construction, and maintenance activities. The purpose of the asbestos rules is to prevent asbestos fiber release and exposure.

Proposed temporary changes to the rules are summarized below.

- 1) Delete or clarify definitions that are perceived as too broad and unenforceable. The temporary rule deletes the definition of “shattered” and the reference to “potential to release asbestos fibers” in the definition of friable asbestos material² and nonfriable asbestos material (see Attachment A, OAR 340-248-0010, pages 3-4). These phrases were meant to clarify when nonfriable material is made friable. The Department has received comments that these terms are too broad and can lead to confusion when trying to implement the rules. The temporary rule restores the definitions of friable and nonfriable used before the January 2002 amendments. The advisory committee will help the Department craft language that more clearly identifies when asbestos-containing material must be handled and disposed of as friable asbestos material.
- 2) In OAR 340-248-0290, delete the new nonfriable asbestos waste packaging and disposal requirements, and restore original rule language on nonfriable waste handling and disposal (see Attachment A, OAR 340-248-0290, page 48). The Department wrote new nonfriable asbestos waste packaging and disposal requirements to ensure that nonfriable asbestos waste is clearly labeled, packaged and treated in a manner that minimizes emissions, prevents breakage and prevents nonfriable asbestos waste from being made friable during the disposal process. The solid waste industry expressed concern that these requirements are more stringent than many neighboring state and local agency requirements and create an unequal playing field for business. Industry members are concerned that they may not be able to identify

² Friable asbestos material is defined in ORS 468A.700(8) to mean “any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.” This language will be restored in OAR 340-248-0010(25).

every nonfriable asbestos material that is brought to a transfer station or landfill, or is accepted by a hauler, and they do not want to unknowingly violate Department rules. They believe that they would suffer significant economic impact if they have to change their operations to follow the January 2002 nonfriable asbestos waste packaging and disposal requirements. They contend that there should be a point in the disposal process after which nonfriable material may be treated as other waste.

The Department agrees that the new nonfriable asbestos waste packaging and disposal requirements may be more burdensome and prescriptive than intended. The advisory committee will evaluate ways to clarify the requirements for handling nonfriable asbestos waste without causing unnecessary impacts on industry. In the interim, the temporary rules restore the original nonfriable disposal language which will protect the public from exposure to airborne asbestos fibers if followed properly.

- 3) Change the asbestos survey requirement so that residential buildings with four or fewer units are exempt from surveying (see Attachment A, OAR 340-248-0250(2)(c), page 28). This change will make the asbestos survey requirement the same as in the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. The rules adopted in January 2002, applied the survey requirement to all residential units built earlier than 1987 except for work done by homeowners on their own homes or vacation homes. The Department considers surveying to be vitally important to prevent unnecessary exposure to asbestos. With the assistance of the advisory committee, the Department will determine if alternatives to the survey requirement are available to effectively accomplish this goal in small residential units.
- 4) Ensure statutorily defined definitions are the same in rule, and correct errors, punctuation, typographical errors, citations and references. The temporary rule ensures that statutorily defined terms reflect statutory language. The rule replaces all "shalls" with "musts" or "wills," and corrects typographical errors and inaccurate citations. The rule makes a few other clarifying corrections.

Other amendments made in January 2002 will not be changed by the temporary rule.

Commission Authority	The Commission has authority to take this action under ORS 468A and ORS 183.335(5).
Stakeholder Involvement	The Department did not formally involve stakeholders in this temporary rulemaking process. However, the Department is making the identified changes in response to comments received from several industry associations. The Department will form an advisory committee in the Fall of 2003 to follow-up on issues discussed above.
Public Comment	The Department did not extend a public comment period for this temporary rule. The Department will propose making the identified rule changes permanent using normal rulemaking procedures, including public comment, in early 2003.
Key Issues	<p>Key issues for follow-up advisory committee discussions include:</p> <ol style="list-style-type: none">1. Clarifying when asbestos-containing material must be treated as friable.2. Developing economically viable nonfriable asbestos waste handling and disposal requirements that minimize public exposure to airborne asbestos.3. Determining how to achieve the goals of the asbestos survey requirement for small residential units.
Next Steps	<p>The temporary rule will become effective immediately upon adoption. The Department will inform homeowners, building contractors, solid waste companies, other stakeholders and citizens of the rule change through educational mailings, the DEQ webpage, meetings, news releases and other outreach activities. Training for Air Quality and Solid Waste staff will ensure consistent application of the rules. Training will be accomplished through meetings with staff.</p> <p>The Department intends to propose rules to make these changes permanent in early 2003, with consideration for action by the Commission in May 2003. In the Fall of 2003, the Department will form an advisory committee to determine long term solutions to the issues raised above as well as to comprehensively review the asbestos rules. The Department will initiate rulemaking upon completion of the advisory committee work.</p>

Attachments

- A. Proposed Rule Revisions
- B. Statement of Justification and Need for Temporary Rules

**Available Upon
Request**

- 1. Rule Implementation Plan
- 2. Summary of comments received from Oregon Refuse and Recycling Association, Oregon Building Industry Association and Oregon Remodelers Association

Approved:

Section:

Division:

Audrey M O'Brien
E Patricia Veen for Andy Ginsburg

Report Prepared By: Audrey O'Brien

Phone: 503-229-5572

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DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 248

ASBESTOS REQUIREMENTS

340-248-0005

Applicability

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

Stat. Auth.: ORS 468.020, ORS 468A.025, ORS 468A.135 & ORS 468A.745

Stats. Implemented: ORS 468A.700 - ORS 468A.760

Hist.: DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0010

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

- (1) "Accredited inspector" means a person that has completed training and received accreditation under 40 CFR Part 763 Subpart E, Appendix C (Model Accreditation Plan), Section B (Initial Training), Subsection 3 (Inspector), (1994).
- (2) "Accredited trainer" means a provider of asbestos abatement training courses authorized by the Department to offer training courses that satisfy requirements for worker training.
- (3) "Adequately wet" means to sufficiently mix or penetrate asbestos-containing material with liquid to prevent the release of particulate asbestos materials. An asbestos-containing material is not adequately wetted if visible emissions originate from that material. Precipitation is not an appropriate method for wetting asbestos-containing material.

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- (4) "Agent" means an individual who works on an asbestos abatement project for a contractor but is not an employee of the contractor.
- (5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.
- (6) "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling, disturbance, or disposal of any asbestos-containing material with the potential of releasing asbestos fibers from asbestos-containing material into the air. ~~Emergency fire fighting is not an asbestos abatement project.~~
- (7) "Asbestos manufacturing operation" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos with any other material(s) including commercial asbestos, and the processing of this combination into a product as specified in OAR 340-248-0210(3).
- (8) "Asbestos-containing material" means any material, ~~including particulate material, that contains s~~ more than one-percent asbestos ~~by weight as determined using the method specified in 40 CFR Part 763 Appendix E, Subpart E, Section 1, Polarized Light Microscopy.~~
- (9) "Asbestos mill" means any facility engaged in the conversion or any intermediate step in the conversion of asbestos ore into commercial asbestos.
- (10) "Asbestos tailings" mean any solid waste product of asbestos mining or milling operations that contains asbestos.
- (11) "Asbestos waste generator" means any person performing an asbestos abatement project or any owner or operator of a source subject to OAR 340-248-0005 through 248-0290 whose act or process generates asbestos-containing waste material.
- (12) "Asbestos-containing waste material" means any waste that contains asbestos tailings or any commercial asbestos, and is generated by a source subject to OAR 340-248-02050 and 340-248-0210 through 340-248-0290. This term includes, but is not limited to, filters from control devices, asbestos abatement project waste, and bags or containers that previously contained commercial asbestos.
- (13) "Asbestos waste shipment record" means the shipment document, required to be originated and signed by the asbestos waste generator; used to track and substantiate the disposition of asbestos-containing waste material.
- (14) "Certified supervisor" means a person who has a current Oregon supervisor certification card.

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- (15) "Certified worker" means a person who has a current Oregon worker certification card.
- (16) "Contractor" means a person that undertakes for compensation an asbestos abatement project for another person. As used in this Division, "compensation" means wages, salaries, commissions and any other form of remuneration paid to a person for personal services.
- (17) "Commercial asbestos" means asbestos that is produced by extracting asbestos from asbestos ore.
- (18) "Commission" means the Environmental Quality Commission.
- (19) "Demolition" means the wrecking or removal of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.
- (20) "Department" means the Department of Environmental Quality.
- (21) "Director" means the Director of the Department of Environmental Quality.
- (22) "EPA" means the U.S. Environmental Protection Agency.
- (23) "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.
- (24) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.
- (25) "Friable asbestos-containing material" means any asbestos-containing material that hand pressure can ~~can be~~ crumbled, pulverized or reduced to powder by hand pressure ~~when dry~~. ~~Friable asbestos material includes any asbestos-containing material that is shattered or subjected to sanding, grinding, sawing, abrading or has the potential to release asbestos fibers.~~
- (26) "HEPA filter" means a high efficiency particulate air filter capable of filtering 0.3 micron particles with 99.97 percent efficiency.
- (27) "Inactive asbestos-containing waste disposal site" means any disposal site for asbestos-containing waste where the operator has allowed the Department's solid waste permit to lapse, has gone out of business, or no longer receives asbestos-containing waste.
- (28) "Interim storage of asbestos-containing material" means the storage of asbestos-containing waste material that has been placed in a container outside a regulated area until transported to an authorized landfill.

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- (29) "Licensed" means a contracting entity has met the Department's training and experience requirements to offer and perform asbestos abatement projects and has a current asbestos abatement contractor license. For purposes of this definition, a license is not a permit subject to OAR chapter 340, division 216 or 2184.
- (30) "Negative pressure enclosure" means any enclosure of an asbestos abatement project area where the air pressure outside the enclosure is greater than the air pressure inside the enclosure and the air inside the enclosure is changed at least four times an hour by exhausting it through a HEPA filter.
- (31) "Nonfriable asbestos-containing material" means any asbestos-containing material that cannot be crumbled, pulverized, or reduced to powder by hand pressure. ~~Nonfriable asbestos-containing material does not include material that has been subjected to shattering, sanding, grinding, sawing, or abrading or that has the potential to release asbestos fibers.~~
- (32) "Open accumulation" means any accumulation, including interim storage, of friable asbestos-containing material or asbestos-containing waste material other than material securely enclosed and stored as required by this divisionchapter.
- (33) "Owner or operator" means any person who owns, leases, operates, controls or supervises a facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.
- (34) "Particulate asbestos material" means any finely divided particles of asbestos material.
- (35) "Person" means an individuals, public or private estates, trusts, corporations, nonprofit corporation, associations, firms, partnerships, joint venture, business trust, joint stock companies, municipal corporations, political sub-divisions, the state and any agency of the state or any other entity, public or private, however organizedies thereof, and the federal government and any agencies thereof.
- (36) "Renovation" means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or removed are excluded.
- ~~(37) "Shattered" means the condition of an asbestos-containing material that has been broken into four (4) or more pieces from its original whole condition.~~
- (37) "Small-scale, short-duration activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:
- (a) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;
 - (b) Replacement of an asbestos-containing gasket on a valve;
 - (c) Installation or removal of a small section of wallboard;

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(d) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those that can be contained in a single glove bag;

(e) Minor repairs to damaged thermal system insulation that do not require removal;

(f) Repairs to asbestos-containing wallboard;

(g) Installation of electrical conduits through or proximate to asbestos-containing materials;

(~~h~~g) Repairs, involving encapsulation, enclosure, or removal, of small amounts of friable asbestos-containing material in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those that can be contained in a single prefabricated mini-enclosure. Such an enclosure must conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

(389) "Structural member" means any load-supporting member of a facility, such as beams and load-supporting walls; or any non-supporting member, such as ceilings and non-load-supporting walls.

(3940) "Survey" means to conduct a detailed inspection of a building, structure, or facility for the presence of asbestos-containing material. The survey must be conducted by an accredited inspector and include sampling of materials suspected to contain asbestos, analysis of those samples to determine asbestos content, and evaluation of the materials in order to assess their condition.

(404) "Training Day" means a day of classroom instruction that consists of at least seven hours of actual classroom instruction and hands-on practice.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.700

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88, cert. ef. 6-1-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0455; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 22-1995, f. & cert. ef. 10-6-95]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0020, 340-032-5590; DEQ 1-2002, f. & cert. ef. 2-4-02

Asbestos Licensing and Certification Requirements

340-248-0100

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Applicability

(1) OAR 340-248-0005 through 340-248-0180:

- (a) Apply to asbestos contractor licensing, worker and supervisor certification, asbestos abatement trainer accreditation, and the Department's administration and enforcement;
- (b) Apply to any asbestos abatement project; and
- (c) Provide training, licensing, and certification standards for implementation of OAR 340-248-0205 through 340-248-0280, Emission Standards and Procedural Requirements for Asbestos.

(2) OAR 340-248-0005100 through 340-248-0180 do not apply to:

- (a) An asbestos abatement project exempted by OAR 340-248-0250(2)(a); and
- (b) Persons performing vehicle brake and clutch maintenance or repair.

Stat. Auth.: ORS 468.065, ORS 468A.745 & ORS 468A.750

Stats. Implemented: ORS 468A.745

Hist.: DEQ 10-1988, f. 5-19-88, cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 19-1994, f. 9-6-94, cert. ef. 10-1-94; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0010; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0110

General Provisions

- (1) Any person performing an asbestos abatement project must be certified, unless exempted by OAR 340-248-0100(2).
- (2) An owner or operator of a facility may not allow any persons other than those employees of the facility owner or operator who are appropriately certified or a licensed asbestos abatement contractor to perform an asbestos abatement project in or on that facility.
- (3) Any contractor that performs an asbestos abatement project must be licensed by the Department under the provisions of OAR 340-248-0120.
- (4) Any person acting as the supervisor for any asbestos abatement project must be certified by the Department as a supervisor under the provisions of OAR 340-248-0130.

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- (5) Any person engaged in or working on any asbestos abatement project must be certified by the Department as a worker or a supervisor under the provisions of OAR 340-248-0130.
- (6) A certified supervisor is required to be present on each asbestos abatement project other than a small-scale short-duration activity.
- (7) Each training provider for asbestos abatement certification must be accredited by the Department under the provisions of OAR 340-248-0140.
- (8) Each person licensed, certified, or accredited by the Department under the provisions of this Division must comply with OAR 340-248-0005 through 340-248-0290 and maintain a current address on file with the Department. Failure to comply with this paragraph will subject such persons to suspension or revocation of license, certification, or accreditation.
- (9) The Department may require training providers to ask applicants to provide their social security number and to retain records of those numbers for the Department's use in identifying and tracking workers and supervisors. Trainers must notify each applicant that providing their social security number is voluntary and explain how the Department proposes to use the social security number.
- (10) A regional air pollution authority which has been delegated authority under OAR 340-244-0020(2) may inspect for and enforce against violations of licensing and certification regulations. A regional air pollution authority may not approve, deny, suspend or revoke a training provider accreditation, contractor license, or worker certification, but may refer violations to the Department and recommend denials, suspensions, or revocations.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.707

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0030; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0120

Contractor Licensing

- (1) Any contractor performing an asbestos abatement project must be licensed by the Department.
- (2) Application for licenses must be submitted on forms prescribed by the Department and must be accompanied by the following:
 - (a) Documentation that the contractor, or the contractor's employee representative, is a certified supervisor;

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- (b) Certification that the contractor has read and understands the applicable Oregon and federal rules and regulations on asbestos abatement and agrees to comply with the rules and regulations;
 - (c) A list of all certificates or licenses, issued to the contractor by any other jurisdiction, that have been suspended or revoked during the past year, and a list of any asbestos-related enforcement actions taken against the contractor during the past year;
 - (d) A list of additional project supervisors for asbestos abatement projects and their certification numbers;
 - (e) A summary of all asbestos abatement projects conducted by the contractor during the past 12 months; and
 - (f) A license application fee.
- (3) The Department will review the application for completeness. If the application is incomplete, the Department will notify the applicant in writing of the deficiencies.
- (4) The Department ~~shall~~will deny, in writing, a license to a contractor who has not satisfied the license application requirements.
- (5) The Department will issue a license to the applicant after the license is approved.
- (6) A license is valid for a period of 12 months but will be extended pending the Department's review of a renewal application provided the renewal application is filed before the expiration date of the contractor's license.
- (7) Renewals:
- (a) License renewals must be applied for in the same manner as required for the initial license;
 - (b) For renewal, the contractor or employee representative must have a valid certified supervisor card; and
 - (c) The complete renewal application must be submitted no later than 60 days before the license expiration date.
- (8) The Department may suspend or revoke a license if the licensee:
- (a) Fraudulently obtains or attempts to obtain a license; or
 - (b) Fails at any time to satisfy the qualifications for a license; or

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- (c) Fails to meet any applicable state or federal standard relating to asbestos abatement; or
 - (d) Permits an untrained or uncertified worker to work on an asbestos abatement project; or
 - (e) Employs a worker who fails to comply with applicable state or federal rules or regulations relating to asbestos abatement; or
 - (f) Fails to make current certification cards readily available at worksites for inspection by the Department; or
 - (g) Fails to pay delinquent application fees, notification fees, or civil penalty assessments.
- (9) A contractor whose license has been revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.707

Hist.: DEQ 10-1988, f. & cert ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0040; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0130

Certification

- (1) Any persons working on an asbestos abatement project must be either an Oregon certified supervisor or certified worker. A certified supervisor may work as a certified worker without having separate certification as a worker.
- (2) Application for Certification -- General Requirements:
 - (a) Any person wishing to become a certified supervisor or relying on prior training, as provided in OAR 340-248-0160 must apply to the Department, through the training provider, for certification;
 - (b) Any person applying for worker certification without prior training and any certified worker taking a refresher course must apply directly to the accredited training provider using Department-approved forms.
- (3) An application to be a certified supervisor must include:

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- (a) Documentation that the applicant has successfully completed the ~~supervisor-supervisor-level~~ training and examination as specified in OAR 340-248-0150 and the Department's **Asbestos Training Guidance Document**; and
- (b) Documentation that the applicant has:
 - (A) Been certified as a worker and has at least three months of asbestos abatement experience, including time on powered air purifying respirators and experience on at least five separate asbestos abatement projects; or
 - (B) Successfully completed certified worker training and six months of general construction, environmental or maintenance supervisory experience demonstrating skills to independently plan, organize and direct personnel in conducting an asbestos abatement project. The Department will determine if an applicant's experience satisfies those requirements.
- (4) An application to be a certified worker must include documentation that the applicant has successfully completed the level of training and examination as specified in OAR 340-248-0150 and the Department's **Asbestos Training Guidance Document**.
- (5) A typed certification card and a certificate of course completion will be issued by the training course provider to an applicant who has fulfilled the requirements of certification.
- (6) Certification at all levels is valid for one year after the date of issue.
- (7) Annual Recertification:
 - (a) Previously certified Oregon workers and supervisors must apply through the training provider to take recertification refresher courses;
 - (b) Applicants for re-certification must possess a valid certification card in order to take the refresher course;
 - (c) All certified supervisors and workers must complete an annual recertification course during the three months before the expiration date of their certification card. A certified supervisor or worker may reinstate certification by taking the appropriate refresher course up to one year after the expiration date of the current Oregon certification card. After that time, such persons must take the initial course to be recertified.
- (8) A current worker certification card must be readily available for inspection by the Department at each asbestos abatement project for each worker or supervisor engaged in asbestos abatement activities.

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- (9) Suspensions and Revocations: The Department may suspend or revoke a person's certification if the person:
- (a) Fails to comply with state or federal asbestos abatement regulations; or
 - (b) Performs asbestos removal without having physical possession of a current certification card; or
 - (c) Permits the use or duplication of one's certification card or certificate by another; or
 - (d) Obtains certification from a training provider that does not have the Department's or the EPA's approval to offer training for the particular discipline; or
 - (e) Fails to pay delinquent application fees, or civil penalties.
- (10) A person whose certification has been revoked may not apply for recertification until 12 months after the revocation date.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 10-1988, f. & cert ef. 5-19-88 (and corrected 6-3-88); DEQ 9-1989(Temp), f. & cert. ef. 6-7-89; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0050; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0140

Training Provider Accreditation

(1) General:

- (a) Any person may apply to become an Oregon accredited asbestos training provider under this Division.;
- (b) Only training providers accredited by the Department may offer training in Oregon to satisfy the certification requirements contained in this Division.;
- (c) The Department will accredit each individual training course.;
- (d) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles.;

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- (e) Training course providers must permit representatives of the Department or its designee to attend, evaluate and monitor any training course without charge. The Department is not required to give advance notice of its inspection. The Department may suspend or withdraw approval of a training course based upon the grounds specified in OAR 340-248-0140(4);
- (f) All initial worker and supervisor certification training, or refresher training involving persons wishing to be certified in Oregon using prior training from an EPA approved accreditation or certification course, must take place in Oregon.
- (g) The Department may require accredited training providers to pay a fee to cover the reasonable travel expenses for one Department representative to audit for compliance with this Division any accredited refresher course that is not offered in the State of Oregon. This fee is an addition to the standard accreditation application fee.

(2) Application for Accreditation:

- (a) Applications for accreditation must be submitted to the Department in writing on forms provided by the Department and include the information required by this section:
 - (A) Name, address, telephone number of the firm, individual(s), or sponsors conducting the course, including the name under which the training provider intends to conduct the training;
 - (B) The type of course(s) for which approval is requested;
 - (C) A detailed course outline showing topics covered and the amount of time given to each topic, and includes working with asbestos-substitute materials, fitting and using respirators, use of glove-bag, donning protective clothing and constructing a decontamination unit, the number of students to be accommodated; the number of instructors; and the amount of time for hands-on skill training;
 - (D) A copy of the course manual, instructor notebooks and all printed material to be distributed in the course;
 - (E) A description of teaching methods to be employed, including description of audio-visual materials to be used. Upon the Department's request the applicant must provide copies of the materials. Any audio-visual materials provided to the Department will be returned to the applicant;
 - (F) A description of the hands-on facility to be utilized including protocol for instruction;
 - (G) A description of the equipment that will be used during classroom lectures and hands-on training;

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- (H) A list of all personnel involved in course preparation and presentation and a description of the background, special training and qualification of each, as well as the subject matter covered by each;
 - (I) A copy of each written examination to be given including the scoring methodology to be used in grading the examination; and a detailed statement about the development and validation of the examination;
 - (J) A list of the tuition or other fees required;
 - (K) A sample of the certificate of completion;
 - (L) A description of the procedures and policies for re-examination of students who do not successfully complete the training course examination;
 - (M) A list of any states or accrediting systems that approve the training course;
 - (N) A description of student evaluation methods (other than written examination to be used) associated with the hands-on skill training and course evaluation methods used by students;
 - (O) Any restriction on attendance such as class size, language, affiliation, or target audience of class;
 - (P) A description of the procedure for issuing replacement certification cards to workers who were issued a certification card by the training provider within the previous 12 months and whose cards have been lost or destroyed;
 - (Q) Any additional information or documentation the Department may require in order to evaluate the adequacy of the application; and
 - (R) The aAccreditation application fee.
- (b) The training provider must retain a copy of the application materials listed above for at least three years. Such applications must be made available for inspection by the Department or its designees upon request.
 - (c) Application for initial training course accreditation and course materials must be submitted to the Department at least 45 days before the requested approval date.;
 - (d) Upon approval of an initial or refresher asbestos training course, the Department will issue a certificate of accreditation. The certificate is valid for one year from the date of issuance.;

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- (e) Application for renewal of accreditation must follow the procedures described for the initial accreditation. In addition, course instructors must demonstrate that they have maintained proficiency in their instructional specialty and adult training methods during the 12 months before renewal.

