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Part 2 of 2

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 05/08/2003

State of Oregon
Department of Environmental Quality

If you do your own asbestos removal work, you are responsible for following all handling, transport and disposal regulations. Asbestos-containing waste requires special handling and disposal and must be deposited at a landfill authorized to handle asbestos waste. Contact DEQ for more information about special disposal requirements for asbestos waste.

Do not disturb sprayed-on acoustic or "popcorn" ceilings and some textured walls. If these materials have never been painted, a coat of sealant can be sprayed on with an airless sprayer to seal the surface. Do not use a brush or roller! Do not use a broom to sweep cobwebs off the textured surface.

DEQ

State of Oregon
Department of
Environmental
Quality

Headquarters
811 SW Sixth Ave.
Portland, OR 97204
Phone: (503) 229-5696
Toll free (in Oregon):
(800) 452-4011
TTY: (503) 229-6993
www.deq.state.or.us

10/00

For more information, contact DEQ at:

For answers to your questions about asbestos and how to handle it safely, call the DEQ office nearest you.

Clackamas, Clatsop, Columbia, Multnomah, Tillamook and Washington Counties:
DEQ Northwest Region Office, Portland
503-229-5364,
503-229-5473
503-229-5982
1-800-452-4011 toll-free in Oregon

Benton, Lincoln, Linn, Marion, Polk and Yamhill Counties:
DEQ Salem Office
503-378-8240, ext. 272
(800) 379-7677

Lane County:
Lane Regional Air Pollution Authority
541-736-1056.

Jackson, Josephine and Eastern Douglas Counties:
DEQ Medford Office
541-776-6010, ext. 235
877-823-3216

Coos, Curry and Western Douglas Counties:
DEQ Coos Bay Office
541-269-2721, ext. 22.

Eastern Oregon counties:
DEQ Bend Office
541-388-6146, ext. 226
DEQ Pendleton Office
541-278-4626

You can also visit DEQ's home page at *www.deq.state.or.us* and click on "Consumer Corner".

Consumer Corner: Asbestos

5-9-03 Item J
Handout

DEQ

State of Oregon
Department of
Environmental
Quality

WORKING WITH DEQ

Consumer Corner: Asbestos

Popcorn-ceiling material may contain asbestos and if disturbed, should only be handled by licensed professionals.

Asbestos is dangerous!
Breathing in asbestos fibers has been linked to cancer and other diseases. When asbestos-containing material is disturbed or damaged, it releases tiny fibers into the air that are too small to be filtered by a dust mask. There is no safe level of exposure, so contact with any amount of asbestos can be harmful.

The best way to handle asbestos-containing material is to hire a licensed asbestos abatement contractor to perform the work. Most home repair or remodeling contractors do not have an asbestos abatement license or certified workers trained and equipped to work safely with asbestos.

Protect yourself and your family from the dangers of improper asbestos removal. Call DEQ at 1-800-452-4011 to get more information and advice before you remodel, hire a contractor or attempt to handle asbestos yourself.

What is asbestos?
Asbestos is a mineral that can be broken down into very fine fibers that are heat-resistant and extremely durable. Because of these properties, asbestos was widely used in construction materials until 1987. As of 1987, most building materials no longer contain asbestos.

Depending on its condition, asbestos in your home may be hazardous to your health. As long as asbestos is not disturbed, damaged or worn, or the material is sealed, it is not considered a health hazard.

If you're thinking of buying a pre-1987 house that needs remodeling, or planning to remodel your current pre-1987 home, have a qualified inspector survey the house for asbestos before you buy or remodel. Improper handling of asbestos-containing materials can be expensive.

Does your house have asbestos-containing materials?
The following materials may contain asbestos:

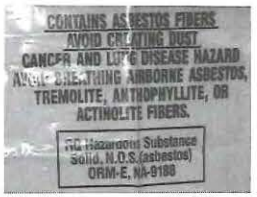
- Sprayed-on popcorn acoustical ceilings
- Acoustical ceiling tiles
- Sheet flooring (such as linoleum) or vinyl asbestos tiles
- Cement asbestos board siding and roofing
- Furnace and duct insulation
- Boiler and pipe insulation

Be safe! Treat all suspect materials as if they contain asbestos until you know for sure.

You cannot identify asbestos by looking at it. The only safe way to find out if material contains asbestos is to have a laboratory analyze a sample of the suspect material. Laboratories that do this work are usually listed in the Yellow Pages under "Laboratories - Analytical." Call DEQ for information on how to safely take a sample.

Handling asbestos-containing materials in your home
If the asbestos-containing material is NOT broken, worn, damaged or disturbed, it poses little or no danger. Asbestos removal involves disturbing