(3) Training Provider Administrative Tasks. Accredited training providers must perform the following as a condition of accreditation:

- (a) Administer the training course only to those persons who have been approved by the Department, or have surrendered their expired certification cards to the trainer and others who are otherwise qualified according to these rules. Such persons may take the examination to complete the training course.
- (b) Issue a numbered certificate and a photo certification card to each student who successfully passes the training course examination and meets all other requirements for certification. Each certificate and photo certification card must include:

- (A) A unique certificate number;

- (B) Name of certified person;

- (C) Training course completed;

- (D) Dates of the training course;

- (E) Date of the examination;

- (F) An expiration date of one year after the date upon which the person successfully completed the course and examination;

- (G) The name, address, and telephone number of the training provider that issued the certificate;
and

- (H) A statement that the person receiving the certificate has completed the requisite training for asbestos certification as specified in OAR-340-248-0130.

- (c) Provide the Department with advance payment for each certificate to be issued;

- (d) Utilize and distribute as part of the course information or training aides furnished by the Department;

- (e) Provide the Department with a monthly class schedule at least one week before the schedule begins. Notification must include time and location of each course. Training providers must

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obtain approval from the Department before any class taking place that is not on their monthly schedule, and if the trainer wishes to hold a class with less than one week advanced notice.;

(f) Training Providers must comply with the following recordkeeping requirements:

(A) Maintain the training records required by this subsection for a minimum of three years and make them readily available for inspection by the Department or its designee.

(B) Retain copies of all instructional materials used during each classroom course.

(C) Retain copies of all instructor resumes and instructor approvals issued by either the Department or US EPA. ;

(D) Document the following information for each accredited course:

(i) The date the exam was given;

(ii) Training course for which the exam was given;

(iii) The name of the exam proctor;

(iv) The name and score of each person taking the exam and a single copy of the exam;

(v) Attendance record;

(vi) Course evaluation form-; and

(vii) The names of the instructors for each part of the course offered.

(E) Maintain records of certificates issued to students, including the following information:

(i) Name, address, telephone number, social security number of person receiving the certificate;

(ii) Certificate number given to each person;

(iii) Photograph of each person;

(iv) Discipline for which the certificate was given; and

(v) Dates of training and certificate expiration.

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- (F) If a training provider is not accredited or ceases to give asbestos worker certification training, the training provider must notify and allow the Department to take possession of the records for lawful disposition.
- (G) Submit certification class information to the Department within 30 days after the end of each training class or as directed by the Department.
- (g) Notify the Department before issuing a replacement certification card;
- (h) Have a current accreditation certificate at the training location.
- (4) Denial, Suspension or Revocation of Accreditation. The Director may deny, suspend, or revoke an application or current accreditation for any of the reasons contained in this section. The Department will issue a notice of denial, suspension, or revocation specifying the reasons for the action and any conditions that must be met before the certificate will be issued or reinstated. Applicants may appeal the Director's determination by requesting a contested case hearing pursuant to the provisions of OAR chapter 340 division 11. The following are considered grounds for denial, revocation or suspension:
 - (a) Misrepresenting the extent of a training course's approval by a State or the EPA; or
 - (b) Failing to submit required information or notifications in a timely manner; or
 - (c) Failing to report to the Department any change in staff or program which substantially deviates from the information contained in the application; or
 - (d) Failing to maintain requisite records; or
 - (e) Falsifying accreditation records, instructor qualifications, or other accreditation information; or
 - (f) Failing to adhere to the training standards and requirements of this Division; or
 - (g) Failing to comply with the administrative tasks and any other requirement of this Division; or
 - (h) Providing concurrent training for either initial or refresher courses for supervisors and asbestos workers; or
 - (i) Failing to pay delinquent application fees, notification fees, or civil penalties; or
 - (j) The Department may suspend or withdraw a training course's approval if an approved training course instructor or other person with supervisory authority over the delivery of training violates any other asbestos regulations administered by the Department or other agencies.

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Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 10-1988, f. & cert ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0060; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0150

General Training Standards

- (1) The training provider must limit each class to a maximum of 25 participants unless the Department grants an exception in writing. The student to instructor ratio for hands-on training must be equal to or less than ten to one (10:1). To apply for an exception allowing class size to exceed 25, the course sponsor must submit the following information in writing to the Department and receive approval before expanding the class size:
 - (a) The new class size limit;
 - (b) The teaching methods and techniques for training the proposed larger class;
 - (c) The protocol for conducting the written examination; and
 - (d) Justification for a larger class size.
- (2) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles.
- (3) The Department may require any accredited training provider to use examinations developed by the Department in lieu of the examinations offered by the training provider.
- (4) Courses of instruction required for certification must be specific for each of the certificate categories and ~~must~~ shall be in accordance with the Department's requirements. The course-instruction must be presented through a combination of lectures, demonstrations, and hands-on practice.
- (5) Courses requiring hands-on training must provide participants actual experience performing tasks associated with asbestos abatement. Demonstrations not involving individual participation are unacceptable as a substitute for hands-on training.
- (6) Any person seeking certification as a supervisor must successfully complete an accredited training course of at least five training days that satisfies the elements contained in the Department **Asbestos Training Guidance Document**. The training course must include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit testing, course review, and a written

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examination consisting of multiple choice questions. To successfully complete the course, the candidate must attend the lectures and demonstrations, fully participate in the hands-on training, and achieve a passing score on the closed book examination.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0070; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0160

Prior Training

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

- (1) The Department determines that the course and examination requirements are equivalent to or exceed the requirements of OAR 340-248-0130 and 340-248-0140 and the Department's **Asbestos Training Guidance Document** for the level of certification sought or the Department has a reciprocity agreement with the other jurisdiction.
- (2) To qualify for a refresher course and certification, prior training must have occurred during the two years preceding the date the applicant applies to the Department. Applicants must have a current certification from EPA or an equivalent certification from another state when applying under this section.

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[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 10-1988, f. & cert ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0080; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0170

Reciprocity

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 10-1988, f. & cert ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0090

340-248-0180

Fees

(1) The Department may assess the following fees to provide revenues to operate the asbestos control program.

(a) Contractor Licenses: A non-refundable license application fee of \$1000 for a one-year Asbestos Abatement Contractor license;

(b) Worker and Supervisor Certifications: A non-refundable fee of \$65 for a one-year certification as an asbestos supervisor and \$45 for a one-year certification as an asbestos worker;

(c) Training Provider Accreditation: A non-refundable accreditation application fee of:

(A) \$320 for a one-year accreditation to provide a course for training asbestos supervisors;

(B) \$320 for a one-year accreditation to provide a course for training asbestos workers; and

(C) \$320 each for a one-year accreditation to provide a course for refresher training for any level of Oregon asbestos certification;.

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(d) Asbestos Abatement Project Notifications as required in OAR 340-248-0260.

- (2) Requests for waiver of fees must be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 19-1994, f. 9-6-94, cert. ef. 10-1-94; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0100; DEQ 1-2002, f. & cert. ef. 2-4-02

Asbestos Emission Standards and Procedural Requirements

340-248-0205

General Provisions

- (1) No person may openly accumulate friable asbestos-containing material or asbestos-containing waste material.
- (2) Contractors working on asbestos abatement projects at secure facilities must ensure that all security clearance requirements are completed before asbestos abatement projects at secure facilities start so Department inspectors may gain immediate access to perform required asbestos project inspections.
- (3) Any asbestos-containing material that is subjected to sanding, grinding, sawing, or abrading must be handled and disposed of as friable asbestos material.
- (4) The content of asbestos in any asbestos-containing material must be determined using the method specified in 40 CFR Part 763 Appendix E, Subpart E, Section 1, Polarized Light Microscopy or another method approved by the Department.

Stat. Auth.: ORS 468.020, ORS 468A.025, ORS 468A.135 & ORS 468A.745

Stats. Implemented: ORS 468A.700 - ORS 468A.760

Hist.: DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0210

Asbestos Requirements for Mills, Roadways and Parking lots, and Manufacturing Operations

- (1) Emission standard for asbestos mills. No person may cause or allow to be discharged into the atmosphere any visible emissions, including fugitive emissions, from any asbestos milling operation

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except as provided under OAR 340-248-0275(2) Air Cleaning. For purposes of this rule, the presence of uncombined water in the emission plume is not a violation of the visible emission requirement. Outside storage of asbestos materials is not part of an asbestos mill operation. The owner or operator of an asbestos mill must meet the following requirements:

- (a) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operations. The monitoring must be by visual observation of at least 15 seconds duration per source of emissions;
- (b) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, a maintenance schedule and recordkeeping plan.
- (c) Maintain records of the results of visible emissions monitoring and air cleaning device inspections using a format approved by the Department and including the following information:
 - (A) Date and time of each inspection;
 - (B) Presence or absence of visible emissions;
 - (C) Condition of fabric filters, including presence of any tears, holes, and abrasions;
 - (D) Presence of dust deposits on clean side of fabric filters;
 - (E) Brief description of corrective actions taken, including date and time; and
 - (F) Daily hours of operation for each air cleaning device.
- (d) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section;
- (e) Retain a copy of all monitoring and inspection records for at least two years;
- (f) Submit a copy of visible emission monitoring records to the Department quarterly. The quarterly reports must be postmarked by the 30th day following the end of the calendar quarter;

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- (g) Asbestos-containing waste material produced by any asbestos milling operation must be disposed of according to OAR 340-248-0280 and -0290.
- (2) Roadways and Parking Lots. No person may construct or maintain, or allow to be constructed or maintained a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless (for asbestos tailings):
 - (a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine); or
 - (b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at least once per calendar year or within 12 months of road construction to prevent dust emissions; or
 - (c) It is encapsulated in asphalt concrete meeting the specifications contained in **Section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-85, 1985**, or their equivalent.
- (3) Manufacturing. No person may cause or allow to be discharged into the atmosphere any visible emissions, except as provided in OAR 340-248-0275(2), from any building or structure in which manufacturing operations utilizing commercial asbestos are conducted, or directly from any such manufacturing operations if they are conducted outside buildings or structures, or from any other fugitive emissions. All asbestos-containing waste material produced by any manufacturing operation must be disposed of according to OAR 340-248-0280 and -0290. Visible emissions from boilers or other points not producing emissions directly from the manufacturing operation and having no possible asbestos material in the exhaust gases are not a violation of this rule. The presence of uncombined water in the exhaust plume is not a violation of the visible emission requirements:
 - (a) Applicability. Manufacturing operations subject to this rule are as follows:
 - (A) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials;
 - (B) The manufacture of cement products;
 - (C) The manufacture of fire proofing and insulating materials;
 - (D) The manufacture of friction products;
 - (E) The manufacture of paper, millboard, and felt;
 - (F) The manufacture of floor tile;
 - (G) The manufacture of paints, coatings, caulks, adhesives, or sealants;

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- (H) The manufacture of plastics and rubber materials;
 - (I) The manufacture of chlorine, using asbestos diaphragm technology;
 - (J) The manufacture of shotgun shell wads;
 - (K) The manufacture of asphalt concrete; and
 - (L) Any other manufacturing operation that results or may result in the release of asbestos material to the ambient air.
- (b) The owner or operator of the manufacturing operation must monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment. Monitoring must be done at least once each day during daylight hours for visible emissions to the outside air during periods of operation and be by visual observation of at least 15 seconds duration per source of emissions.
- (c) The owner or operator of the manufacturing operation must inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, a maintenance schedule and recordkeeping plan.
- (d) The owner or operator of a manufacturing operation must maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department and including the following information:
- (A) Date and time of each inspection;
 - (B) Presence or absence of visible emissions;
 - (C) Condition of fabric filters, including presence of any tears, holes and abrasions;
 - (D) Presence of dust deposits on clean side of fabric filters;
 - (E) Brief description of corrective actions taken, including date and time; and
 - (F) Daily hours of operation for each air cleaning device.

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- (e) The owner or operator of a manufacturing operation must furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section;
- (f) The owner or operator of a manufacturing operation must retain a copy of all monitoring and inspection records for at least two years;
- (g) The owner or operator of a manufacturing operation must submit quarterly a copy of the visible emission monitoring records to the Department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the 30th day following the end of the calendar quarter;
- (h) Asbestos-containing waste material produced by any asbestos manufacturing operation ~~shall~~ must be disposed of according to OAR 340-248-0280 ~~or~~ and 340-248-0290.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88 (and corrected 6-3-88), ef. 6-1-88; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 8-1990, f. 3-13-90, cert. ef. 4-23-90; DEQ 18-1991, f. & cert. ef. 10-7-91; Section (4)(a) - (d) renumbered to 340-025-0466; Section (5)(a-d) renumbered to 340-025-0467; Sections (6) - (12) renumbered to 340-025-0468; Sections (13) - (15) renumbered to 340-025-0469; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0465; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5600; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0220

Reporting Requirements for Asbestos Sources Using Air Cleaning Devices

- (1) New sources covered by this rule must submit the requested information 90 days before initial startup. Existing sources covered by this rule must comply by March 1, 1996. Changes in the information provided to the Department must be submitted within 30 days after the change.
- (2) Sources covered by OAR 340-248-0210(1) Mills, 340-248-0210(3) Manufacturing, 340-248-0275(4) Fabricating, and 340-248-0230 Asbestos to Nonasbestos Conversion Operations, must provide the following information to the Department:
 - (a) A description of the emission control equipment used for each process; and
 - (b) If a fabric filter device is used to control emissions:

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- (A) The airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$) if the fabric filter device uses a woven fabric, and, if the fabric is synthetic, whether the fill yarn is spun or not spun; and
- (B) If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$).
- (c) If a HEPA filter is used to control emissions, the certified efficiency.
- (3) ~~For sources covered by this rule and subject to OAR 340-248-0280(1) through 340-248-0280(9) and 340-248-0290(1) through 0290(9) Asbestos Disposal Requirements must submit the following information:~~
 - (a) A brief description of each process that generates asbestos-containing waste material;
 - (b) The average volume of asbestos-containing waste material disposed of, measured in m^3/day (yd^3/day);
 - (c) The emission control methods used in all stages of waste disposal; and
 - (d) The type of disposal site or incineration site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.
- (4) ~~For sources covered by this rule and subject to OAR 340-248-0280(10), 340-248-0280(11) and 340-248-0290(10) Active Disposal Sites and 340-248-0280(11) and 0290(11) Inactive Disposal Sites must provide the following information:~~
 - (a) A brief description of the site; and
 - (b) The method or methods used to comply with the standards, or alternative procedures used.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5604; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0230

Asbestos to Nonasbestos Conversion Operations

- (1) 40 CFR Part 61.155 (July 1, 2001) is by this reference adopted and incorporated herein.
- (2) The following substitutions are made in 40 CFR Part 61.155:

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- (a) "Administrator" means "Department";
- (b) §61.150 means OAR 340-248-0280;
- (c) §61.152 means OAR 340-248-0270(13);
- (d) §61.154 means OAR 340-248-0280;
- (e) §61.154(e) means OAR 340-248-0280(10)(a)(C)-(G);
- (f) §61.154(f) means OAR 340-248-0280(10)(b).

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5605; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0240

Asbestos Inspection Requirements for Oregon Title V Operating Permit Program Sources

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

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

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- (b) Contractor's Oregon demolition license number, if applicable.
- (c) Certification that no asbestos was found during the predemolition asbestos survey and that if asbestos-containing material is uncovered during demolition the procedures found in OAR 340-248-0250 through OAR 340-248-0290 will be followed.
- (d) Description of building, structure, facility, installation, vehicle, or vessel to be demolished, including:
 - (A) The age and present and prior use of the facility; and
 - (B) Address or location of the scheduled demolition project.
- (e) Major source owner or operator name, address and phone number.
- (f) Scheduled starting and completion dates of demolition work.
- (g) Any other information requested on the Department form.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5610; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0250

Asbestos Abatement Projects Exemptions

- (1) Any person who conducts or provides for the conduct of an asbestos abatement project must comply with the provisions of OAR 340 division 248 except as provided in this rule.
- (2) The following asbestos abatement projects are exempt from certain provisions of this Division as listed in this Section:
 - (a) Asbestos abatement conducted inside a single private residence:
 - ~~(A) by the owner is exempt from OAR 340-248-0270(1), if the residence is not a rental property, a commercial business, or intended to be demolished; or~~
 - ~~(B) by the owner occupant is exempt from OAR 340-248-0110 through 340-248-180, OAR 340-248-0210 through 340-248-240 and OAR 340-248-0260 through 340-248-0270 if the~~

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residence is occupied by the owner and the owner occupant is performing the asbestos abatement work.

- (b) Asbestos abatement conducted outside of a single private residence by the owner is exempt from the notification requirements contained in OAR 340-248-0260 and 0270(1), if the residence is not a rental property, a commercial business, or intended to be demolished.
- (c) Residential buildings with four or fewer dwelling units ~~that were constructed after 1987~~ are exempt from the provisions of OAR 340-248-0270(1).
- (d) Projects involving the removal of mastics and roofing products that are fully encapsulated with a petroleum-based binder and are not hard, dry, or brittle are exempt from OAR 340-248-0110 through 340-248-0280 and 0290(1), (2), (8), and (9) provided the materials are not made friable.
- (e) Projects involving the removal of less than three square feet or three linear feet of asbestos-containing material are exempt from OAR 340-248-0110 through 340-248-0180 and the notification requirements in 340-248-0260 provided that the removal of asbestos is not the primary objective, is part of a needed repair operation, and the methods of removal are in compliance with OAR 437 Division 3 "Construction" Subsection Z and **29 CFR 1926, 1101 (g)(i) through (iii) (1998)**. Asbestos abatement projects may not be subdivided into smaller sized units in order to qualify for this exemption.
- (f) Projects involving the removal of asbestos-containing materials that are sealed from the atmosphere by a rigid casing are exempt from OAR 340-248-0110 through 340-248-02870 and 0290(2) through (4) and (7) through (9), provided the casing is not broken or otherwise altered such that asbestos fibers could be released during removal, handling, and transport to an authorized disposal site.
- (3) Any person who removes non-friable asbestos-containing material not exempted under OAR 340-248-0250(2) must comply with the following:
 - (a) Submit asbestos removal notification and the appropriate fee to the Department Business Office on a Department form in accordance with OAR 340-248-0260.
 - (b) Remove nonfriable asbestos-containing materials in a manner that ensures the material remains nonfriable.
 - (c) A nonfriable asbestos abatement project is exempt from the asbestos licensing and certification requirements under OAR 340-248-0100 through 340-248-0180. The exemption ends whenever the asbestos-containing material becomes friable ~~or has the potential to release asbestos fibers into the environment.~~
- (4) Emergency fire fighting is not subject to this division.

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(5) Asbestos containing waste material that is handled and disposed of in compliance with a solid waste permit issued pursuant to ORS 459 is not subject to OAR 340-248-0205(1).

~~NOTE: The requirements and jurisdiction of the Department of Insurance and Finance, Oregon Occupational Safety and Health Division and any other state agency are not affected by OAR 340-248-0200 through 340-248-0280.~~

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88 (and corrected 6-3-88), ef. 6-1-88; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 8-1990, f. 3-13-90, cert. ef. 4-23-90; DEQ 18-1991, f. & cert. ef. 10-7-91; Section (1)(a) - (d) renumbered from 340-025-0465(4)(a) - (d); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0466; DEQ 19-1994, f. 9-6-94, cert. ef. 10-1-94; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5620; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0260

Asbestos Abatement Notifications Requirements

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

(1) Submit the notifications as specified in section (4) of this rule and the project notification fee to the Department at least ten days before beginning any friable asbestos abatement project and at least five days before beginning any non-friable asbestos abatement project.

(a) The project notification fee is:

(A) \$35 for each project less than 40 linear feet or 80 square feet of asbestos-containing material, a residential building, or a non-friable asbestos abatement project.

(B) \$70 for each project greater than or equal to 40 linear feet or 80 square feet but less than 260 linear feet or 160 square feet of asbestos-containing material.

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- (C) \$275 for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos-containing material.
 - (D) \$375 for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or 1600 square feet of asbestos-containing material.
 - (E) \$650 for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.
 - (F) \$750 for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.
 - (G) \$1,200 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.
 - (H) \$2,000 for each project greater than or equal to 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
 - (I) \$2,500 for each project greater than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
 - (J) \$260 for annual notifications for friable asbestos abatement projects involving removal of 40 linear feet or 80 square feet or less of asbestos-containing material.
 - (K) \$350 for annual notifications for non-friable asbestos abatement projects performed at schools, colleges, and facilities.
- (b) Project notification fees must accompany the project notification form. Notification has not occurred until the completed notification form and appropriate notification fee is received by the Department.
 - (c) The Department may waive the ten-day notification requirement in section (1) of this rule in emergencies that directly affect human life, health, and property. This includes:
 - (A) Emergencies where there is an imminent threat of loss of life or severe injury;
 - (B) Emergencies where the public is exposed to air-borne asbestos fibers; or
 - (C) Emergencies where significant property damage will occur if repairs are not made immediately.
 - (d) The Department may waive the ten-day notification requirement in section (1) of this rule for asbestos abatement projects that were not planned, resulted from unexpected events, and will

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cause damage to equipment or impose unreasonable financial burden if not performed immediately. This includes the non-routine failure of equipment.

- (e) In either subsection (c) or (d) of this section persons responsible for such asbestos abatement projects must notify the Department by telephone before commencing work or by 9:00 am of the next working day if the work was performed on a weekend or holiday. In any case notification as specified in section (4) of this rule and the appropriate fee must be submitted to the Department within three days of commencing emergency or unexpected event asbestos abatement projects.
 - (f) Failure to notify the Department before any changes in the scheduled starting or completion dates or other substantial changes will render the notification void.
 - (g) If an asbestos project equal to or greater than 2,600 linear feet or 1,600 square feet continues for more than one year from the original start date of the project a new notification and fee must be submitted annually thereafter until the project is complete.
 - (h) Residential buildings include: site built homes, modular homes constructed off site, mobile homes, condominiums, and duplexes or other multi unit residential buildings consisting of four units or less.
- (2) Annual notification for small-scale friable asbestos abatement projects. This notification may be used only for projects where no more than 40 linear or 80 square feet of asbestos-containing material is removed. The small-scale friable asbestos projects may be conducted at multiple facilities by a single licensed asbestos contractor, or at a facility that has a centrally controlled asbestos operation and maintenance program where the facility owner uses appropriately trained and certified personnel to remove asbestos.
- (a) Establish eligibility for use of this notification procedure with the Department prior to use.;
 - (b) Maintain on file with the Department a general asbestos abatement plan. The plan must contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible.;
 - (c) Provide to the Department a summary report of all asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report must include the information specified in subsections (4)(i) through (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan; and a description of asbestos abatement projects anticipated for the next quarter when possible.;
 - (d) Provide to the Department, upon request, a list of asbestos abatement projects that are scheduled or are being conducted at the time of the request.;
 - (e) Submit project notification and fee prior to use of this notification procedure.;

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- (f) Failure to provide payment for use of this notification procedure will void the general asbestos abatement plan and each subsequent abatement project will be individually assessed a project notification fee.
- (3) Annual non-friable asbestos abatement projects may only be performed at schools, colleges, and facilities where the removal work is done by certified asbestos abatement workers. Submit the notification as follows:
 - (a) Establish eligibility for use of this notification procedure with the Department prior to use.
 - (b) Maintain on file with the Department a general non-friable asbestos abatement plan. The plan must contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible.
 - (c) Provide to the Department a summary report of all non-friable asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report must include the information specified in subsections (4)(i) through (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan, and a list describing the non-friable asbestos abatement projects anticipated for the next quarter, when possible.
 - (d) Submit project notification and fee prior to use of this notification procedure.
 - (e) Failure to provide payment for use of this notification procedure will void the general non-friable asbestos abatement plan and each subsequent non-friable abatement project will be individually assessed a project notification fee.
- (4) The following information must be provided for each notification:
 - (a) Name and address of person conducting asbestos abatement.
 - (b) The Oregon asbestos abatement contractor's license number and certification number of the supervisor for the asbestos abatement project or, for nonfriable asbestos abatement projects, the name of the supervising person that meets Oregon OSHA's competent person qualifications as required in OAR 437, division 3 "Construction", Subdivision Z, 1926.1101(b) "Competent person", (2/10/1994).
 - (c) Method of asbestos abatement to be employed.
 - (d) Procedures to be employed to insure compliance with OAR 340-248-0270 through 340-248-0290.
 - (e) Names, addresses, and phone numbers of waste transporters.

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- (f) Name and address or location of the waste disposal site where the asbestos-containing waste material will be deposited.
 - (g) Description of asbestos disposal procedure.
 - (h) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including:
 - (A) The age, present and prior use of the facility;
 - (B) Address or location where the asbestos abatement project is to be accomplished, including building, floor, and room numbers.
 - (i) Facility owner or operator name, address and phone number.
 - (j) Scheduled starting and completion dates of asbestos abatement work.
 - (k) Description of the asbestos type, approximate asbestos content (percent), and location of the asbestos-containing material.
 - (l) Amount of asbestos to be abated: linear feet, square feet, thickness.
 - (m) For facilities described in OAR 340-248-0270(8) provide the name, title and authority of the State or local government official who ordered the demolition, date the order was issued, and the date demolition is to begin.
 - (n) Any other information requested on the Department form.
- (5) The project notification fees specified in this section will be increased by 50% when an asbestos abatement project is commenced without filing of a project notification or submittal of a notification fee or when notification of less than ten days is provided under subsections (1)(c) and (d) of this rule.
- (6) The Director may waive part or all of a project notification fee. Requests for waiver of fees must be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship.
- (7) Pursuant to ORS 468A.135, a regional authority may adopt project notification fees for asbestos abatement projects in different amounts than are set forth in this rule. The fees will be based upon the costs of the regional authority in carrying out the delegated asbestos program. The regional authority may collect, retain, and expend such project notification fees for asbestos abatement projects within its jurisdiction.

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Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88 (and corrected 6-3-88), ef. 6-1-88; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 8-1990, f. 3-13-90, cert. ef. 4-23-90; DEQ 18-1991, f. & cert. ef. 10-7-91; Renumbered from 340-025-0465(5)(a) - (d); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0467; DEQ 19-1994, f. 9-6-94, cert. ef. 10-1-94; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5630; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0270

Asbestos Abatement Work Practices and Procedures

Except as provided for in OAR 340-248-0250, the following procedures must be employed by any person who conducts or provides for the conduct of an asbestos abatement project.

- (1) Prior to performing a demolition or renovation activity on a facility the owner or operator of a facility must have an accredited inspector thoroughly survey the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos-containing material, including nonfriable asbestos-containing material.
- (2) The owner or operator of a facility that requires a survey pursuant to OAR 340-248-0270(1) must keep a copy of the survey report onsite at the facility during any demolition or renovation activity.
- (3) Remove all asbestos-containing materials before any activity begins that would break up, dislodge, or disturb the materials or preclude access to the materials for subsequent removal. Asbestos-containing materials need not be removed before demolition if:
 - (a) They are on a facility component that is encased in concrete or other similar material and are adequately wetted whenever exposed during demolition;
 - (b) They were not discovered before demolition and cannot be removed because of unsafe conditions as a result of the demolition.
- (4) Upon discovery of asbestos-containing materials found during demolition the owner or operator performing the demolition must:
 - (a) Stop demolition work immediately;
 - (b) Notify the Department immediately of the occurrence;

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- (c) Keep the exposed asbestos-containing materials and any asbestos-contaminated waste material adequately wet at all times until a licensed asbestos abatement contractor begins removal activities;
 - (d) Have the licensed asbestos abatement contractor remove and dispose of the asbestos-containing waste material.
- (5) Asbestos-containing materials must be adequately wetted when they are being removed. In renovation, maintenance, repair, and construction operations, where wetting would unavoidably damage equipment or is incompatible with specialized work practices, or presents a safety hazard, adequate wetting is not required if the owner or operator:
- (a) Obtains prior written approval from the Department for dry removal of asbestos-containing material;
 - (b) Keeps a copy of the Department's written approval available for inspection at the work site;
 - (c) Adequately wraps or encloses any asbestos-containing material during handling to avoid releasing fibers;
 - (d) Uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the asbestos abatement project.
- (6) When a facility component covered or coated with asbestos-containing materials is being taken out of the facility as units or in sections:
- (a) Adequately wet any asbestos-containing materials exposed during cutting or disjointing operation;
 - (b) Carefully lower the units or sections to ground level, not dropping them or throwing them;
 - (c) Asbestos-containing materials do not need to be removed from large facility components such as reactor vessels, large tanks, steam generators, but excluding beams if the following requirements are met:
 - (A) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the regulated asbestos-containing material; and
 - (B) The component is encased in leak-tight wrapping; and
 - (C) The leak-tight wrapping is labeled according to OAR 340-248-0280(2)(b) during all loading and unloading operations and during storage.

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- (7) For friable asbestos-containing materials being removed or stripped:
- (a) Adequately wet the materials to ensure that they remain wet until they are disposed of in accordance with OAR 340-248-0280;
 - (b) Carefully lower the materials to the floor, not dropping or throwing them;
 - (c) With prior written approval from the Department, transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped above ground level and were not removed as units or in sections.
 - (d) Enclose the area where friable asbestos materials are to be removed with a negative pressure enclosure prior to abatement unless written approval for an alternative is granted by the Department.
 - (e) A minimum of one viewing window will be installed in all enclosures, including negative pressure enclosures, in accordance with the following:
 - (A) Each viewing window must be a minimum of two feet by two feet and be made of a material that will allow a clear view inside the enclosure.
 - (B) For large enclosures, including negative pressure enclosures, install one viewing window for every 5,000 square feet of area when spatially feasible.
- (8) Any person that demolishes a facility under an order of the State of Oregon or a local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse must comply with the following:
- (a) Obtain written approval from the Department for an ordered demolition procedure before that demolition takes place; and
 - (b) Send a copy of the order and an asbestos abatement project notification (as described in OAR 340-248-0260) to the Department before commencing demolition work; and
 - (c) Keep a copy of the order, Department's approval, and the notification form at the demolition site during all phases of demolition until final disposal of the project waste at an authorized landfill; and
 - (d) Keep asbestos-containing materials and asbestos contaminated debris adequately wet during demolition and comply with the disposal requirements set forth in OAR 340-248-0280 and 340-248-0290.

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- (9) Persons performing asbestos abatement outside full negative pressure containment must obtain written approval from the Department before using mechanical equipment to remove asbestos-containing material.
- (10) Before a facility is demolished by intentional burning, all asbestos-containing material must be removed and disposed of in accordance with OAR 340-248-0010 through 340-248-0290.
- (11) None of the operations in section (1) through (4) of this rule may cause any visible emissions. Any local exhaust ventilation and collection system or vacuuming equipment used during an asbestos abatement project, must be equipped with a HEPA filter or other filter of equal or greater collection efficiency.
- (12) The Director may approve, on a case-by-case basis, requests to use an alternative to the requirements contained in this rule. The contractor or facility owner or operator must submit a written description of the proposed alternative and demonstrate to the Director's satisfaction that the proposed alternative provides public health protection equivalent to the protection that would be provided by the specific requirement, or that such level of protection cannot be obtained for the asbestos abatement project.
- (13) Final Air Clearance Sampling Requirements apply to projects involving more than 160 square feet or 260 linear feet of asbestos-containing material. Before containment around such an area is removed, the person performing the abatement must have at least one air sample collected that documents that the air inside the containment has no more than 0.01 fibers per cubic centimeter of air. The air sample(s) collected may not exceed 0.01 fibers per cubic centimeter of air. The Department may grant a waiver to this section or exceptions to the following requirements upon receiving an advanced written request:
 - (a) The air clearance samples must be performed and analyzed by a party who is National Institute of Occupational Safety and Health (NIOSH) 582 certified and financially independent from the person(s) conducting the asbestos abatement project;
 - (b) Before final air clearance sampling is performed the following must be completed:
 - (A) All visible asbestos-containing material and asbestos-containing waste material must be removed according to the requirements of this section;
 - (B) The air and surfaces within the containment must be sprayed with an encapsulant;
 - (C) Air sampling may commence when the encapsulant has settled sufficiently so that the filter of the sample is not clogged by airborne encapsulant;
 - (D) Air filtration units must remain on during the air-monitoring period.

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- (c) Air clearance sampling inside containment areas must be aggressive and comply with the following procedures:
 - (A) Immediately before starting the sampling pumps, direct exhaust from a minimum one horse power forced air blower against all walls, ceilings, floors, ledges, and other surfaces in the containment;
 - (B) Then place stationary fans in locations that will not interfere with air monitoring equipment and then directed toward the ceiling. Use one fan per 10,000 cubic feet of room space;
 - (C) Start sampling pumps and sample an adequate volume of air to detect concentrations of 0.01 fibers of asbestos per cubic centimeter according to NIOSH 7400 method;
 - (D) When sampling is completed turn off the pump and then the fan(s);
 - (E) As an alternative to meeting the requirements of paragraphs (A) through (D) of this subsection, air clearance sample analysis may be performed according to Transmission Electron Microscopy Analytical Methods prescribed by **40 CFR 763, Appendix A to Subpart E (Interim Transmission Electron Microscopy Analytical Methods)**.
- (d) The person performing asbestos abatement projects requiring air clearance sampling must submit the clearance results to the Department on a Department form. The clearance results must be received by the Department within 30 days after the completion date of the asbestos abatement project.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88. ef. 6-1-88 (and corrected 6-3-88); DEQ 18-1991, f. & cert. ef. 10-7-91; Renumbered from 340-025-0465(6) - (12); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0468; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5640; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0275

Asbestos Standards for Air Cleaning, Spraying, Molded Insulation, and Fabricating

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

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

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conduits must contain less than one-percent asbestos on a dry weight basis. If any city or area of local jurisdiction has ordinances or regulations for spray application materials more stringent than those in this section, the provisions of such ordinances or regulations apply;

- (b) Any person intending to spray asbestos materials to insulate or fireproof buildings, structures, pipes, conduits, equipment, or machinery must notify the Department in writing 20 days before the spraying operation begins. The notification must contain the following:
 - (A) Name and address of person intending to conduct the spraying operation;
 - (B) Address or location of the spraying operation;
 - (C) The name and address of the owner of the facility being sprayed.
- (c) The spray-on application of materials in which the asbestos fibers are encapsulated with a bituminous or resinous binder during spraying and which are not friable after drying is exempted from the requirements of subsections (a) and (b) of this section.
- (4) Fabricating. Except as provided in section (2) of this rule no person may cause or allow to be discharged into the atmosphere any visible emissions, including fugitive emissions, from fabricating operations including the following:
 - (a) Applicability. This section applies to fabricating operations using commercial asbestos:
 - (A) The fabrication of cement building products;
 - (B) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles;
 - (C) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.
 - (b) The owner or operator of a fabricating operation must monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices and process equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring must be by visual observation of at least 15 seconds duration per source of emissions, ~~and~~
 - (c) The owner or operator of a fabricating operation must inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of

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bags. For air cleaning devices that cannot be inspected on a weekly basis according to this subsection, submit to the department, revise as necessary, and implement a written maintenance plan to include, at a minimum, a maintenance schedule and recordkeeping plan.

- (d) The owner or operator of a fabricating operation must maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department that includes the following information:
 - (A) Date and time of each inspection;
 - (B) Presence or absence of visible emissions;
 - (C) Condition of fabric filters, including presence of any tears, holes, and abrasions;
 - (D) Presence of dust deposits on clean side of fabric filters;
 - (E) Brief description of corrective actions taken, including date and time;
 - (F) Daily hours of operation for each air cleaning device.
 - (e) The owner or operator of a fabricating operation must furnish upon request and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.;
 - (f) The owner or operator of a fabricating operation must retain a copy of all monitoring and inspection records for at least two years.;
 - (g) The owner or operator of a fabricating operation must submit a copy of the visible emission monitoring records to the Department quarterly. The quarterly report must be postmarked by the 30th day following the end of the calendar quarter.
- (5) Insulation. No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this section do not apply to insulating materials regulated under section (3) of this rule.

Stat. Auth.: ORS 468.020, ORS 468A.025, ORS 468A.135 & ORS 468A.745

Stats. Implemented: ORS 468A.700 - ORS 468A.760

Hist.: DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0280

Friable Asbestos Disposal Requirements

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Work practices and procedures for packaging, storing, transporting, and disposing of friable asbestos-containing waste material: The owner or operator of a facility or an activity covered under the provisions of OAR 340-248-0205 through 340-248-0280 or any other source of friable asbestos-containing waste material must meet the following standards:

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

DANGER

Contains Asbestos Fibers

Avoid Creating Dust

Cancer and Lung Disease Hazard

Avoid Breathing Airborne

Asbestos Fibers

- (ii) Alternatively, warning labels specified by 29 CFR 1926.1101(k)(7) (1994) may be used.
- (3) If the asbestos-containing materials are not removed from a facility before demolition as described in OAR 340-248-0270(5), adequately wet the asbestos-containing waste material at all times after demolition and keep it wet during handling and loading for transport to a disposal site. Such asbestos-containing waste materials must be transported in lined and covered containers for bulk disposal.
- (4) The interim storage of asbestos-containing waste material must protect the waste from dispersal into the environment and provide physical security from tampering by unauthorized persons. The interim

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storage of asbestos-containing waste material is the sole responsibility of the contractor, owner or operator performing the asbestos abatement project.

- (5) All asbestos-containing waste material must be deposited as soon as possible by the asbestos waste generator at:
 - (a) A waste disposal site authorized by the Department and operated in accordance with this rule; or
 - (b) A Department approved site that converts asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of OAR 340-248-0230 Asbestos to Nonasbestos Conversion Operations.
- (6) Persons disposing of asbestos-containing waste material must notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator before bringing the waste to the disposal site.
- (7) For each waste shipment the following information must be recorded on a Department form:
 - (a) Waste Generation:
 - (A) The name, address, and telephone number of the asbestos waste generator.
 - (B) The number and type of asbestos-containing waste material containers and volume in cubic yards.
 - (C) A certification that the contents of this consignment are carefully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highways according to applicable regulations.
 - (b) Waste Transportation:
 - (A) The date transported.
 - (B) The name, address, and telephone number of the transporter(s).
 - (c) Waste Disposal:
 - (A) The name and telephone number of the disposal site operator.
 - (B) The name and address or location of the waste disposal site.
 - (C) The quantity of the asbestos-containing waste material in cubic yards.

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- (D) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers.
- (E) The date asbestos-containing waste is received at disposal site.
- (8) For the transportation of asbestos-containing waste material:
 - (a) The asbestos waste generator must:
 - (A) Maintain the asbestos waste shipment records for at least two years and ensure that all the information requested on the Department form regarding waste generation and transportation has been supplied.
 - (B) Limit access into loading and unloading area to authorized personnel.
 - (C)(i) Mark vehicles, while loading and unloading asbestos-containing waste, with signs (20 in. x 14 in.) that state:

DANGER

ASBESTOS DUST HAZARD

CANCER AND LUNG DISEASE HAZARD

Authorized Personnel Only

- (ii) Alternatively, language that conforms to the requirements of 29 CFR 1926.1101(k)(6) (1994) may be used.
- (b) The waste transporter must:
 - (A) Immediately notify the landfill operator upon arrival of the waste at the disposal site.
 - (B) Provide a copy of the asbestos waste shipment record to the disposal site owners or operators when the asbestos-containing waste material is delivered to the disposal site.
- (9) After initial transport of asbestos-containing waste material the asbestos waste generator must:
 - (a) Receive a copy of the completed asbestos waste shipment record within 35 days, or determine the status of the waste shipment. A completed asbestos waste shipment record must include the signature of the owner or operator of the designated disposal site.

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- (b) Receive a copy of the completed asbestos waste shipment record within 45 days, or submit to the Department a written report including:
 - (A) A copy of the asbestos waste shipment record when a confirmation of delivery was not received; and
 - (B) A cover letter signed by the asbestos waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.
 - (c) Keep asbestos waste shipment records, including a copy signed by the owner or operator of the designated waste disposal site, for at least three years. Make all disposal records available upon request to the Department. For an asbestos abatement project conducted by a contractor licensed under OAR 340-248-0120, the records must be retained by the licensed contractor. For any other asbestos abatement project, the records must be retained by the facility owner.
- (10) Each owner or operator of an active asbestos-containing waste disposal site must meet the following standards:
- (a) For all asbestos-containing waste material received:
 - (A) Ensure that off-loading of asbestos-containing waste material is done under the direction and supervision of the landfill operator or their authorized agent, and that it is accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents the release of visible emissions to the air.
 - (B) Ensure that off-loading of asbestos-containing waste material occurs at the immediate location where the waste will be buried and restrict public access to off-loading area until waste is covered in accordance with paragraph (H), of this subsection.
 - (C) Maintain asbestos waste shipment records for at least two years and ensure that all information requested on the Department form regarding waste disposal has been supplied.
 - (D) Immediately notify the Department by telephone, followed by a written report to the Department the following working day, of the presence of improperly enclosed or uncovered waste. Submit a copy of the asbestos waste shipment record along with the report.
 - (E) As soon as possible, and no more than 30 days after receiving the waste, send a copy of the signed asbestos waste shipment record to the asbestos waste generator.
 - (F) Upon discovering a discrepancy between the quantity of waste designated on the asbestos waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the asbestos waste generator. Report in writing to the Department any discrepancy between the quantity of waste designated on the asbestos waste shipment records

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and the quantity actually received that cannot be reconciled between the asbestos waste generator and the waste disposal site within 15 days after receiving the waste. Describe the discrepancy and attempts to reconcile it, and submit a copy of the asbestos waste shipment record along with the report. Include the Department assigned asbestos project number in the discrepancy report.

- (G) Select the waste burial site in an area of minimal work activity that is not subject to future excavation.
- (H) Cover all asbestos-containing waste material deposited at the disposal site with at least 12 inches of soil or six inches of soil plus 12 inches of other waste before running compacting equipment over it but no later than the end of the operating day.
- (b) Maintain, until site closure, record of the location, depth and area, and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.
- (c) Excavation or disturbance of asbestos-containing waste material that has been deposited at a waste disposal site and is covered is considered an asbestos abatement project. The notification for any such project must be submitted as specified in OAR 340-248-0260 except as follows:
 - (A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.
 - (B) State the reason for disturbing the waste.
 - (C) Explain the procedures for controlling emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. The Department may require changes in the proposed emission control procedures.
 - (D) State the location of any temporary storage site and the final disposal site.
- (d) Upon closure of an active asbestos-containing waste disposal site, each owner or operator must:
 - (A) Comply with all the provisions for inactive asbestos-containing waste disposal sites.
 - (B) Submit to the Department a copy of records of asbestos waste disposal locations and quantities.
 - (C) Make available during normal business hours and furnish upon request all records required under this section for inspection by the Department.

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- (11) The owner or operator of an inactive asbestos-containing waste disposal site must meet the following standards:
- (a) Maintain a cover of at least two feet of soil or one foot of soil plus one foot of other waste.
 - (b) Grow and maintain a cover of vegetation on the area to prevent erosion of the non asbestos-containing cover of soil or other waste materials. In desert areas where vegetation would be difficult to maintain, a layer of at least three inches of well-graded, nonasbestos crushed rock may be placed and maintained on top of the final cover instead of vegetation.
 - (c) For inactive asbestos waste disposal sites for asbestos-containing tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used and maintained to achieve the requirements of subsections (a) and (b) of this section, provided prior written approval of the Department is obtained.
 - (d) Excavation or disturbance at any inactive asbestos-containing waste disposal site is an asbestos abatement project. The notification for any such project must be submitted as specified in OAR 340-248-0260, except as follows:
 - (A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.
 - (B) State the reason for disturbing the waste.
 - (C) Explain the procedures to be used to control emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. The Department may require changes in the proposed emission control procedures to be used.
 - (D) State the location of any temporary storage site and the final disposal site.
 - (e) Within 60 days of a site's becoming inactive, request in writing that the Commission issue an environmental hazard notice for the site. This environmental hazard notice will notify in perpetuity any potential purchaser of the property that:
 - (A) The land has been used for the disposal of asbestos-containing waste material;
 - (B) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required for active asbestos disposal sites have been filed with the Department; and
 - (C) The site is subject to the provisions of OAR 340-248-0205 through 340-248-0290.

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- (12) Rather than meet the requirements of this rule, an owner or operator may use alternative packaging, storage, transport, or disposal methods after receiving written approval by the Department.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88 (and corrected 6-3-88), ef. 6-1-88; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 8-1990, f. 3-13-90, cert. ef. 4-23-90; DEQ 18-1991, f. & cert. ef. 10-7-91; Renumbered from 340-025-0465(13) - (15); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0469; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5650; DEQ 1-2002, f. & cert. ef. 2-4-02

340-248-0290

Nonfriable Asbestos Disposal Requirements

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

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

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~~ASBESTOS-CONTAINING MATERIAL~~

- ~~(3) Nonfriable asbestos-containing roofing materials that are fully encapsulated in a petroleum-based binder and meet the conditions in OAR 340-248-0250(2)(c) are exempt from 340-248-0290(2).~~
- ~~(4) The interim storage of nonfriable asbestos-containing waste material must protect the waste from tampering by unauthorized persons. The interim storage of nonfriable asbestos-containing waste material is the sole responsibility of the contractor or the owner or operator performing the nonfriable asbestos abatement project.~~
- ~~(5) All nonfriable asbestos-containing waste material must be deposited as soon as possible by the asbestos waste generator at:
 - ~~(a) A waste disposal site authorized by the Department and operated in accordance with this rule; or~~
 - ~~(b) A Department approved site that converts asbestos-containing waste material into nonasbestos (asbestos free) material according to the provisions of OAR 340-248-0230, Asbestos to Nonasbestos Conversion Operations.~~~~
- ~~(6) Persons disposing of nonfriable asbestos-containing waste material must notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator before bringing the waste to the disposal site.~~
- ~~(7) For each nonfriable waste shipment, the waste generator must provide the generator information contained in OAR 340-248-0280(7).~~
- ~~(8) For the transportation of nonfriable asbestos-containing waste material the waste generator must follow the provisions of OAR 340-248-0280(8).~~
- ~~(9) After initial transport of nonfriable asbestos-containing waste material, the asbestos waste generator must follow the provisions of OAR 340-248-0280(9).~~
- ~~(10) Each owner or operator of an active nonfriable asbestos-containing waste disposal site must meet the provisions of OAR 340-248-0280(10).~~
- ~~(11) The owner or operator of an inactive nonfriable waste disposal site must meet the provisions of OAR 340-248-0280(11).~~
- ~~(12) Rather than meet the requirements of this rule, an owner or operator may use alternative packaging, storage, transport, or disposal methods after receiving written approval from the Department.~~

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Stat. Auth.: ORS 468.020, ORS 468A.025, ORS 468A.135 & ORS 468A.745

Stats. Implemented: ORS 468A.700 - ORS 468A.760

Hist.: DEQ 1-2002, f. & cert. ef. 2-4-02

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**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATEMENT OF NEED AND JUSTIFICATION FOR TEMPORARY RULE**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Environmental Quality

OAR Chapter 340

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Amending the Asbestos Rules in OAR 340 Division 248.

Statutory Authority: ORS 468A.745 (8), and 468A.025

Other Authority: ORS 183.335(5).

Statutes Implemented: ORS 468A.700 to 468A.760.

Need for the Rules:

The rule is necessary to provide immediate relief from asbestos requirements that are causing implementation problems for some Oregon businesses. While developing amendments to the asbestos rules that were adopted in January 2002, the Department inadvertently neglected to involve the Oregon Refuse and Recycling Association, the Oregon Building Industry Association and the Oregon Remodelers Association. These associations were not on mailing lists maintained by the Air Quality Program and did not learn of the rulemaking in time to comment. These associations identified a number of concerns with the recent rule changes that the Department agrees should be carefully considered.

The temporary rule will meet the need by making the following changes:

- 1) Delete or clarify definitions that are perceived as too broad and unenforceable. The temporary rule will delete the definition of "shattered" and restore the definitions of "friable asbestos material" and "nonfriable asbestos material" that were used before the January 2002 amendments.
- 2) In OAR 340-248-0290, delete the new nonfriable asbestos waste packaging and disposal requirements, and restore original rule language on nonfriable waste handling and disposal. The temporary rule will still protect the public from exposure to airborne asbestos fibers, but will repeal the detailed procedures adopted in January 2002.
- 3) Asbestos survey: Change the asbestos survey requirement so that residential buildings with four or fewer units are exempt from surveying. This change will make the asbestos survey requirement the same as in the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. The rules adopted in January, 2002 applied the survey

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requirement to all residential units built earlier than 1987 except for work done by homeowners on their own homes or vacation homes.

- 4) Ensure statutorily defined definitions are the same in rule, correct errors, punctuation, typographical errors, citations and references. The temporary rule ensures that statutorily defined terms reflect statutory language. The rule replaces all "shalls" with "musts" or "wills," and corrects typographical errors and inaccurate citations. The rule makes a few other clarifying corrections.

Documents Relied Upon:

-40 CFR Part 61 Subpart M, National Emission Standards for Asbestos
-ORS 468A

Justification of Temporary Rules:

The Department finds that failure to act promptly will result in serious prejudice to residential owners, construction contractors, and the solid waste industry because the unintended impact of the January 2002 rules upon these entities is significant. Some of the recent rule changes are more prescriptive and burdensome than intended. If the Commission does not adopt a temporary rule addressing these issues, there will be inconsistent implementation of the existing rules that will cause unintended economic hardship. Some solid waste companies have changed their policies to comply with the new requirements, while others have sought relief by requesting that the Department allow them to use alternatives, thus creating an economic advantage for themselves. In addition, the solid waste industry claims that their members are unable to compete with landfills and transfer stations in neighboring states and jurisdictions that do not label, package, and dispose of nonfriable waste nor take specific steps to prevent nonfriable waste from being shattered and made friable, as required by the existing rules.

The temporary rule will allow the Department to propose permanent rules to address these confusing requirements. The temporary rule reflects the Department's commitment to resolving the issues of the survey scope, nonfriable packaging and disposal requirements, and when and how improper handling of asbestos-containing material makes a nonfriable asbestos project subject to requirements for friable asbestos projects.

Housing Cost Impacts:

The Department has determined that this proposed rulemaking will have no effect on the cost of development of a new 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel, as no asbestos-containing materials are being used in construction at this time.

Stephanie Hallock 11-20-02
Signer and Date

STEPHANIE HALLOCK
Printed name

Asbestos Advisory DEQ's Building Survey Requirement

What is the survey requirement?

DEQ's survey rule requires that an inspection be performed before any demolition or renovation activities to determine the presence of friable and nonfriable asbestos-containing materials. DEQ believes this rule will be an important preventive tool that will allow a building owner to prevent asbestos fiber exposure when asbestos-containing material is in or on their facility.

Who must get a survey done?

All facility owners, including but not limited to manufacturing facilities, public and private building owners, commercial facilities, apartment complexes, residential buildings, etc., undertaking a demolition or renovation project will be affected by this rule. The survey rule does not apply to residential buildings with four or fewer dwelling units or owners of a single private residence that is not used as a rental property, commercial business, or intended for demolition. However, contractors and building owners or operators are responsible for any asbestos rule violations that may occur from renovation or demolition work in or on their structure when a survey is not performed.

What is a demolition or renovation project?

Demolition is defined as wrecking that involves the removal of load-supporting members and/or intentional burning. Renovation is defined as altering in any way one or more facility components that does not involve removing a load-supporting member.

Who can perform the survey?

The rule requires that an accredited inspector perform the survey. DEQ wants to ensure that the individual doing the inspection is qualified and understands what they need to look for to complete the survey. This training is in accordance with the Asbestos Hazard Emergency Response Act (AHERA) program regulations and the Model Accreditation Program training rules in 40 CFR Part 763.

In Oregon there are two service providers that offer the AHERA training courses: Clayton Environmental in Portland at (971) 244-1200 and PBS Environmental Building Consultants at (503) 248-1939. The inspector training is three days.

What does DEQ mean by survey?

Generally, DEQ will require a sample of each type of material suspected to contain asbestos to be collected and analyzed before any demolition or renovation project takes place. DEQ will not require the inspector to conduct an AHERA type survey. AHERA surveys can be restrictive and expensive because of the detailed and extensive amount of sampling and evaluation necessary. DEQ will continue to rely upon the types of surveys and sampling we have recommended in the past.

For example: When complete demolition or extensive renovation is to be conducted, a complete building survey will be required. If only a partial renovation activity is to take place, such as a kitchen remodel, then only that area of the structure requires a survey. If a single material, such as sheet vinyl floor is to be removed and replaced then only one sample (each layer if applicable) will need to be collected (an accredited inspector need not be used under these circumstances) and analyzed. When the suspected material involves either blown or troweled on surfacing materials (i.e. ceiling texture), the DEQ recommends that more than one sample be collected and analyzed.

A copy of the survey report (or just a lab analysis report when appropriate) must be kept onsite during the demolition or renovation project. A survey report includes documentation of all of the samples collected, locations of where the samples were collected, results of the laboratory analysis and an evaluation of the materials to assess their condition (friable or nonfriable).

Please keep in mind that a survey is not a 100% guarantee that all asbestos-containing



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materials have been identified. Discoverable materials can be found in areas which were not accessible during the survey (i.e. such as behind walls, under carpet, etc.). During the demolition and renovation activities, an appropriately trained person should be on site and attentive for the discovery of asbestos-containing materials.

When is a survey not required?

Anyone may presume that a single material contains asbestos and have it properly abated without conducting a survey. DEQ has discretion to approve alternatives to the asbestos requirements under OAR 340-248-0270(12). Such an alternative could allow an owner or operator to assume that all suspect materials contain asbestos. In this instance, the owner or operator must contact DEQ before starting the project to obtain permission to use that method of identification.

Materials that commonly contain asbestos, such as popcorn ceiling texture, cement siding, and vinyl floor tile, are candidates for materials that may be presumed to contain asbestos and properly abated in accordance with the rules. **However, you cannot assume that a material does not contain asbestos.** Only through laboratory analysis can a negative determination be made. DEQ intends to develop guidance documents describing situations where a survey may not be necessary and provide a list of suspect materials to contain asbestos. There will be circumstances when DEQ asbestos staff will need to make a determination on a case by case basis.

When will a survey always be required?

A building survey will always be required before a structure is demolished and before a structure is intentionally burned unless otherwise exempted. DEQ recommends that building owners determine if asbestos is present before conducting any demolition or before having a structure intentionally burned.

When will these requirements take effect?

The rules were adopted by the Environmental Quality Commission (EQC) on January 25, 2002, and the rules became effective on February 4, 2002. DEQ will delay formal

enforcement of the survey regulation until December 31, 2002 while the asbestos group implements a major outreach campaign to inform building owners and operators about the survey requirement. A large number of the facility and building owners are already aware of the existing EPA and OSHA building survey requirements.

Copies of DEQ's guidance documents, abatement contractor and landfill lists, project notification and waste shipment report forms can also be found on the DEQ web page under "[Air Quality](#)" at www.deq.state.or.us. For further information about the asbestos regulations, contact your regional office.

For Clackamas, Clatsop, Columbia, Multnomah, Tillamook and Washington Counties, call the Portland Office at (503) 229-5364, (503) 229-5473, or (800) 452-4011.

For Benton, Lincoln, Linn, Marion, Polk and Yamhill Counties, call the Salem Office at (503) 378-8240, ext. 272 or (800) 349-7677.

For Lane County call Lane Regional Air Pollution Authority at (541) 736-1056.

For Jackson, Josephine and Eastern Douglas Counties, call the Medford Office at (541) 776-6010, ext. 235 or (877) 823-3216.

For Coos, Curry and Western Douglas Counties, call the Coos Bay Office at (541) 269-2721, ext. 22.

For all areas east of the Cascades, call the Bend Office at (541) 388-6146, ext. 226, or the Pendleton Office at (541) 278-4626 or at 1-800-304-3513.

Alternative Formats

Alternative formats of this document can be made available. Contact DEQ Public Affairs for more information (503) 229-5696.

!! CONTRACTOR ALERT !!

Effective February 4, 2002, DEQ made changes to the asbestos rules that will affect how contractors handle renovation and demolition projects. If you are engaged in demolition, remodeling or renovation you could be subject to these requirements.

The rule changes include a requirement that a building be **surveyed** (inspected) by an accredited inspector before work begins, to determine whether asbestos is present. All building owners and operators must have an inspection or survey done for the presence of asbestos containing materials **before** demolition or renovation activities can take place.

To **protect your business**, your employees, and yourself **always** get a written copy of this required survey!

Do not accept anyone's word that no asbestos is present in your work area!

If you are unsure whether an asbestos survey has been done or if you need more information, call DEQ at one of the following phone numbers or check out our website at www.deq.state.or.us/aq/asbestos/index.htm:

For Clackamas, Clatsop, Columbia, Multnomah, Tillamook and Washington Counties, call the Portland Office at (503) 229-5364, (503) 229-5473, or (800) 452-4011.

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***Formal enforcement of the survey requirement will begin after August 1, 2002.

!! ATTENTION !! URGENT INFORMATION INSIDE FROM DEQ

Department of Environmental Quality
2020 SW 4th, Suite 400
Portland, OR 97201

State of Oregon
Department of Environmental Quality

Memorandum

Date: November 25, 2002

To: Environmental Quality Commission

From: Stephanie Hallock, Director *S. Hallock*

Subject: Agenda Item L, Informational Item: Response to Commission Request for Analysis of Mercury Reduction Goals and Mixing Zones. Part I: Mercury Reduction Goals, December 13, 2002 EQC Meeting

Purpose of Item At their July 26 meeting, the Environmental Quality Commission (Commission) denied a petition submitted by the Oregon Environmental Council (OEC) to regulate air emissions of mercury. In doing so, the Commission directed the Department to prepare an analysis of workload requirements and the scientific, technological, policy and economic constraints associated with establishment of the following mercury reduction goals as a matter of state policy as proposed by OEC:

- 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

After completing the analysis provided in the attached report, the Department concludes that achievement of 100% reduction by 2020 is not realistic because of the ubiquitous nature of mercury and the extraordinary social, technological, economic, and regulatory changes that would appear to be necessary to achieve complete elimination of mercury releases. At this time, the Department also has reservations about establishing interim goals for the following reasons:

- 1) Estimates of mercury releases are preliminary in nature and are not well-suited for adoption of specific numeric reduction goals;
- 2) The proposed targets and timeframes do not appear to be feasible either economically or technically. For example, a 50% reduction by 2006 of mercury from mining sites is probably not achievable even if the Department had unlimited Orphan Site Account funds; and
- 3) The Department is concerned that sources would assume from an ambitious official policy on numeric reduction levels that the Department intends to implement sweeping regulatory changes, perhaps without adequate consultation with stakeholders. This perception, if it were to develop, would make working with interested parties more difficult and would probably result in regulatory stalemate.

The Department intends to work collaboratively with all interested parties to verify mercury estimates and begin work to further reduce mercury sources. A follow-up report to the Commission on progress achieved will include not only the Department's specific approach to mercury reduction but a sound way to measure progress. At that time, we may have the ability to recommend realistic targets.

In the attached "Oregon Department of Environmental Quality Mercury Reduction Strategy," the Department provides background information about what we presently know about mercury releases in Oregon and policy considerations associated with moving forward on mercury reduction efforts.

Reducing toxic releases to air, water and land is one of the four top strategic directions for the Department's work. We will continue to use available resources to complete this work. Currently, these resources include dedicated staff to coordinate agency toxic chemical reduction efforts, completion of water quality Total Maximum Daily Load (TMDL) work for mercury, development of the air toxics rules, and identification and cleanup of abandoned mine sites.

Next Steps

- The Department will work with identified sources, source sectors and others to review and refine preliminary estimates of mercury sources. We will also work with stakeholders to identify and implement cost-effective mercury reduction strategies. These mercury reduction strategies can be tailored to individual sectors and sources.
- On or before June 2004, the Department will report to the Commission on the status of mercury reduction efforts in Oregon.

Attachments

"Oregon Department of Environmental Quality Mercury Reduction Strategy," prepared for the Oregon Environmental Quality Commission, November 2002.

Available Upon Request

The following reports were a major source of information used in developing the Department's report:

"Mercury: On the Road to Zero, Recommended Strategies to Eliminate Mercury Releases from Human Activities in Oregon by 2020," Oregon Environmental Council and the Mercury Solution Team, December 2001. This document is also available electronically at:
<http://www.orcouncil.org/reports/OEC%20Mercury%20Report.pdf>

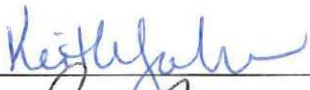
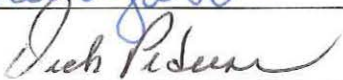
"Draft for Public Comment: Washington State Mercury Chemical Action Plan," Washington State Department of Ecology and Washington State Department of Health, August 2002. This document is available electronically at:
<http://www.ecy.wa.gov/pubs/0203042.pdf>

Agenda Item L, Informational Item, Part 1: Mercury Reduction Goals
December 13, 2002 EQC Meeting
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**Oregon Department of Environmental Quality
Mercury Reduction Strategy**

**Prepared by:
Oregon Department of Environmental Quality (DEQ)**

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Oregon Department of Environmental Quality Mercury Reduction Strategy

Purpose

This report describes what we currently know about sources of mercury releases in Oregon, and identifies an agency-wide strategy for moving forward with a plan to better understand mercury sources and to develop and implement mercury reductions.

Mercury: what it is

Mercury is a metallic element that, in its pure form, is a heavy liquid. Elemental mercury can evaporate even at ambient temperatures, but especially when heated. In addition to this pure form (known as elemental mercury), mercury reacts with other substances to form organic and inorganic compounds. Mercury can be found at low levels almost everywhere and can be carried across whole continents by upper atmospheric air currents.

“Release” means any action by Oregonians, including past practices and current actions, resulting in the movement of mercury into the environment or between environmental media.

“100% Reduction” means no additional releases to the environment as a result of direct or indirect human activities.

Mercury occurs naturally in certain ores called cinnabar, and is also present at low levels in other geologic formations including coal and other fossil fuels. When exposed to natural processes such as erosion, geothermal activities and volcanic activities, mercury is dispersed into the environment. In addition, human activities such as fuel use and manufacturing processes have significantly increased mercury levels in the environment. Finally, many common household and industrial products contain small amounts of mercury and can be released to the environment when they are incinerated, landfilled, broken, or disposed of down drains.

The report focuses on the sources of mercury and mercury releases that result from actions of Oregonians and development of a strategy for reducing mercury releases.

Why mercury exposure is a concern

Mercury may affect the human brain, kidneys, liver and cardiovascular system. Although it can be absorbed through the lungs or skin, eating mercury-contaminated fish is generally regarded as the primary concern for human health. Mercury affects development of the brain and nervous system and, as such, can affect normal development of the fetus and young children. In adults, mercury can cause nerve problems and possible adverse effects on the cardiovascular system. Wildlife such as loons, osprey, otters and other fish-eating creatures are also at risk from eating mercury-contaminated fish.

Mercury exists in various forms in the environment. Whereas mercury released into the environment is primarily inorganic or elemental by nature, this released mercury can be converted by bacteria to a methylated or organic form, which is the most toxic and

bioaccumulative form of mercury. Many physical and chemical factors affect the rate of methylmercury production including temperature, sediment particle size, and the presence of dissolved oxygen and organic carbon. Once formed, methylmercury can be readily passed up through the food web chain to upper-level predators.

A mercury advisory warning of health risks from consumption of fish has been in effect at Cottage Grove Reservoir since 1979. In 1997, the Oregon Health Division issued health advisory warnings for fish consumption from the entire Willamette River mainstem and the Coast Fork of the Willamette including Cottage Grove Reservoir and Dorena Reservoir. Other fish advisories have been issued for Cooper Creek Reservoir, Galesville Reservoir, Plat I Reservoir, the Snake River, the Owyhee River and Reservoir, East Lake, Antelope Reservoir, and Jordan Creek. These fish advisories remain in effect. Nearly all of the mercury present in fish tissue is methylmercury.

Preliminary inventories

This section provides a summary of estimates of mercury in consumer products that are disposed of and may result in releases of mercury to the environment along with estimates of releases of mercury from both point and nonpoint sources.

Table 1 provides estimates of mercury contained in common consumer products that are used and disposed of by all Oregonians. The mercury that is contained in these products is typically present in very small amounts but it adds up as products are disposed in volume.

Table 1: Estimated Mercury in Products Disposed of Annually, Oregon

Mercury products	Estimated pounds disposed	Data Sources	Confidence Level
Fluorescent lamps	534	Washington Department of Ecology (Washington DOE) scaled to Oregon population	Low
Thermostats	.258	Washington DOE scaled to Oregon population	Low
Dental amalgam from dental facilities	234	Washington DOE scaled to Oregon population	Low
Auto convenience light switches	127	Washington DOE scaled to Oregon population	Low
Household fever thermometers	87	Washington DOE scaled to Oregon population	Low
Button cell batteries	51	Washington DOE scaled to Oregon population	Low
Other*	300-400	DEQ preliminary estimate	Low
TOTAL	1591-1691		

*"Other" includes the following products that may contain mercury: compact fluorescent lamps; high-intensity discharge lamps; neon lamps; mercury thermometers discarded by health care facilities, veterinary facilities, or schools; appliance switches; miscellaneous gauges; components of computers and other electronic devices that may contain mercury; mercury-containing consumer landscape and gardening fertilizer products; some construction and demolition debris; and miscellaneous other products.

As these products are disposed, mercury has the potential to be released into the environment depending on how the disposed product is managed. Mercury in most of the products listed in Table 1 is currently disposed as solid waste or wastewater or the mercury is recycled. However, mercury contained in products that may easily break--fluorescent lamps and thermometers, for example--may be released prior to or during the waste collection process, or on the face of a landfill before a daily cover layer is applied.

In general, potential strategies for reducing mercury in products will involve use of alternative products that do not contain mercury and for improved management of the mercury that is used so that it is recovered instead of disposed of as wastewater or in solid waste.

At the national level, technological changes allowing for more cost-effective manufacture and use of products that do not contain mercury or contain smaller amounts of mercury are among the potential strategies for reducing mercury in these products. In addition, state, local and voluntary programs for improved recycling and recovery of mercury in discarded products may present other opportunities for improved recovery and management of mercury sources once mercury-containing products are discarded.

Table 2 provides a summary of available estimates of releases from facility or "point sources". Facility point sources, such as Publicly-Operated Treatment Works (POTWs), refer to discrete sources such as outfall discharges of effluent in wastewater and stack emissions to the atmosphere. POTWs are not truly "sources" of mercury in that they merely receive wastewater from homes, businesses and industries. Some of this wastewater contains mercury. Typically, mercury is a trace contaminant in POTWs and other point source releases, but the total amount of mercury released adds up.

Table 2: Estimated Annual Releases of Mercury from Point Sources, Oregon

Sources	Estimated release (pounds)	Data sources	Confidence Level
Power generation and transmission	434	Air quality emissions estimates	Medium
Manufacturing	301	Air quality emissions estimates and source tests	Low
POTW Biosolids	186	Water quality biosolids annual reports	Medium
Combustion of fuels in boilers for space heating	164	Air quality emissions estimates	Low
Crematoria	43	See Appendix A for methodology.	Low
Municipal waste incinerators	37	Air quality source tests and regulatory limits	Medium
Other*	200-300	DEQ preliminary estimate	Low
TOTAL	1365-1465		

*"Other" includes miscellaneous sources such as air emissions that may be associated with smaller manufacturing facilities; wastewater from POTWs and some industrial sources; septic systems; and municipal solid waste facility leachate and methane control systems.

In general, potential strategies for reducing releases of mercury from point sources include reductions in amounts of mercury used or received before manufacturing or treatment

processes begin, as well as improved effluent and emissions controls (i.e., end-of-pipe controls). For POTWs, mercury reduction strategies may include efforts to reduce the amount of mercury disposed in wastewater as well as improved pre-treatment and treatment processes.

Table 3 provides available nonpoint estimates of mercury releases. These sources include cleanup sites, area-wide sources and mobile sources. Estimates for nonpoint sources, because of their disperse nature, are inherently more difficult to quantify. Again, mercury is often a trace contaminant in releases at nonpoint sources, but the total amount of mercury released adds up.

Table 3: Estimated Annual Mercury Releases from Nonpoint Sources, Oregon

Sources	Estimated release (pounds)	Data sources	Confidence level
Abandoned mercury mines	680	"Quicksilver Deposits in Oregon"; "Mercury: on the Road to Zero"; and DEQ	Low
Air emissions from motor vehicles	372	Air quality emissions estimates	Low
Abandoned gold mines	50-340	Oregon Department of Geology and Mineral Industries and DEQ	Low
Other area sources*	200-300	DEQ preliminary estimate	Low
TOTAL	1302-1692		

* "Other area sources" includes stormwater runoff not managed by POTWs; residential space heating; environmental cleanup sites other than abandoned and inactive mine sites; and agricultural uses of fertilizer.

Potential strategies for reducing nonpoint sources may include identification and implementation of best management practices (e.g., identification and implementation of best management practices for stormwater runoff). For cleanup sites the Department is working on, removal or treatment of elevated sources of mercury that are continuing to release mercury to the environment is a priority.

Mercury reduction activities

Table 1, in summary, provided estimates of mercury contained in disposed products that have the potential to be released to the environment. Tables 2 and 3 together represent DEQ's preliminary inventory of releases of mercury. The preceding estimates, taken as a whole, are indicative of the wide range of sources of mercury in the environment. In support of the information in Tables 1-3, a more detailed **summary of source information and estimates** is provided in **Appendices A and B**.

Although there are recognized information shortcomings, DEQ's preliminary estimates are comparable to ones developed by other states and organizations in terms of sources identified and methodologies used for development of estimates. Work by DEQ and others is expected to improve our agency's understanding of the sources and fate-and-transport of mercury in the environment. This work includes:

- 1) DEQ will work with interested parties, including trade associations and sources, to review and improve the preliminary estimates;
- 2) Water quality monitoring work for mercury underway as part of the Willamette River Total Maximum Daily Load (TMDL) process is expected to significantly improve our understanding of the sources and fate-and-transport issues associated with mercury in water and fish tissue;¹ and
- 3) DEQ will initiate a study in the next year to better quantify the amount of mercury discharged from targeted industrial and municipal sources².

Appendix C provides a list of **current mercury reduction activities**. These current activities emphasize data collection and voluntary efforts in cooperation with sources, trade associations and others.

Appendix D presents a **summary of existing regulatory requirements that apply to mercury**. Perhaps the most significant conclusion to draw from this material is that mercury as a specific pollutant cuts across all media and all DEQ programs. DEQ administers a wide range of technical assistance and regulatory programs, and many of these programs address mercury or have the potential to apply to mercury as a specific pollutant.

DEQ understands that effectively addressing mercury and other persistent bioaccumulative toxics (PBTs) will require effective "cross-program" efforts.

Discussion of mercury reduction goals

The Oregon Environmental Council has proposed the following statewide mercury reduction goals as a matter of state policy:

- 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.

Appendix E describes the **social, technological, economic and regulatory changes** that would appear to be **needed to meet 100% reductions**. Based on this analysis, DEQ concludes that a goal of zero release of mercury is simply not achievable.

With respect to the proposed interim goals, DEQ believes there is inherent uncertainty about baseline data. Similarly, there is uncertainty in trends in mercury releases as a result of external factors such as technological developments, economic trends and federal regulatory changes.

In lieu of adopting specific numeric goals, DEQ believes the prudent course of action is to continue: a) efforts to improve and maintain data; and b) implementing mercury reduction actions in cooperation with individual sources, trade associations, and state and local agencies. We do not believe mercury reduction goals or targets need to be formally adopted as policies.

¹ For additional information on the Willamette River TMDL monitoring work, see: http://www.deq.state.or.us/wq/Willamet/Will_hom.htm

² "Oregon Department of Environmental Quality Work Plan for 104(b)(3) funds", approved by EPA in October 2002. Under this project, DEQ will conduct mercury sampling of ambient water quality and selected point sources to determine concentrations of mercury in selected point source discharges.

Conclusion

Protecting human health and the environment from exposure to toxics is one of the agency's four strategic priorities. We believe the best articulation of DEQ's strategy for mercury reductions is that we are now *"on the road to continual reductions."*

Because of the inherent uncertainty in preliminary baseline data about mercury sources and the need to work collaboratively with stakeholders, DEQ does not believe that specific numeric mercury reduction goals or targets should be formally adopted as policies, at least not at this time.

In developing a preliminary inventory of releases and potential releases, DEQ relied upon reviews of available literature, studies performed in other states, and the best readily-available sources of information and estimates. However, in a few cases, such as cleanup sites and nonpoint sources, these preliminary estimates represent an educated guess only.

DEQ is committed to refining and improving baseline information. We can also play a key role in maintaining information about total future reductions in mercury and mercury removed from the environment.

Most important, DEQ is interested in helping to promote and provide leadership in mercury reduction activities. We will work cooperatively with stakeholders to improve mercury data and to identify and implement mercury reduction strategies. Through these efforts, we look forward to reporting progress to the Commission and all Oregonians.

Appendix A

Estimates of mercury in products used/disposed

Mercury is contained in products that are used by consumers as well as in institutional, business and industrial settings. Mercury-containing products include fluorescent lamps, thermostats, thermometers and batteries as well various types of switches and gauges. Appendix A provides estimates of mercury contained in products that are disposed, and supplements the information provided in Table 1 of the Oregon's Mercury Reduction Strategy.

Mercury emissions from these products typically do not occur at the time of use but rather when the product is taken out of service. At the time of breakage or disposal, emissions can occur to the air, water and land. For available information on estimates of releases from point sources and nonpoint sources, see Appendix B.

DEQ's preliminary estimate is that approximately 1,600 pounds of mercury is available for release each year from mercury added products. Estimates are based on available literature and have been scaled to Oregon's population based on census data.

Fluorescent Lamps

Mercury-containing lighting includes fluorescent tubes, high-intensity fluorescent lamps, high-intensity discharge lamps and neon lamps. The amount of mercury in fluorescent tubes, for example, has decreased steadily due to technological advances, but small amounts of elemental mercury typically in the form of mercury vapor are still required.

Approximately 620 million fluorescent bulbs are discarded annually in the United States.³ Adjusting for Oregon's population and assuming a 20 percent recycling rate and an estimated 3 grams of elemental mercury vapor per lamp, discarded fluorescent bulbs release approximately 534 pounds of mercury in Oregon annually. Some of this mercury is released to the atmosphere and the balance is contained in Oregon's solid waste stream.

Estimates are not available for mercury entering the waste stream from compact fluorescent lamps, high-intensity discharge lamps, or neon lamps.

Thermostats

Mercury-containing wall and other thermostats are widely used for control of heating, ventilation and air conditioning systems. After scaling for Oregon's population, DEQ's estimate of 258 pounds disposed annually is based on draft estimates prepared by the State of Washington of mercury disposed from system conversion and building demolition and remodeling projects.⁴ In the past, most of this waste was disposed of as construction and demolition debris.

³ "Washington State Mercury Chemical Action Plan: Draft for Public Comment", page 43 citing Aucott, Michael, et. al., Journal of Air Waste Management Association, in press.

⁴ Washington State Mercury Chemical Action Plan: Draft for Public Comment", page 40.

Oregon's Mercury Reduction Act, adopted in the 2001 legislative session, and the Act's implementing regulations, require mercury recovery programs for thermostats and is expected to reduce the amount of mercury disposed in solid waste.

Dental Facilities

Amalgam fillings used by dentists contain about 50% mercury by weight. DEQ's estimate of 234 pounds of mercury discharged annually from dentists is based on the State of Washington's draft estimates adjusted to Oregon's population.

In developing its estimate, the State of Washington relied upon a survey of dental waste disposal practices in King County,⁵ where approximately half of Washington's dentists practice. The King County study indicated that near-equal amounts of mercury are disposed by dentists to sewers, red bag wastes and solid waste systems. The specific waste disposal method for approximately one fourth of the mercury discharged, however, was determined to be "unknown."

Auto switches

Mercury has been used historically in a variety of automotive convenience lighting applications such as lights that turn on when opening car trunks or hoods. Use of mercury in automotive lighting applications is gradually being phased out by auto manufacturers. DEQ's estimate of 127 pounds of mercury in automotive switches disposed annually is based on draft estimates developed by the State of Washington and have been adjusted to reflect Oregon's population.⁶

Oregon's Mercury Reduction Act of 2001 and implementing rules have created a state-wide program for collecting mercury switches from discarded automobiles. As such, opportunities for safe management of mercury recovered from this source may improve.

Fever Thermometers

Consumer mercury fever thermometers contain 0.5 to 1.5 grams of mercury⁷ and are used to measure body temperature in homes, health care facilities and schools. Assuming a middle range of the estimate used by the State of Washington of the amount of mercury in thermometers broken per year in private homes,⁸ DEQ's preliminary estimate is 87 pounds of mercury-containing thermometers discarded annually. Some of this mercury is released to the atmosphere, some is poured down the drain, and some is contained in the solid waste stream. This estimate does not include mercury fever thermometers discarded by health care facilities, including veterinary facilities or schools.

⁵ Washington State Mercury Chemical Action Plan: Draft for Public Comment", page 53 citing "Hazardous Waste Management Program, Water and Land Resources Division, Department of Natural Resources, King County, "Management of Hazardous Dental Wastes in King County", 1991-2000, October 2000.

⁶ Washington State Mercury Chemical Action Plan: Draft for Public Comment", page 45.

⁷ "Washington State Mercury Chemical Action Plan: Draft for Public Comment", page 37 citing Ravanesi, in "mercury in Medical Devices at http://www.sustainablehospitals.org/HTMLSrc/IP_mercury_amounts.html

⁸ Washington State Mercury Chemical Action Plan: Draft for Public Comment", page 38, indicates a range of 11 to 300 pounds for the state of Washington depending on assumptions used. For purposes of Oregon's preliminary estimate, we assume approximately 150 pounds for the state of Washington and scale for Oregon's population.

HB 3007, adopted in the 2001 legislative session and the Act's implementing regulations, restrict the sale of mercury-containing thermometers. As such, over time, the portion of discarded thermometers containing mercury is expected to decline.

Batteries

Some batteries, such as some hearing aid battery products and batteries in watches, contain mercury oxides and are sold as mercury-zinc batteries. DEQ's preliminary estimate of 50 pounds annually of mercury from batteries in the solid waste stream is based on the draft estimate prepared for the State of Washington,⁹ adjusted to reflect Oregon's population.

⁹ Washington State Mercury Chemical Action Plan: Draft for Public Comment", page 40.

Appendix B

Estimates of mercury releases from point and nonpoint sources

Appendix B provides estimates of mercury releases associated with point and nonpoint sources and supplements the information in Tables 2 and 3 of Oregon's Mercury Reduction Strategy.

Power Generation

Description

DEQ's preliminary inventory of mercury sources includes 12 power generation and transmission facilities located in the state. Nationally, coal-fired power plants are the largest known source of anthropogenic (human-caused) mercury emissions. However, Oregon has only one coal fired plant, located near Boardman, far fewer than is common in the Midwest and Eastern regions of the country. Most of the facilities included in this preliminary estimate are power generation units associated with remote natural gas pumping stations.

Quantity Estimated and Methodology

DEQ's preliminary inventory estimates total mercury emissions from power generation and transmission facilities of 434 pounds per year. Data for this estimate was based on available literature, specifically information about typical air quality emissions factors for generating facilities and production associated with individual power generating facilities.

Current Regulations

Mercury emissions from power generating and transmission facilities are not currently limited by law or regulation. A number of proposals have been made in Congress and by the U.S. Department of Energy and the U.S. Environmental Protection Agency to require additional point source monitoring or controls, especially for coal-fired generating facilities. Additional federal regulations for coal-fired power plants are likely to occur.

Manufacturing

Description

For purposes of DEQ's inventory of mercury sources, manufacturing includes facilities for the manufacture of cement, steel, metals, wood products and paper. DEQ's preliminary estimate includes 22 of these manufacturing facilities.

Mercury emissions from manufacturing include emissions associated with process heat and, to a lesser extent, emissions associated with mercury as an incidental component of raw materials (e.g. cement). DEQ's estimates do not include air emissions that may be associated with smaller manufacturing facilities or emissions that may be associated with industrial facilities with permitted water discharges.

Quantity Estimated and Methodology

DEQ's preliminary estimate of 301 pounds per year of mercury is based on production records for manufacturing facilities and available literature concerning air emissions factors for various manufacturing operations.

Current Regulations

Some monitoring and reporting requirements, associated with the federal Toxics Release Inventory law, apply for mercury air emissions from manufacturing facilities. In addition, state and federal hazardous waste reporting and management requirements apply to generated waste that contains characteristic or listed hazardous wastes. A general description of these regulations is provided in Appendix D.

With respect to air emissions, there are no current limitations or control requirements that are specific to mercury releases from these manufacturing facilities.

POTW Biosolids

Description

Mercury is present in wastewater treated by Publicly Operated Treatment Works (POTWs) also known as sewage treatment plants. POTWs are not true "sources" of mercury. Rather, they receive wastewaters from multiple upstream sources and must manage the pollutants they contains, including mercury.

The apparent largest source of mercury in wastewater received by POTWs is discharges from dental offices.¹⁰ The apparent second largest source of mercury in wastewater results from domestic sources, including dental amalgam and food sources associated with disposal of human waste, laundry graywater, and some household products that contain mercury and are subsequently discharged to public treatment systems. The apparent third largest source is hospitals.

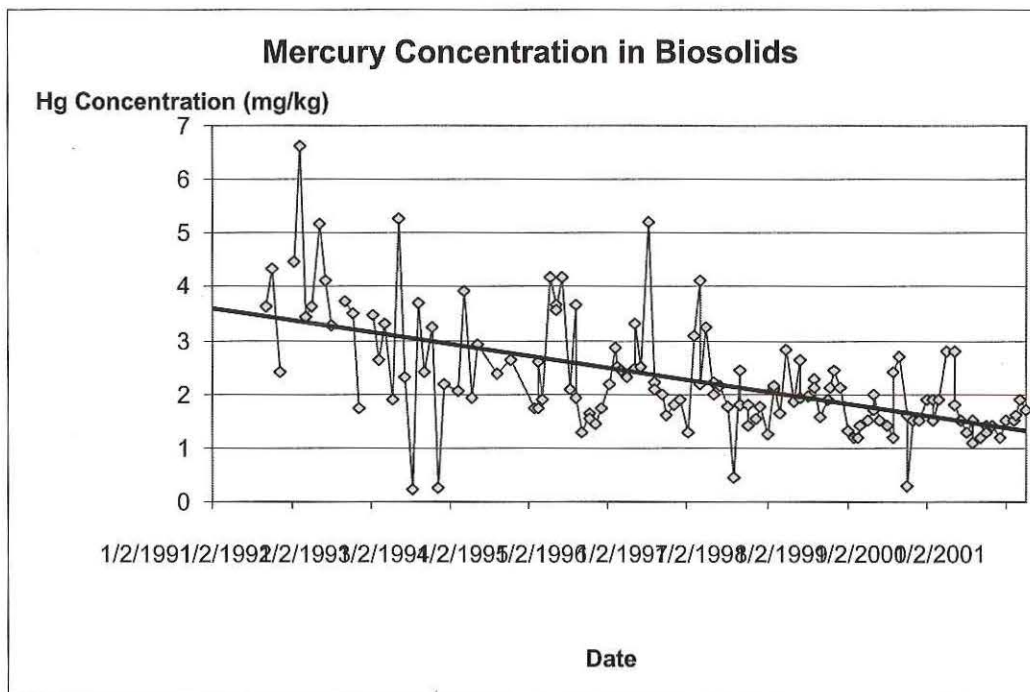
Following treatment, mercury is present in POTW water effluent discharges, biosolids, and air emissions. The Department's estimate addresses only biosolids, where the majority of mercury concentrates in the wastewater process.

Quantity Estimated and Methodology

The Department estimates that biosolids applied to land in 2001 contained approximately 186 pounds of mercury. In Oregon, the average concentration of mercury in biosolids is 2.2 mg/kg, which is well within the federal and state standard of 57 mg/kg. This Department's estimate is based on Biosolids Annual Reports from the 64 wastewater facilities that applied biosolids during 2001. This data accounts for 90% of the facilities that applied biosolids to land and 97% of the volume applied.

¹⁰ Larry Walker Associates, "Mercury Source Control and Pollution Prevention Program Evaluation: Final Report", prepared for the Association of Metropolitan Sewerage Agencies under grant from U.S. Environmental Protection Agency, March 2002, p. 51.

Twenty-four facilities accept and treat wastewater from major industries and are therefore required to implement pretreatment programs regulating major industries for discharges received by the wastewater facility. These pretreatment programs have been effective in reducing mercury discharges to POTWs, and thus to receiving waters and treatment plant residuals (biosolids) as indicated by the following chart, illustrating typical mercury reduction trends over a 10-year period for biosolids generated at one large Oregon POTW.



Current Regulations

The Department requires any facility applying biosolids to have permit, meet federal and state pollutant standards, and be approved on a site-by-site basis for all land application activities. POTWs must obtain Department approval for application of biosolids to land and must submit annual reports of the volume and concentration of mercury and other pollutants contained in biosolids. In Oregon, Additional information on the Department's biosolids program can be obtained at:

<http://www.deq.state.or.us/wq/Biosolids/BiosolidsHome.htm>

Additional information about DEQ Water Quality Program regulations is provided in Appendix D.

Combustion of Fuels in Boilers

Description

The combustion of fuels category includes estimates of mercury emissions associated with use of natural gas and petroleum products from boilers used for space heating. Because there are no oil refining facilities located in Oregon, the DEQ's estimates are limited to emissions associated with fuel consumption.

DEQ's mercury emissions estimates do not include use of wood or wood waste in residential stoves and fireplaces or in the industrial sector. They also do not include mercury emissions from home heating oil or from residential use of natural gas. DEQ's estimate was developed based on available literature, specifically information about typical air quality emissions factors for boilers.

Quantity Estimated and Methodology

DEQ's preliminary estimates indicate 164 pounds of mercury emissions annually resulting from use of petroleum products and natural gas in boilers for space heating, including schools and other commercial and institutional facilities.

Current Regulations

Mercury content in fuels and mercury emissions from fuel burning are not currently regulated.

Crematoria

Description

There are 59 crematories in Oregon.¹¹ The human body contains low levels of mercury primarily in the form of dental fillings.

Quantity Estimated and Methodology

DEQ's estimate of annual mercury emissions from crematoria is based on a methodology as suggested by the State of Washington in its "Draft for Public Comment Washington State Mercury Chemical Action Plan," (August, 2002) and is summarized in the following table.

Estimated Annual Mercury Releases from Dental Amalgam at Crematoria, Oregon

Number of Deaths in Oregon, 2001	30,129	State of Oregon, Department of Human Resources at http://www.ohd.hr.state.or.us/chs/arpt/01v2/chapter6/6-33.pdf
Cremations as a percent of deaths in Oregon, 2000	53%	The Internet Cremation Society at http://www.cremation.org
Number of cremations in Oregon, 2001	15,968	
Grams of mercury released per cremation	1	John Reindl, "Summary of References on Mercury Emissions from Crematoria", Dane County, Wisconsin, March 2002.
Grams of mercury released during cremations in Oregon, 2001	15,968	
Pounds of mercury released during cremations in Oregon, 2001	43	

Current Regulations

¹¹ <http://www.cremationassociation.org/docs/00data-projtest-new.pdf>

There are no monitoring or control requirements for mercury emissions from crematoria.

Municipal Waste Incinerators

Description

Oregon has two permitted municipal solid waste incinerators (also known as solid waste combustors). The Covanta facility is located in Marion County. A second municipal waste incinerator, located in Coos County, is operated by the county.

Quantity Estimated and Methodology

The Covanta facility emits an estimated 17 pounds per year of mercury, based on source test data. The regulatory limit of 20 pounds per year of mercury was used as a preliminary estimate of the amount of mercury emitted by the Coos Bay facility.

Current Regulations

Of all the sources with air quality permits, only the municipal waste incinerators have requirements to control mercury. In addition, federal Toxics Release Inventory requirements apply to solid waste incinerators.

Mercury, Gold and Silver Mine Sites

Description

Cleanup sites, including abandoned mine sites, represent the universe of sites contaminated by past practices. DEQ is particularly interested in mine sites that may involve "continuing releases" of mercury. For example, in some cases, mercury-contaminated soils or tailings piles from historic mining activities may constitute sources of continuing releases to surface water.

Quantity Estimated and Methodology

A total of 46 mines produced 10 or more flasks of mercury (a flask is equal to 76 pounds).¹² Five of these mines--Bonanza in Douglas County, Black Butte in Lane County, the Bretz and Opalite mines in Malheur County, and Horse Heaven in Deschutes County--account for approximately 90% of the mercury produced in the state. Oregon's mercury mines operated as early as the late 1880s, with some continuing operations until the early 1950s. There are no active mercury mines in Oregon.

Data from the Oregon Department of Geology and Mineral Industries include information on approximately 1,300 gold and silver mines. At many of these sites, mercury was used to amalgamate (capture) gold and silver particles to allow for extraction of gold from crushed ore or stream sediments. The number of placer or lode mining operations where mercury was used is not known. Gold and silver mining operations were most active from the late 1800s until the early 1950s. There are no commercial-scale gold or silver mining operations remaining in Oregon. It is no longer legal to use mercury in placer or lode mine amalgamation processes.

DEQ estimates that perhaps as much as 680 pounds of mercury a year continue to be released from former mercury-production mines and an additional 50 to 200 pounds per

¹² "Quicksilver Deposits in Oregon", Department of Geology and Mineral Industries, 1971.

year from former gold and silver mines, although these figures represent only an educated estimate.¹³

Current Regulations

DEQ's Environmental Cleanup Program is in the early phases of identifying, prioritizing and cleaning up mine sites. Additional information on cleanup requirements is found in Appendix D.

Motor Vehicle Emissions

Description

Because motor vehicles burn fossil fuels and fossil fuels include small amounts of mercury, mercury is released to the atmosphere from driving of cars, trucks and other vehicles.

Quantity Estimated and Methodology

DEQ's preliminary estimate of 372 pounds of mercury per year from motor vehicles is based on the number of on- and off-road vehicles and associated emissions factors based on available literature.

Current Regulations

Mercury content in motor vehicle fuels and mercury emissions from motor vehicles are not currently regulated.

¹³ As a point of comparison, for this source, the Oregon Environmental Council and the Mercury Solution Team estimated a range of 680 to 6,715 pounds a year from mercury-producing mines. Source: "Mercury: On the Road to Zero", Oregon Environmental Council, December 2001.

Appendix C Summary of Current Activities

Activities Underway

1. *Improve Mercury Data*

Air Quality

Place high priority on improving mercury emission factors and activity levels used to estimate air emissions

Land Quality (Cleanup)

Participate in interagency Dept of Geology-chaired task force to prioritize former mine sites

Give priority to assessment of mine sites because many sites have known or suspected mercury

Land Quality (Solid Waste)

Evaluate data related to mercury-containing products as part of a landfill waste composition study

New Activities

1. *Improve Mercury Data*

Air Quality

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)

Land Quality (Solid Waste)

Develop list of top mercury-containing products

Lab

Update LASARFACE (tool to extract data from lab Dbase) with mercury data. Data includes fish, sediment, water samples.

Water Quality

Conduct representative study of suspected mercury point sources to quantify the nature of ongoing mercury discharges.

All (all divisions)

Characterize mercury sources, activities that generate mercury, estimate emissions

Analyze literature for emission estimates and state, national, international data on mercury reduction strategies

Review permits for sources with cross program discharges

<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 distributed 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>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. Clean Up 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><u>All (divisions)</u> Develop generic mercury factsheet and add to website</p>

Appendix D

Summary of Existing Regulations

Air

Of all the sources with air quality permits, only municipal waste incinerators have existing requirements that limit and control mercury emissions. In general, the other point sources of emissions that were identified in the DEQ's preliminary inventory of mercury emissions could be regulated given existing statutory authority. Regulations could encompass monitoring and reporting requirements, or they could impose limits on emission or require implementation of additional control technologies. Following several years of advisory committee work, DEQ recently proposed rules for toxic air emissions that would address some mercury and other emissions. DEQ is revising these proposed rules and will resubmit them for public comment.

Water

Pollutants including mercury that are present in industrial and municipal wastewater discharges to surface waters are regulated by the Department in National Pollutant Discharge Elimination System (NPDES) permits. For industrial discharges to waters of the state, DEQ typically develops NPDES permits using technology-based standards and water quality-based criteria. Technology-based standards represent minimum levels of technology and pollution control performance; water-quality based requirements are limits necessary to meet standards for the receiving water. It is not uncommon for an NPDES permit to include both technology-based and water-quality based limits.

For municipal wastewater discharges--also known as Publicly Operated Treatment Works or POTWs--in the past, DEQ developed technology-based NPDES permits that regulated the conventional pollutants that municipal wastewater facilities were designed to treat such as total suspended solids (TSS) and biological oxygen demand (BOD). Within the last couple of years, DEQ has begun supplementing these requirements with water quality-based standards.

In a water quality-based permit, DEQ performs a "reasonable potential analysis" of the pollutants in a facility's discharge to determine if toxic effluent limits for pollutants such as mercury have a potential for exceeding water quality standards.¹⁴ If the analysis indicates a potential for exceeding water quality standards, then limits are included in the permits. Relatively few reasonable potential analyses have been conducted for mercury and, to date, reasonable potential analyses have not resulted in limits for mercury in NPDES permits for POTWs.

POTWs that accept and treat wastewater from major industries are required to have pretreatment programs. There are 24 approved pretreatment programs in

¹⁴ For example, the water quality-based criteria as adopted in Oregon Administrative Rules Chapter 340, Division 41, Table 20 for protection of freshwater aquatic life are 2.4 micrograms per liter (acute criteria) and 0.012 micrograms per liter (chronic criteria).

Oregon. All of these POTWs have developed and implemented local standards (i.e., local limits) for controlling pollutants such as mercury from major commercial and industrial facilities. Many of these local programs include educational programs for pollution prevention and implementation of best management practices designed to reduce mercury discharges received by the POTW. As indicated in Appendix B, these pretreatment programs have been effective in reducing mercury discharges to POTWs, and thus to receiving waters and treatment plant residuals (i.e., biosolids).

DEQ presently allows for use of mixing zones for toxic substances including mercury and other pollutants. A mixing zone is a limited and specific portion of a water body near the point of discharge (outfall) where initial dilution of the effluent with the ambient water body is permitted.

A number of other programs and activities carried out by the DEQ's Water Quality Division also directly and indirectly affect regulation of water discharges, including requirements for management of stormwater and identification of impaired water bodies and associated requirements for development of Total Maximum Daily Load (TMDL) requirements.

Solid Waste

Municipal solid waste disposal is regulated by permits issued by DEQ. Solid waste facilities must be designed, constructed and operated in a manner consistent with federal requirements promulgated under the Resource Conservation and Recovery Act (RCRA).

DEQ also assists local communities and interested parties in efforts to reduce the overall volume of solid waste that is generated and, in consultation with the Department's Hazardous Waste Program, provides technical and financial assistance for household and small quantity generator hazardous waste collection events. These events and facilities can help to recover mercury and provide for safer disposal options of products containing mercury.

Hazardous Waste

Hazardous waste generation and disposal is also regulated by DEQ. These regulations include permit requirements for facilities that treat or dispose of hazardous substances. In addition, several mercury-containing waste streams are regulated under RCRA as hazardous waste. Some of these mercury-containing waste streams are "characteristic" for hazardous waste and others are "listed" as hazardous waste.

The Hazardous Waste Program also provides technical assistance to help generators of hazardous waste properly manage hazardous waste, encourage implementation of measures to reduce hazardous waste generation, and implement mercury recovery efforts. For example, the Hazardous Waste Program is currently working with automotive repair facilities and other automobile service industries to implement a program adopted by the 2001 Legislature to replace mercury-containing switches in automobiles with switches that do not contain mercury. Approximately 95 companies are currently participating.

Cleanup

Oregon's Legislature and the Environmental Quality Commission have adopted requirements for investigation and cleanup of past releases of hazardous substances including mercury. To summarize these requirements, DEQ:

- 1) has authority to require investigation of sites at which hazardous substance releases have occurred, if the agency believes the release may present an unacceptable risk as specified by statute and implementing rules;
- 2) must consider "current and reasonably likely future" land and water uses in evaluating risk and in selecting remedies; and
- 3) selects or approves protective remedies based on remedy selection criteria and balancing factors such as implementability and reasonableness of cost of the remedy. Potential remedial action measures may include removal of contaminants of concern, treatment, engineering controls, institutional controls or a combination of the preceding.

Appendix E: What it would take to achieve 100% elimination of mercury releases

This appendix describes by source some of the economic, technological and regulatory barriers present if complete elimination of mercury is to be achieved. **DEQ is not recommending the following actions.** Rather, the purpose of this analysis is to address the practicality of achieving a proposed goal of "zero emissions" of mercury. Based on these apparent barriers, DEQ has concluded that achievement of a 100% reduction in mercury emissions by 2020 is not practicable.

Mercury in Products	Actions Required	Potential economic, regulatory and technological barriers
Fluorescent lamps	Replace fluorescent lamps with other lighting technologies; or Develop fluorescent lighting technology without mercury Safely dispose of existing lamps	Increased consumer energy costs; potential increase in capital and other costs for development of additional power generating facilities; state or federal regulations may be required; technology may not be available
Thermostats	Replace mercury-containing thermostats and safely dispose of existing thermostats	Replacement costs for switches; state or federal regulations may be required.
Dental amalgam from dental facilities	Implement control technologies and/or prohibit continued use of mercury amalgams	Increased costs for dentists; State or federal regulations may be required.
Auto convenience light switches	Replace mercury-containing auto convenience light switches and safely dispose of existing switches	Replacement and disposal costs for affected autos; state or federal regulations may be required.
Button cell batteries	Replace mercury-containing button cell batteries and safely dispose of existing batteries	Additional replacement and disposal costs may be minimal due to natural attrition of product; state or federal regulations may be required.
Household fever thermometers	Replace mercury-containing fever thermometers and safely dispose of existing thermometers	Replacement and disposal costs; state or federal regulations may be required.
Point Sources		
Fuel use (space heat)	Use alternative fuels that do not emit mercury; or Implement emissions controls that eliminate discharges	Capital costs for investments in equipment for alternative fuel use or emissions controls; potential increased operation and maintenance costs for purchase and use of alternative fuels; financial impacts to the petroleum and natural gas industries; state or federal legislation may be required; control technology may not be available.
Power generation and transmission	Use alternative fuels that do not emit mercury; or Implement emissions controls that eliminate discharges	Capital costs for investments in equipment for alternative fuel use or emissions controls; potential increased operation and maintenance costs for use of alternative fuels; financial impacts to consumers; state or federal legislation may be required;

		control technology may not be available.
Manufacturing	<p>Modify manufacturing processes to eliminate use of raw materials that include mercury used in manufacturing goods; or</p> <p>Implement emission controls that eliminate discharges</p>	Capital costs for investments in equipment for alternative fuel or raw materials or capital costs for emissions controls; potential increased operation and maintenance costs; financial impacts to consumers; state or federal legislation may be required; control technology may not be available.
POTW Biosolids	<p>Comprehensive elimination of sources of mercury currently received by POTWs; or</p> <p>Implement emission controls that eliminate mercury in biosolids; or</p> <p>Prohibit land application of biosolids</p>	Cost and implementability of product substitution, mercury recovery and/or controls at multiple individual sources (e.g., homes and businesses); capital investments for control technologies; potential increased operation, maintenance or disposal costs; financial impacts to communities; state or federal regulations may be required; control technology may not be available.
Crematoria	Implement emission controls that eliminate mercury discharges or remove fillings before cremation	Capital costs for investments in equipment for emissions controls; potential increased operating costs; financial impacts to those who use crematoria services; state or federal legislation may be required; control technology may not be available.
Municipal waste combustors	<p>Comprehensive elimination of sources of mercury currently received by municipal waste combustors; or</p> <p>Implement emission controls that eliminate mercury is air discharges</p>	Cost and implementability of product substitution and/or mercury recovery at multiple individual sources (e.g., homes and businesses); capital investments for control technologies; potential increased operation, maintenance or disposal costs; financial impacts to communities; state or federal regulations may be required; control technology may not be available.
Nonpoint Sources		
Mine sites	Identify and eliminate all continuing sources of releases of mercury	Cost and implementability; change in state cleanup law required.
Motor vehicle emissions	<p>Use alternative fuels that do not emit mercury; or</p> <p>Implement emissions controls that eliminate discharges</p>	Capital costs for investments in equipment for alternative fuel use or emissions controls; potential increased operation and maintenance costs for purchase and use of alternative fuels; financial impacts to the petroleum and natural gas industries; state or federal legislation may be required; control technology may not be available.

Disclaimer: DEQ is not recommending these actions. This table is intended to indicate the types of steps that might be required to achieve "zero" releases of mercury and some of the associated economic, regulatory and technological barriers to implementing actions for complete elimination of mercury releases.

State of Oregon
Department of Environmental Quality

Memorandum

Date: November 25, 2002

To: Environmental Quality Commission

From: Stephanie Hallock, Director *S. Hallock*

Subject: Agenda Item L, Informational Item: Response to Commission Request for Analysis of Mercury Reduction and mixing zones. Part II: Water Quality Mixing Zones for PBTs.

Purpose of Discussion The Oregon Environmental Council (OEC) has suggested that DEQ adopt administrative rules to phase out and prohibit the use of mixing zones for persistent bioaccumulating toxic substances (PBTs). At the July 26 meeting, the Commission requested information on DEQ's current mixing zone policy related to PBTs and the resources that would be required to adopt a rule that would implement OEC's proposed mixing zone prohibition. This report provides that information.

Background Wastewater Permits issued under the Clean Water Act contain effluent limits for any pollutant that exists in the final treated effluent to assure attainment with appropriate water quality standards. "Mixing zones" are a defined segment of a waterbody, usually immediately downstream of the discharge outfall, in which exceedence of the water quality standard is allowed. Mixing zones allow for some dilution of the wastewater effluent. Without mixing zones, dischargers would incur additional cost of either more treatment of the effluent or "product substitution" if applicable to eliminate the existence of the pollutant entirely.

OEC has suggested that DEQ eliminate the allowance of mixing zones for the 10 PBTs identified by DEQ which are: Mercury, PCB, Dioxins, Furans, Benzo(a)Pyrene, Aldrin, Dieldrin, Chlordane, DDT, DDE, DDD, Hexachlorobenzene, Mirex, & Toxaphene.

The Water Quality Program currently believes most PBTs are associated with pesticides, legacy conditions, nonpoint source (NPS) contributions and natural conditions rather than point sources. Mercury, PCBs, dioxins and furans are the most notable exceptions that may be contributed by point sources. Mercury likely exists in all municipal wastewater effluent at low levels since mercury is ubiquitous in everyday domestic use (amalgams for example). Eliminating mercury prior to entering the municipal treatment plant is not feasible at this time since the wide-spread public use of products that contain mercury, as well as trace amounts in dental fillings, would be

prohibitively difficult to regulate.

Mixing zones are calculated on a permit-by-permit basis. Oregon mixing zone rules are set out at OAR Chapter 340, Division 41 (an example mixing zone rule for the North Coast-Lower Columbia Basin is provided in Appendix A). EPA mixing-zone guidance cautions, but does not prohibit, the use of mixing zones for bioaccumulating substances. After more than a decade of public debate, EPA and the Great Lakes States have agreed to phase out the use of mixing zones for PBTs.

Key Issues

1. Does DEQ have the legal authority to restrict or prohibit mixing zones for PBTs?

Yes. Mixing zone policy is a provision of the state's water quality standards. DEQ has the authority under the CWA as well as state statutes to promulgate and submit for EPA approval water quality standards, including mixing zone policy. OEC's recommendation to eliminate mixing zones for PBTs essentially means that permit holders would have to meet ambient water quality criteria for PBTs at the "end of their pipe." Although DEQ has the authority to revise mixing zone policy consistent with OEC's suggested policy, such a change in mixing zone policy will be highly controversial with municipalities and industries. It should be noted that any effort to clarify DEQ's authority regarding mixing zones and PBTs is likely to be met by vigorous stakeholder resistance, including attempts to restrict our authority through legislation.

2. Which point sources currently discharge mercury and other PBTs?

Although many point sources are likely to have at least trace amounts of PBTs (particularly mercury) in their discharge, DEQ currently lacks facility specific information on the exact scope and extent of these discharges. To begin to fill this data gap, DEQ has obtained limited EPA funding to conduct a pilot study in 2003. The study will quantify the amount of mercury discharged from selected industrial and municipal sources. (A copy of the pilot study proposal is attached in Appendix B for more information.)

3. What resources would it take to revise current water quality standard rules to phase out the allowance for a mixing zone for PBTs?

DEQ rulemaking to revise the mixing zone rules, the water quality criteria for mercury, or even prohibit the discharge of certain PBTs will require at least .5

FTE for 12 to 18 months. DEQ would pursue a rule making through its Water Quality Standards Policy Advisory Committee process which currently is involved in several significant water quality standards reviews. Pursuing this new work immediately (January 1, 2003) would come at the expense of the effort to update our toxic or temperature criteria.

Even if mixing zones for PBTs were prohibited, current state water quality standards would continue to allow the discharge of PBTs as long as ambient standards are met. Mixing zone policy is different than a "zero discharge" standard which would force all dischargers to completely eliminate PBTs in their effluent and would eliminate the need for DEQ to calculate allowable pollution limits in each discharge. Thus, it is unlikely that the elimination of mixing zones for PBTs would result in significant resource savings or streamlining of DEQ's water quality point source permitting process.

Permit holders may incur significant costs to meet end of pipe limits to eliminate the PBTs in their discharge. The discharger would either have to build additional treatment capacity to meet "end of pipe" limits or find ways to eliminate or reduce the input of the particular PBT to their treatment system. For a municipality, it would be extremely difficult to impose controls on the public to prohibit the introduction of a PBT like mercury into the sewer system. Therefore, it is likely that most municipalities would incur additional costs for higher level of treatment. Industries may have more capacity for "product substitution." DEQ believes these costs should be better quantified before pursuing a major rule revision.

Finally, any rule revision that would require specific types of sources to reduce their PBT discharges should allow a reasonable time schedule for those sources to do so.

Next Steps

DEQ will conduct the pilot study to develop a water quality baseline indicating the extent of mercury from industrial and municipal point sources.

If opportunities to expand the study to other PBTs present themselves, DEQ will do so.

DEQ will continue to regulate the discharge of PBTs through the NPDES permit program by establishing appropriate effluent limits to meet water quality

standards and to require effluent monitoring at targeted, significant PBT point
sources.

Attachments

- A. Example Oregon mixing zone rule for the North Coast-Lower
Columbia Basin, OAR 340-041-0205
- B. 2003 DEQ Pilot Study proposal

Approved:

Section:

Handwritten signature for Mark Charles
Program Policy and Project Assistance

Division:

Handwritten signature
Water Quality Division

Report Prepared By: Mark Charles
Phone: 503-229-5589

North Coast-Lower Columbia Basin

340-041-0205

Water Quality Standards Not to be Exceeded (To be Adopted Pursuant to ORS 468.735 and Enforceable Pursuant to ORS 468.720, 468.990 and 468.992)

(4) Mixing zones:

- (a) The Department may allow a designated portion of a receiving water to serve as a zone of dilution for wastewaters and receiving waters to mix thoroughly and this zone will be defined as a mixing zone;
- (b) The Department may suspend all or part of the water quality standards, or set less restrictive standards, in the defined mixing zone, provided that the following conditions are met:
 - (A) The water within the mixing zone shall be free of:
 - (i) Materials in concentrations that will cause acute toxicity to aquatic life as measured by a Department approved bioassay method. Acute toxicity is lethality to aquatic life as measured by a significant difference in lethal concentration between the control and 100 percent effluent in an acute bioassay test. Lethality in 100 percent effluent may be allowed due to ammonia and chlorine only when it is demonstrated on a case-by-case basis that immediate dilution of the effluent within the mixing zone reduces toxicity below lethal concentrations. The Department may on a case-by-case basis establish a zone of immediate dilution if appropriate for other parameters;
 - (ii) Materials that will settle to form objectionable deposits;
 - (iii) Floating debris, oil, scum, or other materials that cause nuisance conditions;
 - (iv) Substances in concentrations that produce deleterious amounts of fungal or bacterial growths.
 - (B) The water outside the boundary of the mixing zone shall:
 - (i) Be free of materials in concentrations that will cause chronic (sublethal) toxicity. Chronic toxicity is measured as the concentration that causes long-term sublethal effects, such as significantly impaired growth or reproduction in aquatic organisms, during a testing period based on test species life cycle. Procedures and end points will be specified by the Department in wastewater discharge permits;
 - (ii) Meet all other water quality standards under normal annual low flow conditions.
 - (c) The limits of the mixing zone shall be described in the wastewater discharge permit. In determining the location, surface area, and volume of a mixing zone area, the Department may use appropriate mixing zone guidelines to assess the biological, physical, and chemical character of receiving waters, and effluent, and the most appropriate placement of the outfall, to protect instream water quality, public health, and other beneficial uses. Based on receiving water and effluent characteristics, the Department shall define a mixing zone in the immediate area of a wastewater discharge to:
 - (A) Be as small as feasible;
 - (B) Avoid overlap with any other mixing zones to the extent possible and be less than the total stream width as necessary to allow passage of fish and other aquatic organisms;
 - (C) Minimize adverse effects on the indigenous biological community especially when species are present that warrant special protection for their economic importance, tribal significance, ecological uniqueness, or for other similar reasons as determined by the Department and does not block the free passage of aquatic life;
 - (D) Not threaten public health;
 - (E) Minimize adverse effects on other designated beneficial uses outside the mixing zone.

- (d) The Department may request the applicant of a permitted discharge for which a mixing zone is required, to submit all information necessary to define a mixing zone, such as:
 - (A) Type of operation to be conducted;
 - (B) Characteristics of effluent flow rates and composition;
 - (C) Characteristics of low flows of receiving waters;
 - (D) Description of potential environmental effects;
 - (E) Proposed design for outfall structures.
- (e) The Department may, as necessary, require mixing zone monitoring studies and/or bioassays to be conducted to evaluate water quality or biological status within and outside the mixing zone boundary;
- (f) The Department may change mixing zone limits or require the relocation of an outfall if it determines that the water quality within the mixing zone adversely affects any existing beneficial uses in the receiving waters.
- (g) **Alternate requirements for mixing zones:** For some existing or proposed discharges to some receiving streams, it may not be practicable to treat wastewater to meet instream water quality standards at the point of discharge or within a short distance from the point of discharge. Some of these discharges could be allowed without impairing the overall ecological integrity of the receiving streams, or may provide an overall benefit to the receiving stream. This section specifies the conditions and circumstances under which a mixing zone may be allowed by the Department that extends beyond the immediate area around a discharge point, or that extends across a stream width. An alternate mixing zone may be approved if the applicant demonstrates to the Department's satisfaction that the discharge (A) creates an overall environmental benefit, or (B) is to a constructed water course, or (C) is insignificant. The three circumstances under which alternate mixing zones may be established are described further below.
 - (A) **Overall environmental benefit.**
 - (i) Qualifying for alternate mixing zone based on overall environmental benefit: In order to qualify for an alternate mixing zone based on a finding of overall environmental benefit, the discharger must demonstrate to the Department's satisfaction the following:
 - (I) That all practical strategies have been or will be implemented to minimize the pollutant loads in the effluent; and
 - (II) For proposed increased discharges, the current actual discharge and mixing zone does not meet the requirements of a standard mixing zone; and
 - (III) Either that, on balance, an environmental benefit would be lost if the discharge did not occur, or that the discharger is prepared to undertake other actions that will mitigate the effect of the discharge to an extent resulting in a net environmental benefit to the receiving stream.
 - (IV) For the purposes of this rule, the term "practical" shall include environmental impact, availability of alternatives, cost of alternatives, and other relevant factors.
 - (ii) Studies required and evaluation of studies: In order to demonstrate that, on balance, an environmental benefit will result from the discharge, the following information shall be provided by the applicant:
 - (I) The effluent flow and pollutant loads that are detected or expected in the effluent, by month, both average and expected worst case discharges. The parameters to be evaluated include at a minimum temperature, biochemical oxygen demand, total suspended solids, total dissolved solids, pH, settleable solids, e. coli bacteria, oil and grease, any pollutants listed in Table 20 of this rule division, and any pollutant for which the receiving stream has been designated by the Department as water quality limited; and
 - (II) Receiving stream flow, by month; and
 - (III) The expected impact of the discharge, by month, on the receiving stream for the entire proposed mixing zone area for all of the pollutants listed above. Included in

this analysis shall be a comparison of the receiving stream water quality with the discharge and without the discharge; and

- (IV) A description of fish, other vertebrate populations, and macroinvertebrates that reside in or are likely to pass through the proposed mixing zone, including expected location (if known), species identification, stage of development, and time of year when their presence is expected. For existing discharges, the applicant shall provide the same information for similar nearby streams that are unaffected by wastewater discharges. In addition, any threatened or endangered species in the immediate vicinity of the receiving stream shall be identified; and
 - (V) The expected impact of the discharge on aquatic organisms and/or fish passage, including any expected negative impacts from the effluent attracting fish where that is not desirable; and
 - (VI) A description of the expected environmental benefits to be derived from the discharge or other mitigation measures proposed by the applicant, including but not limited to improvements in water quality, improvements in fish passage, and improvements in aquatic habitat. If the applicant proposes to undertake mitigation measures designed to provide environmental benefits (e.g., purchasing water or water conservation rights to increase stream flows or establishing stream cover to decrease temperature), the applicant shall describe the mitigation measures in detail, including a description of the steps it will take to ensure that the benefits of the mitigation measures are attained and are not lost or diminished over time.
 - (VII) Some or all of the above study requirements may be waived by the Department, if the Department determines that the information is not needed. In the event that the Department does waive some or all of the above study requirements, the basis for waiving the requirements will be included in the permit evaluation report upon the next permit renewal or modification relating to the mixing zone.
 - (VIII) Upon request of the Department, the applicant shall conduct additional studies to further evaluate the impact of the discharge, which may include whole effluent toxicity testing, stream surveys for water quality, stream surveys for fish and other aquatic organisms, or other studies as specified by the Department.
 - (IX) In evaluating whether an existing or proposed increase in an existing discharge would result in a net environmental benefit, the applicant shall use the native biological community in a nearby, similar stream that is unaffected by wastewater discharges. The Department shall consider all information generated as required in this rule and other relevant information. The evaluation shall consider benefits to the native aquatic biological community only.
- (iii) Permit conditions: Upon determination by the Department that the discharge and mitigation measures (if any) will likely result in an overall environmental benefit, the Department shall include appropriate permit conditions to insure that the environmental benefits are attained and continue. Such permit conditions may include but not be limited to:
- (I) Maximum allowed effluent flows and pollutant loads;
 - (II) Requirements to maintain land ownership, easements, contracts, or other legally binding measures necessary to assure that mitigation measures, if any, remain in place and effective;
 - (III) Special operating conditions;
 - (IV) Monitoring and reporting requirements; and
 - (V) Studies to evaluate the effectiveness of mitigation measures.
- (B) **Constructed water course:** A mixing zone may be extended through a constructed water course and into a natural water course. For the purposes of this rule, a constructed water

course is one that was constructed for irrigation, site drainage, or wastewater conveyance, and has the following characteristics:

- (i) Irrigation flows, stormwater runoff, or wastewater flows have replaced natural streamflow regimes; and
- (ii) The channel form is greatly simplified in lengthwise and cross sectional profiles; and
- (iii) Physical and biological characteristics that differ significantly from nearby natural streams; and
- (iv) A much lower diversity of aquatic species than found in nearby natural streams; and
- (v) If the constructed water course is an irrigation canal, then it must have effective fish screens in place to qualify as a constructed water course.

(C) **Insignificant discharges:** Insignificant discharges are those that either by volume, pollutant characteristics, and/or temporary nature are expected to have little if any impact on beneficial uses in the receiving stream, and for which the extensive evaluations required for discharges to smaller streams are not warranted. For the purposes of this rule, only filter backwash discharges and underground storage tank cleanups are considered insignificant discharges.

(D) **Other requirements for alternate mixing zones:** The following are additional requirements for dischargers requesting an alternate mixing zone:

- (i) Most discharges that qualify for an alternate mixing zone will extend through the receiving stream until a larger stream is reached, where thorough mixing of the effluent can occur and where the edge of the allowed mixing zone will be located. The portion of the mixing zone in the larger stream must meet all of the requirements of the standard mixing zone, including not blocking aquatic life passage; and
- (ii) An alternate mixing zone shall not be granted if a municipal drinking water intake is located within the proposed mixing zone, and the discharge has a significant adverse impact on the drinking water source; and
- (iii) The discharge will not pose an unreasonable hazard to the environment or pose a significant health risk, considering the likely pathways of exposure; and
- (iv) The discharge shall not be acutely toxic to organisms passing through the mixing zone; and
- (v) An alternate mixing zone shall not be granted if the substances discharged may accumulate in the sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare; aquatic life; wildlife; or other designated beneficial uses; and
- (vi) In the event that the receiving stream is water quality limited, the requirements for discharges to water quality limited streams supersede this rule.

Oregon Department of Environmental Quality Work plans for 104(b)(3) funds

Component 1: Point source and ambient mercury characterization. (\$70,000; Estimated FTE: 0.4)

Summary of Project:

Currently, there is limited information regarding mercury levels in point sources discharges. Current data regarding mercury levels are limited to major municipal discharges that have an industrial pretreatment program. Little or no mercury data are available from other source categories such as municipal facilities without pretreatment programs and industrial facilities. In issuing NPDES permits, DEQ conducts a water quality analysis for pollutants of concern. Ambient water quality data is one of the necessary elements for conducting a "reasonable potential to exceed" (RPTE) analysis. Because there is limited ambient water quality data for mercury, RPTE analysis typically assume ambient mercury levels to be equal to zero. U. S. EPA funds will be utilized to conduct sampling at several point sources over a one year period to assess mercury levels in their discharge. Funds will also be used to conduct ambient mercury sampling which can be used for characterizing mercury levels in surface waters and for developing an ambient database for use in conducting RPTE analysis. The primary purpose of this study is to characterize ambient and point source mercury levels. This study does not focus on characterizing mercury levels from other potential sources.

Scope of Work:

The following tasks are included in the Scope of Work for this project:

Task 1: Summarize Existing Point Source and Ambient Mercury Data

As noted above, there is mercury data that is currently available from major municipal discharges that have an industrial pretreatment program. There is also limited mercury data from other municipal and industrial sources. As part of this task, existing mercury data from point sources will be reviewed and summarized. In the Willamette River Basin, there is a monitoring effort for mercury underway to establish mercury levels at various locations in the basin. In addition, several municipalities in the Willamette River Basin are conducting ambient monitoring for mercury. Ambient monitoring data from these sources will be reviewed and summarized. This information will be used to refine the proposed monitoring outlined in Tasks 2 and 3.

Task 2: Prepare Sampling Plan

Samples from point source discharges throughout the state will be collected and analyzed for mercury. The following matrix presents the source categories where mercury monitoring will be conducted. Individual facilities that fit into these categories will be identified after discussion with DEQ permitting staff. A sampling plan will be developed which identifies specific facilities, sampling equipment, clean sampling techniques, shipping, and other relevant information.

Table 1: Point Source Mercury Monitoring								
Category	Municipal			Industrial			Storm Water	
	Major w/o IPP*	Major w/ IPP**	Minor	Major – wood/pulp & paper	Major – metals industry	Minor	Scrap yards/auto wrecking	Other sources
Number of Facilities	10	5	10	10	8	10	6	10
Sampling frequency/year	4	4	4	4	4	4	4	4
Number of samples	40	20	40	40	32	40	24	40

* Major facility without an Industrial Pretreatment Program

* Major facility with an Industrial Pretreatment Program

Task 3: Conduct Point Source and Ambient Sampling

It is anticipated that DEQ regional and DEQ laboratory staff will assist in collecting samples. The sampling plan prepared in Task 2 will be distributed to staff that are likely to be involved in collecting samples. Staff will review and familiarize themselves with the plan as well as clean sampling techniques. Wherever practical, monitoring efforts will be combined with compliance inspections conducted by DEQ staff or local municipalities where the municipality serves as an agent for DEQ (i.e. industrial storm water discharges). Composite samples will be taken where practical (i.e. if the source has ability to take composite samples and ship sample container). Where composite samples are not practical, grab sampling techniques will be used. The Department may also work with the laboratory to mail sample kits directly to the source with instructions for collecting the sample, packaging and shipping sample back to the laboratory for analysis.

In addition to point source sampling, ambient monitoring will be conducted to characterize mercury levels in surface waters and to develop an ambient database for use in conducting RPTE analysis. Specific river segments where ambient monitoring for mercury will be identified after evaluating existing mercury database and after consultation with DEQ laboratory staff. It is anticipated that approximately 200 samples will be collected and analyzed for mercury.

This work plan assumes that DEQ staff will be able to collect samples as part of their routine inspections or samples will be collected by the permittees. The total number of mercury samples will need to be reduced if DEQ staff or permittees are not able to collect mercury samples as assumed in this work plan.

Task 4: Laboratory Analysis.

The DEQ lab does not have the capability to analyze mercury using EPA method 1631. A contract laboratory will be used to analyze mercury samples. The cost for analyzing mercury using EPA method 1631 is \$60 per sample. It is estimated that approximately 500 samples will be analyzed for mercury (including QA/QC samples).

Table 2: Mercury Analytical Method					
Parameter	Holding Time (in days)	Analytical Method	Method Reporting Limit	Method Detection Limit	Sample Container/Preservative
Mercury, Total Recoverable	28	EPA 1631	0.001 µg/L	0.0002 µg/L	500 mL plastic container with nitric acid (HNO ₃)

Task 5: Technical Report

After completion of the sampling and analytical tasks, a technical report that summarizes the results of the monitoring program as well as existing mercury data summarized in Task 1 will be prepared.

Time Frame and Budget:

Task	Time Start	Duration	Budget
1	October 2002	1 month	\$4,000
2	November 2002	2 months	\$6,000
3	January 2003	12 months	\$25,000
4	January 2003	12 months	\$30,000
5	January 2004	1 month	\$5,000
		Total	\$70,000

Reporting Milestones:

Progress reports will be submitted on a semi-annual basis. Based on the schedule for the project, two progress reports will be submitted (April 2003 and October 2003). The results of this study will be presented in a technical report as outlined in Task 4 and should be available by early 2004.

Performance Evaluation Process and Reporting Schedule:

The project will be continuously evaluated as each task is completed, or at a minimum annually, in order to assure that the stated project goals are achieved. The State of Oregon will initiate the process by submitting to the EPA project officer a Performance Evaluation Report containing the elements described below. This report will be included as part of the semi-annual progress reports. EPA will then review the submittal and provide input and comment to the State verbally or in writing. Any issues will be resolved through negotiation. If issues can not be resolved, EPA or the State may take appropriate measures under 40 CFR 31.

The evaluation report and process will include the following:

1. A discussion of accomplishments as measured against the work plan tasks.
2. A discussion of the cumulative effectiveness of the work performed under the tasks.
3. A discussion of existing and potential problem areas; and
4. Suggestions for improvement, including, where feasible, schedules for making improvements."

Roles and Responsibilities of Recipient and EPA:

The State of Oregon is responsible for all work plan tasks and deliverables under this agreement. EPA will have no substantial involvement in accomplishments of the work plan tasks. EPA will monitor the project and provide technical assistance and guidance as needed to assure successful project completion. EPA will provide timely responses to any draft documents submitted for comment and provide appropriate responses to the Performance Evaluation process.

Contact Information:

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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

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Jeff Allen

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.

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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

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 Meeting¹**

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

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.

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, 2002²

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 Llewellyn, 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. Llewellyn 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.

² On July 26, Commissioner Van Vliet participated in the meeting by phone for items H, I and J only.

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.

THE WALL STREET JOURNAL

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FRIDAY, NOVEMBER 29, 2002 - VOL. CCXL NO. 107 - ★★ \$1.00

Mercury Found in Fish is Linked To Increased Heart-Attack Risk

By CHARLES FORELLE

Think a thick swordfish steak basted with olive oil and lemon juice, rich in omega-3 fatty acids, is the perfect recipe to ward off a heart attack? Might want to stick to catfish.

Giant, long-lived predators such as swordfish, shark and king mackerel, which sit squarely atop the aquatic food chain, have long been known to contain high concentrations of mercury from their steady diet of smaller fish. And mercury, a heavy metal that is a toxic pollutant, has been firmly connected with developmental delays and neurological damage in children; pregnant women are warned off mercury-high fish.

But a new study in the New England Journal of Medicine draws a wider conclusion: Ingestion of mercury, even at levels common among fish-eating populations, is closely linked to heart attacks in middle-age men. Indeed, the risk factor may even counterbalance the benefits of the omega-3 acids found in fatty fish, widely touted as a preventive measure against heart disease, the study found.

"The magnitude of the effects seems roughly similar," said Eliseo Guallar, a physician and assistant professor at Johns Hopkins University's school of public health and one of the study's authors.

The study is believed to be the first to find a link between mercury and heart disease, but the hypothesis needs to be studied further, according to an accompanying commentary by U.S. Food and Drug Administration researchers.

Indeed, as if to underscore that point, the New England Journal also published another, seemingly contradictory study of U.S. health professionals that found no link between mercury and heart disease.

Dr. Guallar and his colleagues conducted their research in Europe and Israel, measuring mercury levels in toenail clippings from 684 men under 70 who had been hospitalized following a first heart attack. Using 724 healthy men as controls, the researchers found, adjusted

for age, that patients with mercury levels in the highest 20% of the group were 47% more likely to be heart-attack sufferers than those in the lowest 20%.

When the data were further adjusted to take into account a host of known heart-attack risk factors, such as smoking, obesity, high blood pressure and diabetes, as well as the presence of beneficial fatty acids and antioxidants, the European study found that men in the highest quintile had twice the risk of heart attack as men in the lowest.

The second study, performed in the U.S., followed a group of 51,529 dentists, veterinarians, optometrists, podiatrists and other health professionals, asking them questions about their eating habits and medical histories. It also measured mercury levels in toenails, evaluating 934 subjects, and found no association between mercury levels and heart attacks.

It is unclear why the two studies show such different results. Dentists—who make up more than half of the U.S. study cohort—may be ingesting mercury by inhaling it in vaporized form when preparing fillings, and Dr. Guallar hypothesized that that type of exposure might have a different effect than the mercury eaten in a fish diet. Indeed, the U.S. study showed a slight correlation between mercury levels and heart disease when dentists were excluded from the analysis, but the correlation is not statistically significant.

David Acheson, chief medical officer of the FDA's Center for Food Safety and Applied Nutrition, says he doesn't believe there's enough evidence in the studies to add to the agency's current advisory on fish consumption. The agency warns pregnant women and those intending to become pregnant not to eat swordfish, tilefish, king mackerel and shark, and to restrict intake of other fish to 12 ounces a week. Tuna and salmon, as well as whitefish such as halibut and cod, generally have lower levels of mercury. Shellfish, particularly shrimp, generally have very low levels.

12/13/02 - OEC Handout Item 2 (by Laura Weiss)

Clean air
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Oregon Environmental Council

December 13, 2002

TO: Environmental Quality Commission

FROM: Laura Weiss, M.P.H., Oregon Environmental Council
Program Director

CC: Stephanie Hallock, DEQ Director

RE: DEQ Response to Commission Request for Analysis of Mercury
Reduction Goals and Mixing Zones

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Jeff Allen

Three years after Governor Kitzhaber signed an Executive Order directing DEQ to develop a strategy to eliminate the release of persistent, bioaccumulative and toxic chemicals, DEQ has released its first report that outlines its strategy for reducing mercury releases in Oregon. Unfortunately, this plan focuses heavily on collecting more information, and is woefully short on activities that will reduce mercury releases in Oregon.

OEC is glad that DEQ has worked to carefully quantify mercury releases in Oregon. DEQ's estimates of mercury releases reinforces OEC's earlier estimate that there are over 4,000 pounds of mercury being released to Oregon's environment each year from a variety of sources. This is a staggering amount if you consider that it only takes 1 gram (or 0.002 lbs) of mercury released to the air, that when deposited back to earth, can contaminate a 20-acre lake so the fish are unsafe to eat.

While OEC appreciates the time and energy that DEQ staff has put into this effort to date, we are concerned about **two key flaws in the strategy:**

1. **The strategy fails to set any specific goals or benchmarks against which DEQ can measure its progress over time.**
2. **The strategy is woefully short on activities that will reduce mercury releases in Oregon.**

Given the number of mercury fish advisories in Oregon, it is troubling to see DEQ failing to take a stronger leadership role in efforts to reduce and ultimately eliminate mercury pollution.

Specific Reduction Goals Are Necessary to Measure Progress Over Time

Setting a specific goal gives everyone something specific to strive for. The strategy states that DEQ believes it is not economically, technologically or politically possible to even strive to cut the amount of mercury in half in the next four to five years, or to eliminate the release of mercury in 20 years.

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Results from other states demonstrate that this is a short-sighted and misguided conclusion. Consider the following examples:

- In 1997, the Great Lakes Binational Strategy, a U.S. and Canada strategy for the virtual elimination of persistent toxic substances in the Great Lakes, set a national goal of a 50% reduction in the deliberate use of mercury and a 50% reduction in the release of mercury from human activities by 2006. **U.S. EPA Region V has found that these goals have been a critical motivating force for voluntary activities to reduce mercury.**
- In 1998, the New England Governors and Eastern Canadian Premiers agreed on a 50% reduction goal by 2003, which they are well on their way to achieving. The Governors and Premiers also agreed on the ultimate goal of "virtual elimination" of man-made mercury releases. In response to this challenge, the Governor of New Hampshire announced in 2000 that the state had reduced mercury emissions by 37% in just over a year, **putting the state well on its way to meeting its interim goal of halving mercury emissions by 2003.**
- The Minnesota Legislature set mercury release goals in statute (60% by 2000 and 70% by 2005, compared to 1990 levels) and required the state regulatory agency to track reductions and report back to the Legislature.
- The American Hospital Association and the U.S. Environmental Protection Agency signed a Memorandum of Understanding in 1998, which set a goal of virtual elimination of mercury containing waste from the health care industry waste stream by the year 2005.

DEQ's conclusion that adopting interim reduction goals is not economically or technically feasible is inconsistent with other states' experiences. None of these agencies or organizations described above had perfect information about mercury releases when they set their numeric goals. Nonetheless, these organizations saw the benefits of setting a goal to strive for, even while the data were improving over time.

DEQ's Strategy Is Woefully Short on Specific Activities to Reduce Mercury

In the "Mercury Reduction Strategy" presented to you today, DEQ concludes that the "prudent course of action" is to:

- a) "continue efforts to improve and maintain data, and
- b) implement mercury reduction actions in cooperation with individual sources, trade associations, and state and local agencies."

While the second statement above shows that the agency expects to implement mercury reduction activities over time, the DEQ strategy document describes very few specific mercury reduction activities that the agency plans to implement. This is a significant weakness in the agency's strategy that can and should be fixed.

There are numerous activities that DEQ could implement in the short-term. The Mercury Solution Team -- a diverse group of stakeholders from industry, government agencies (including

DEQ) and environmental groups – agreed on 26 specific strategies to reduce mercury pollution. The Solution Team, which included several businesses which emit mercury, also agreed to set specific numeric goals for reducing mercury emissions in Oregon.

Below are six short-term strategies recommended either by the Solution Team or OEC that in total would reasonably be expected to reduce mercury releases in Oregon by nearly 50% by 2006. **We provide these examples to demonstrate that by implementing just a few key strategies, DEQ could achieve nearly 50% reductions of mercury releases by 2006.**

Examples of Short-Term Mercury Reduction Activities	Amount of Mercury Potentially Kept out of Environment
1. Develop and support programs across the state that educate consumers about the proper disposal for mercury wastes and increase access to programs that recover waste mercury products by 50%.	800 pounds a year (18% of total).
2. Label all mercury-added products and require producers of mercury-added products to take responsibility for recovering waste from those products.	(Supports goal #1 above).
3. Require all facilities that release mercury to develop a plan to reduce mercury emissions.	If these facilities reduced mercury emissions by 50% this would result in reducing overall emissions by roughly 600 pounds a year (14 % of total).
4. Develop an incentive, education and technical assistance program for facilities with boilers to increase efficiency (and switch fuels where appropriate).	Supports goal #3 above. (Industrial and commercial boilers emit about 300 pounds of mercury a year).
5. Clean up the largest abandoned mercury and gold mines, in cooperation with other state and federal agencies and private landowners.	300 pounds a year (7% of total).
6. Require dental offices in Oregon to install amalgam separators (as King County, WA now requires and a large dental group practice in Oregon and Washington with multiple offices is currently installing in all their clinics).	200 pounds a year (5% of total).
Total amount of mercury NOT released by 2006: 1,900 pounds (or 44% of the 4,300 pounds released in 1999/2000).	

In addition to those described above, there are numerous other activities that DEQ could have included in their strategy that would result in significant mercury reductions. We would refer you again to the Mercury Solution Team report.

Lastly, we would like to express our frustration that DEQ has chosen to delay adoption of new rules regarding air toxics, particularly because these rules were one of the key reasons DEQ gave for recommending denial of OEC's petition in July. This situation further highlights the need for the agency to take real actions to reduce mercury emissions.

We urge the EQC to take a leadership role and adopt numeric reduction goals for mercury, and to work with DEQ to develop a more action-oriented strategy that will actually reduce mercury releases in Oregon.

Thank you.



Mercury Reduction Goals Analysis

**December 13, 2002
Cross Programs Section
Land Quality Division**



Commission Assignment

Prepare an analysis of workload requirements and the scientific, technological, policy and economic constraints associated with establishment of the following mercury reduction goals as a matter of state policy, as recommended by the OEC:

- 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**



Introduction to the Workgroup

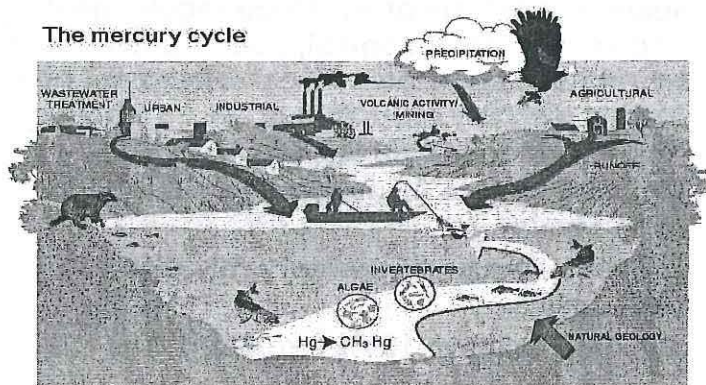
Mission statement--identify and promote strategies to reduce releases of toxic chemicals into the environment.

- **Project Coordination:** Jeff Christensen and David Rozell
- **Air:** Nancy Cardwell and Gregg Lande
- **Cleanup:** Gil Wistar
- **Hazardous Waste:** Gary Calaba
- **Laboratory:** Rae Ann Haynes and James Yates
- **Solid Waste:** Abby Boudouris
- **Water:** Chuck Hopkins and Jared Rubin



Challenges of Mercury

The mercury cycle



(Illustration by Corrie J. Dean, U.S. Geological Survey)



Sources of Mercury in Oregon

Source	Amount (pounds)	Confidence Level	Examples
Hg disposed in products	1591-1691	Low	Light tubes, switches
Point Sources	1365-1465	Low-medium	Sewage treatment plants, power generation facilities
Non-point sources	1302-1692	Low	Legacy mines, automobiles



Conclusions

- 100% reduction of anthropogenic releases by 2020 is not realistic.
- Cost of achieving incremental goals (50% by 2006, 75% by 2011) not directly calculable due to paucity of data.



Current Activities

- **Dedicated Agency toxics coordinator and cross program toxics workgroup**
- **Water quality—TMDL development for mercury**
- **Air quality—air toxics program development**
- **Cleanup—Prioritize and cleanup abandoned mine sites through Orphan Site program**
- **Short term mercury activities**
- **Newly enacted legislation**



The Big Picture and next steps

- **Reducing toxics is a Strategic Priority for DEQ.**
- **Mercury is ubiquitous with multiple sources- work with stakeholders and industry sectors to fine tune preliminary estimates, develop and promote reduction activities. Create inclusive process.**
- **Refine DEQ's existing database of mercury emissions**
- **Continue efforts to understand behavior and transport of mercury in the environment.**
- **Develop appropriate targets and measures of progress, and report back to Commission by June of 2004.**



Summary

“...DEQ is interested in helping to promote and provide leadership in mercury reduction activities. We will work cooperatively with stakeholders to improve mercury data and to identify and implement mercury reduction strategies.”

--Oregon Mercury Reduction Strategy November 2002

Wastewater Finance Background

December 2, 2002

To: OECD Commission and EQ Commission
From: Michael Burton, Assistant Director, OECDD
Michael Llewelyn, Administrator, WQ Div, DEQ
RE: Meeting Financing Needs for Wastewater Treatment

Overview

The following information summarizes the current wastewater financial resources available to communities through both the Departments of **Economic Development** and **Environmental Quality**. Included is a brief description of the community need for wastewater funding, details of the various loan/grant programs, the level of resources currently available and a brief description of relevant issues.

Current Needs

The Dept. of Environmental Quality works fairly closely with both OECDD and USDA's Rural Utilities Services in coordinating our identification of wastewater projects and determining the most economic source of project financing.

In 2002, DEQ's Clean Water State Revolving Fund (CWSRF) annual solicitation for projects resulted in 32 new applications totaling \$156 million in requests for funding of water pollution control projects. Those proposed projects are ranked and included on a project priority list. DEQ's entire project priority list currently contains \$340 million in requests from 98 communities. Proposed projects are financed as applicants complete the necessary documents and as funding is available.

In completing the 2000 EPA Clean Water Needs Survey for Oregon, DEQ documented \$1.5 billion in public infrastructure capital costs needed to address point source wastewater pollution. Nonpoint source needs (such as failing septic systems or the various types of storm water runoff from parking lots, lawns, croplands, feed lots) were not identified in this survey. DEQ suspects those additional needs in Oregon may exceed point source needs.

For Economic and Community Development the first indication of a proposed project usually comes from the Needs and Issues list. That is essentially a survey of near term capital improvement projects planned by Oregon local governments (similar to EPA's Needs Survey). The most recent need is about \$3 billion with about two thirds of that being infrastructure related capital improvements. While they are different data systems, many of the same projects are on both lists.

OECD receives project proposals and applications on an as-ready, ongoing basis. Staff uses the Needs and Issues information to complete an initial project evaluation and to create an intake for the project. Also at this time, other financing agencies such as USDA's Rural Utilities Services are contacted. For large or unusually complicated projects where multiple funding sources may be useful, the community is invited to attend a One Stop meeting where it can present its need simultaneously to all funders. Another way in which our agencies coordinate our assistance to communities is through the services of both the Community Solutions Team (CST) and the Environmental Partnerships for Oregon Communities (EPOC). The services provided by these two teams are invaluable in identifying and supporting communities through the early stages of such projects.

Current resources

In Oregon, OECD and DEQ (along with RUS) provide a vast majority of public financing for water and wastewater projects. The following table summarizes both agencies' funding programs.

Comparison of Oregon Infrastructure Financing Programs						
Agency	Program	Requirements	Grants	Loan Term (Years)	Interest Rate	Fees
Department of Environmental Quality	Clean Water State Revolving Fund (Wastewater)	Water Quality improvements	None	20	2.4-3.2%	1.5% Loan Fee & 0.5% Annual servicing Fee
Oregon Economic & Community Development Department	Safe Drinking Water Revolving Loan Fund	Compliance Issue	Up to \$250,000 Principal Forgiveness based on Comm. financial need	20-30	3.74% (20) 1% (30)	None
	Water/Wastewater Fund	Compliance Issue	Up to \$500,000 based on Comm. financial need	Up to 25	Bond market rates (4.5-5%)	None
	Community Development Block Grant	Compliance Issue	Up to \$750,000 based on Comm. financial need	None	None	None
	Special Public Works Fund-CF	None	None	Up to 25	Bond market rates (4.5-5%)	None

Because OECD, DEQ and RUS funds are directed at slightly different audiences, and because their financial terms vary, these programs provide a range of financing that serves a variety of communities with different financial needs. Both OECD and RUS provide grants and loans. RUS' focus is on rural communities of less than 10,000 in population. The loans and grants provided through OECD address economic development or water quality compliance issues. The loans provided by DEQ address water quality issues, but are not limited to a particular population size, income level or economic need.

OECD, DEQ and RUS Investments for Wastewater System Financing – 2001-03

Program	Types of Financing	Amount Funded	Pending Applications	Total To Date	Number of Projects
OECD					
Community Development Block Grant. Federal funds for communities that are predominantly low income. About \$6 million available annually for water and wastewater projects. Dept. requires compliance issue and financial need to receive funding	Grants	\$6,029,301	\$1,352,000,	\$7,381,301	11
Water/Wastewater Financing Program. State lottery, lottery and revenue bond financed. By administrative rule, water and wastewater systems are eligible if there is a compliance issue. Financial need must be documented for grant funds. Oregon Bond Bank allows unlimited loan funds. Grant funds are limited to an amount to maintain departmental sustainability.	Loans (direct and bonded), grants	\$8,946,670	\$7,007,705	\$15,954,375	33
Special Public Works Fund. State lottery, lottery and revenue bond financed. By administrative rule, projects are eligible if there is a high probability of job creation. Oregon Bond Bank allows unlimited loan funds. Grant funds are limited to maintain departmental sustainability.	Loans (direct and bonded), grants	\$335,456	\$15,000	\$350,456	5
Totals		\$15,311,427	\$8,374,705	\$23,686,132	49
DEQ					
Clean Water State Revolving Fund. Federal grant, state match and loan repayments. Low-cost loans available only to public entities for wastewater projects	Loans (direct and bonded)	\$38,997,594	\$26,466,549	\$65,464,143	20
RUS					
Water/Wastewater Program. USDA funded. Available to public entities and private, non-profit corporations. Priorities given to small, low-income communities with compliance issues.	Loans (direct and bonded), grants	\$24,184,474	\$15,000,000	\$39,184,474	35

Emerging Issues

DEQ

The Department recognizes the importance of addressing Oregon's nonpoint sources (NPS) of water pollution. The on-going development of TMDLs across the state continues to highlight this type of pollution. Nationally, both EPA and other states are promoting the Clean Water State Revolving Fund (CWSRF) loan program as a tool for funding such projects. DEQ is in the process of modifying our CWSRF administrative rules to encourage financing more NPS projects. These rule changes will be reviewed by the EQC in the spring of 2003.

Because DEQ's revolving loan fund is intended to grow, efforts to open up the program to larger numbers of NPS projects may reduce the percentage of the fund going to municipalities for treatment facilities. Yet, we don't expect a major shift in the way the CWSRF fund is divided

over the next several years. Individually, NPS project costs are small, usually in the range of \$10k to \$100K each. Oregon statutes require that DEQ address NPS projects through a public entity. Consequently our NPS loans may be made for "packages of projects" working through public entities. For example, Coos County is considering borrowing \$1M to finance 50-70 septic system repairs over three years. In comparison, individual loans to municipalities are often in the range of \$1-5M.

DEQ does not anticipate a flood of NPS projects applying for funds immediately. We expect it will take a couple years before NPS compliance becomes a driver in the demand for our loan. It is also expected it will take some time and marketing before the CWSRF loan is seen as a resource for projects other than municipal projects.

Finally, DEQ does not foresee a need for additional personnel in our efforts to encourage more NPS funding.

Position of the agency:

- DEQ supports expansion of eligibility for NPS projects.
- CWSRF program being updated to better address NPS needs.

Next steps:

- Adopt CWSRF program administrative rules, spring 2003.
- Educate public entities regarding program changes.
- Continue to define NPS needs.

OECD

The options are to maintain the current priority level for systems addressing compliance or capacity issues or to relax the focus and use the resources to address a wider range of needs. The general expectation with customers and the legislature is to maintain current priorities. The consequences of a change are that grant resources are limited and systems dealing with the current priority problems may not have access to funds when they need or want them.

Customers have surfaced the question of moving from funding projects that address compliance and capacity needs. Both agencies met with the League of Oregon Cities Water Committee and participated in a discussion of the question.

Position of agency:

- Not regulatory, have the authority to change.
- Expectations from customers and most legislators are to continue the status quo.
- A change in priorities has huge implications and needs to follow a broad based discussion and agreement.

Next steps:

- Brief commissions.
- Prepare impact assessment.
- Involve stakeholders.
- Assess additional steps based on input from above.

Regulatory Streamlining

December 1, 2002

To: Oregon Economic and Community Development Commission,
Oregon Environmental Quality Commission

From: Lynn Beaton, Regulatory Advisor, Economic and Community
Development Department

Subject: Promoting Regulatory Streamlining

The Economic and Community Development Department is committed to helping reduce the regulatory burden that faces Oregon businesses. We believe that this will help to improve the state's business climate and allow Oregon businesses to be more competitive. This memo explains why we believe regulatory streamlining is essential, and provides some draft recommendations for achieving this goal.

Background

Over the last year, the Economic and Community Development Department has been involved with a number of initiatives promoting regulatory streamlining. First, House Bill 4026 was passed during the 2002 Special Legislative Session. This bill requires that the Economic and Community Development Department work with a committee to develop a plan to stimulate the economy by attracting and maintaining business.

This plan, the "Economic Stimulus Plan for the State of Oregon" identifies a number of tasks that the state should undertake, including streamlining regulatory processes and encouraging the "redesign of processes and mechanisms for interagency and intergovernmental coordination."

Second, our department participates in the Regulatory Streamlining Task Force staffed by the Department of Administrative Services (DAS). DAS Director Mike Greenfield convened this task force of state agency directors to address regulatory streamlining as a result of commitments he made to the Senate Special Committee on Economic and Job Stimulus during the 2001 session of the Oregon Legislature. The purpose of this effort to ensure that regulations don't impose an excessive burden on businesses and the public while still achieving their statutory goals. The final report of this task force is scheduled to be completed this month.

Third, the Regional Development Officers for our department routinely meet with businesses throughout the state to discuss issues facing those businesses. As part of these meetings, businesses are asked the following questions concerning regulations:

extremely helpful. Companies appreciate getting coordinated information and assistance in one place.

3. **Combine the federal and state wetlands permit programs.** There are currently two parallel wetlands permitting programs – one at the federal level, and one at the state. It is often confusing and frustrating to permit applicants to have to deal with both the US Army Corps of Engineers and the Oregon Division of State Lands. In our experience, the Division of State Lands is generally easier for applicants to work with than the Corps of Engineers. We support delegation of the federal Clean Water Act Section 404 program to the state. We believe this would result in a single (and much improved) wetlands permitting process in Oregon.
4. **Develop a low interest loan program** that allows purchase of equipment that is more environmentally friendly. This should go beyond the Pollution Control Tax Credits program, which does not benefit all businesses. For example, establish a revolving loan fund for small businesses to enable them to purchase pollution prevention equipment (e.g., auto shop hot water parts washer instead of using solvents). Similar programs exist in Minnesota, Michigan, Pennsylvania, Ohio, and West Virginia.
5. **Consolidate reporting requirements** within each individual agency to the extent possible. Coordinate reporting requirements with other state agencies' requirements. For example: combine DEQ Hazardous Waste reporting requirements with the State Fire Marshal's Hazardous Waste reporting requirements.

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** December 3, 2002
From: Mikell O'Mealy
Subject: Materials for the joint meeting with OECD on December 12

Enclosed are materials for the December 12, joint meeting with the Oregon Economic and Community Development Commission to supplement the packet mailed to you on November 26, 2002. The two-hour joint session will feature two topics: (1) maximizing financial support for communities in need of wastewater treatment system upgrades, and (2) streamlining regulatory processes to make it easier to do business in Oregon. Background materials for the meeting include:

- A joint OECD/DEQ background paper on meeting financing needs for wastewater treatment
- An OECD discussion paper on promoting regulatory streamlining
- A DEQ discussion paper on regulatory streamlining and customer service efforts
- In addition, the full agenda for the December 12 OECD Commission meeting is included, for your information

Also enclosed is a corrected page for Agenda Item I, Oil Spill Planning and Fee rules, Attachment B. You have probably noticed that in your original materials, this page was copied with an unintended note attached. Please substitute this corrected page in your original version.

Still to come is an addendum to Agenda Item E, Pollution Control Facility Tax Credit Requests, that will include recommendations on a number of tax credit applications still being processed (the Department received a record-breaking number of applications late this year; see Item E staff report for more discussion).

If have any questions about the meeting or these materials, please let me know (503-229-5301 or toll-free at 1-800-452-4011 ext. 5301).

I look forward to seeing you soon.



Making it easier to do business with DEQ

December 2, 2002

To: Oregon Environmental Quality Commission,
Oregon Economic and Community Development Commission

From: Lauri Aunan, Government and Community Relations Manager, DEQ
Mikell O'Mealy, Assistant to the Commission, DEQ

RE: Regulatory Streamlining and Customer Service

One of DEQ's strategic priorities is to deliver excellence in performance and product. A key action to achieving excellence is "making it easier to do business with DEQ." DEQ is striving to streamline our regulatory processes and improve customer service.

Director's Leadership

Over the past year, Director Stephanie Hallock has been part of a state agency director task force to develop recommendations for regulatory streamlining. In addition, Director Hallock is engaged in a dialogue with numerous legislators, stakeholders and organizations, including the Oregon Business Council, on making it easier to do business with government. On December 9, 2002, she will participate in a director's panel at the Oregon Business Council's Leadership Summit in Portland, focused on regulatory streamlining in state agencies.

Regulatory Streamlining – examples of what we've already done

Air Quality Permit Streamlining

What we've done: Streamlined and added flexibility to the state air permitting process (Air Contaminant Discharge Program).

Why we've done it: To simplify the process and reduce the amount of time to issue air permits, while maintaining the same level of environmental protection.

How the improvements make it easier to do business with DEQ

- About 68% of air permits have changed from individualized permits to general permits. General permits are simpler and typically less costly for business. For a wide range of activities covered by general permits, DEQ can authorize operation in 3-10 days instead of the 2-3 months it took previously.
- Businesses can choose from a range of options when constructing new facilities, from "notice and go" options for minor changes to streamlined permitting options for major new sources. For example, a business formerly required to collect a full year of data before constructing a

major new source may now use protective assumptions during permitting, and collect the information after operation begins.

- The changes also made it easier for companies to avoid costly and complex federal permitting requirements. DEQ added a more flexible approach for companies that can keep their emissions below federal levels.

Water Quality Permit Streamlining

What we've done: "One stop" permitting for construction erosion water quality permits. DEQ contracts with willing cities to administer federal Clean Water Act permits to control construction erosion. This allows developers to obtain both state and local permits from the local building office, instead of having to go to both local and DEQ offices. In December 2002, new federal regulations will require permits for construction activities on smaller land parcels – placing more projects under the erosion control regulations. DEQ will be seeking additional partnerships so that more cities can offer this "one stop" permitting.

Why we've done it: The "one stop" approach saves time and resources for developers and contractors, as well as the state.

Cleanup of Contaminated Sites Streamlining

What we've done: DEQ implemented the Independent Cleanup Program in 1999 to allow property owners to clean up medium and low priority contaminated properties with little or no direct oversight from DEQ. The goal of the program is to review final cleanup reports within 60 days of receipt if the participant has let us know when we will receive it.

Why we've done it: Program participants and other stakeholders asked DEQ to develop an expedited path for simpler cleanup projects and worked with us to craft the details. This program has been enthusiastically received and used by property owners and responsible parties. To date, 57 projects are currently active in the program and 69 have been completed.

How the improvements make it easier to do business with DEQ: For medium and low priority contaminated properties, the Independent Cleanup Program:

- Provides more certain timelines for DEQ to review companies' cleanup projects.
- Is less expensive. Average DEQ oversight costs for an Independent Cleanup project are \$3,000-5,000. Prior to the Independent Cleanup option, DEQ oversight costs for the same type of project were \$12,000 – 15,000.

Regulatory Streamlining – examples of what more we're doing

Consolidated Municipal Water Quality Permit Project

What we're doing: DEQ is working with cities to consolidate numerous federal wastewater permit requirements -- which now require several individual permits -- into one "watershed based" permit. EPA has awarded DEQ, the Clean Water Services agency and the Rogue Valley

Council of Governments a grant to develop a new approach and model permit. Requirements that we hope to consolidate under this approach include wastewater permits, stormwater permits, TMDL issues, and Underground Injection Control requirements.

Why we're doing it: These separate permits and different deadlines for complying with numerous federal requirements make it difficult and costly for cities to plan the most cost-effective infrastructure for meeting clean water standards. This pilot project can result in one permit covering numerous facilities operated by a city, and allow a more reasonable timeline for the city to design and construct facilities.

Streamlining Onsite Septic System Rules

What we're doing: DEQ has formed an advisory committee to comprehensively review the state's sewage program rules. DEQ has revised permit applications and guidance to make them easier to understand and follow, and is now asking installers to review and provide comments on the revised documents. DEQ is providing communications training to improve employees' communication and customer service skills. DEQ is also seeking to encourage delivery of this program at the local level, where counties are willing to perform the service. For example, we are in discussions with Douglas County, which is interested in taking on the program.

Why we're doing it: DEQ anticipates that revised rules will simplify the permitting process. In the meantime, we want to improve our paperwork. The goal is to make it easier to work with us. The goal of communications training is for staff to approach their work in a problem-solving way and communicate information in a positive, understandable manner. Finally, we believe that this program is better delivered at the local level.

Streamlining Wastewater Permitting

What we're doing: DEQ has formed a regulatory performance advisory committee to comprehensively review the state's wastewater program, evaluate current performance expectations, process efficiencies and regulatory requirements. The committee will develop recommendations for program changes and improvements, now targeted for 2005.

Why we're doing it: To simplify the process and reduce the amount of time to issue water permits, while maintaining the same level of environmental protection.

Streamlining Permits for Handling Clean Dredged Sediments

What we're doing: We've started the process to revise solid waste rules to eliminate the need to obtain a Solid Waste permit or permit exemption for clean dewatered sediment. For composting facilities, this would eliminate the need to obtain both a Solid Waste permit and a Water Quality permit.

Why we're doing it: Consolidating multiple permits saves time and costs for businesses and for the state.

Improving Customer Service

Equally important to regulatory streamlining, if not more so, is *how* DEQ does business and *how* each DEQ employee interacts with stakeholders and citizens. It is an agency wide priority to focus on customer service and ensure that every interaction businesses have with DEQ in person, on the phone or in writing is of highest quality.

Investigating ways to improve technical assistance to small businesses

Over the next year and a half, through a federal grant, DEQ will pilot ways to improve assistance to priority business sectors or geographic areas. In addition, DEQ will explore creation of a central technical information source for businesses as part of developing an agency information center. Looking long-term, DEQ will examine opportunities for working with government partners and stakeholders to develop a long term funding source to support greater technical assistance to small businesses.

Providing customer service training for employees

DEQ plans training sessions for staff statewide to improve our interaction and assistance to businesses, industry and individual Oregonians.

Providing training for employees on written communication

DEQ is continuing training for key staff on writing high quality letters, reports, notices and other documents in clear, understandable terms.

Adopting a Communication "Credo"

DEQ adopted clear, agency wide expectations for how employees communicate in person and on the phone with every citizen, business or stakeholder we speak with. These expectations set a high bar for responsiveness, goodwill and positive approach in everything we do and serve as a daily reminder for staff.

AGENDA

Oregon Economic and Community Development Commission Meeting

December 12, 2002

Sky Bridge A&B, World Trade Center, Portland, Oregon

- | | |
|-------|---|
| 9:15 | Call Meeting to Order
Welcome/Introduction
Action: Approve Minutes |
| 9:20 | Public Comments |
| 9:30 | Informational Briefing: Updates of 03-05 Budget and Legislation,
Transition Process and Direction |
| 9:50 | Informational Briefing and Discussion: 2003-2005 Community
Development Fund Investment Plan |
| 10:10 | 2001-2003 Community Development Fund Allocation
Action: Allocate Funds |
| 10:20 | Strategic Plan and Proposed Work Plan
Action: Adopt Strategic Plan |
| 10:50 | Review and Approval of 2001-2002 Annual Report
Action: Approve Annual Report |
| 11:30 | Telecommunications Infrastructure Account
Action: Allocate Funds for Approved Projects |
| Noon | Working Lunch |
| 12:15 | Informational Briefing <ul style="list-style-type: none">• Funding of Small Business Development Centers• Impact of Contracted Business Services |
| 12:40 | Director's Report |
| 12:50 | Break |
| 1 | Informational Briefing: Council on Knowledge and Economic
Development |
| 3 | Joint Meeting with the Environmental Quality Commission <ul style="list-style-type: none">• Wastewater Financing• Regulatory Streamlining |
| 5 | Adjourn |

Oregon Environmental Quality Commission Meeting

December 12-13, 2002

Oregon Department of Environmental Quality (DEQ)
Headquarters Building, Room 3A
811 SW Sixth Avenue, Portland, Oregon

Thursday, December 12, 2002

Prior to the regular meeting, the Commission will hold an executive session beginning at 10:00 a.m., as allowed by ORS 192.660(1)(i), to review and evaluate the employment-related performance of the Director pursuant to the standards, criteria and policy directives adopted by the Commission in January 2002.

The regular Commission meeting will begin at 1:00 p.m. in DEQ Room 3A

A. Contested Case No. WPM/D-NWR-99-186 regarding Caleb Siaw, M.D.

The Commission will consider a contested case between DEQ and Dr. Caleb Siaw, in which Dr. Siaw appealed a May 2002, proposed order assessing him a \$317,700 civil penalty for violating a Commission order. The Commission order required Dr. Siaw to design and construct a new on-site sewage disposal system for a mobile home park he owned in Seaside, Oregon. The Commission will hear arguments from both parties on the case.

B. Director's Dialogue

Stephanie Hallock, DEQ Director, will discuss current events and issues involving the Department and state with the Commission.

C. Action Item: Vote on new Commission Chair

Commissioners will discuss and vote on a new Commission Chair person to replace outgoing Chair, Melinda Eden.

Joint meeting session with the Oregon Economic and Community Development Commission

3:00 p.m., World Trade Center, Sky Bridge A & B, S.W. Second St., Portland Oregon

At approximately 3:00 p.m., the Environmental Quality Commission will join the Oregon Economic and Community Development Commission for a joint meeting session at the World Trade Center, Sky Bridge A&B, located at SW Second & Salmon Street in downtown Portland. The joint session will feature two discussion topics:

- Maximizing financial support to communities in need of wastewater treatment system improvements
- Removing barriers to economic development in Oregon

Following the meeting, Commissioners will hold a joint reception at the World Trade Center as an opportunity for informal discussion and relationship building.

Friday, December 13, 2002

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 Commission meeting will begin at 8:30 a.m. in DEQ Room 3A

D. Approval of Minutes

The Commission will review, amend if necessary, and approve draft minutes of the October 3-4, 2002, Environmental Quality Commission meeting.

E. Action Item: Consideration of Pollution Control Facilities Tax Credit Requests

In 1967, the Oregon Legislature established the Pollution Control Facility Tax Credit Program to help businesses meet environmental requirements. The program was later expanded to encourage investment in technologies and processes that prevent, control or reduce significant amounts of pollution. In 1999, nonpoint source pollution control facilities were made eligible for the program. At this meeting, the Commission will consider tax credit applications for facilities that control air and water pollution, recycle solid and hazardous waste, reclaim plastic products, and control pollution from underground storage tanks.

F. Informational Item: Update on Status of Umatilla Chemical Agent Disposal Facility

Sue Oliver and Thomas Beam, DEQ Chemical Demilitarization Program staff, will update the Commission on the Umatilla Chemical Agent Disposal Facility, including the status of trail burns, an in-progress permit modification and a schedule for facility operation.

G. Public Comment Opportunity on Port Westward Energy Facilities Project and Proposed Wastewater Discharge Permit

The Commission will invite public comment on the proposed wastewater discharge permit for the Port Westward Energy Facilities Project. The proposed project includes construction of two natural gas fired power plants and one ethanol production plant on land owned by the Port of St. Helens adjacent to the Columbia River near Clatskanie. The Port has applied to DEQ for a wastewater permit for the collection and discharge of treated wastewater to the Columbia River from the new facilities. At a future meeting, DEQ will ask the Commission to make a determination about the impact of this project on Columbia River water quality. DEQ is in the process of soliciting public input on the proposed wastewater permit and other information that will support the Commission's determination.

H. *Rule Adoption: Total Maximum Daily Loads (TMDL) Rules

Since the early 1980s, DEQ has been establishing Total Maximum Daily Loads, or TMDLs, for waterbodies that do not meet water quality standards. A TMDL identifies the maximum amount of a pollutant a waterbody can receive and still meet water quality standards, and allocates portions of that amount to pollutant sources or groups of sources. A TMDL also includes a Water Quality Management Plan describing strategies that will achieve the targeted pollution inputs. TMDLs are implemented through permits and through implementation plans adopted by federal, state, or local governmental agencies with authority over contributing sources. At this meeting, Mike Llewelyn, DEQ Water Quality Division Administrator, will present rules to adopt the process DEQ has been using for the past few years to develop and implement TMDLs.

I. *Rule Adoption: Oil Spill Contingency Planning and Fees

In 2001, the Legislature changed requirements for the way in which large ships and other marine vessels plan for how they would respond to oil spills. At this meeting, Dick Pedersen, DEQ Land Quality Division Administrator, will propose rules to implement the legislative changes, including new fees for regulated vessels and facilities to support DEQ's Emergency Response program. The proposed rules would confirm DEQ as the lead agency for responding to hazardous chemical and oil spills, define "spill response zones" within the state's navigable waters, specify equipment requirements for those zones, and require spill contingency plans for all fuel pipelines (current rules only require plans for pipelines that transfer oil over certain state waters).

J. *Rule Adoption: Enforcement Procedures and Civil Penalties for Ballast Water Management, Oil Spill Planning, and Emergency Response to Hazardous Material Spills

Dick Pedersen, DEQ Land Quality Division Administrator, will propose rules that align state enforcement procedures and penalties with recent rule changes in DEQ's Emergency Response program. The proposed rules include revised enforcement classifications for ballast water management and planning requirements for oil and hazardous material spills.

K. Temporary Rule Adoption: Asbestos Requirements

Asbestos is a hazardous air pollutant and known carcinogen. To protect public health, DEQ regulates disposal of asbestos-containing materials from demolition, construction, repair, and maintenance of public and private buildings. DEQ's asbestos rules, designed to prevent asbestos fiber release and exposure, were modified in January 2002 to strengthen public health protection. At this meeting, Andy Ginsburg, DEQ Air Quality Division Administrator, will propose a temporary rule to provide relief from some relatively new asbestos requirements that have caused implementation problems for some Oregon businesses. After adoption of the temporary rule, DEQ plans to work with a stakeholder group on redefining those rule requirements to be easier to use.

L. Informational Item: Response to Commission Request for Analysis of Mercury Reduction Goals and Mixing Zones

In July 2002, the Commission requested information from DEQ on state mercury reduction goals and the discharge of toxics in water quality mixing zones. At this meeting, Dick Pedersen, DEQ Land Quality Division Administrator, and Mike Llewelyn, DEQ Water Quality Division Administrator, will lead a two-part presentation of information and analysis on current and potential state efforts to reduce mercury and other toxic substances.

M. Commissioners' Reports

Adjourn

Environmental Quality Commission Meetings scheduled for 2003:

January 30-31, March 20-21, May 8-9, June 26-27, August 14-15, October 9-10, December 4-5

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.

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.

Public Forum: The Commission will break the meeting at approximately 11:30 a.m. on Friday, December 13, to provide members of the public an opportunity to speak to the Commission on environmental issues 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.

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 & Kearns 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**

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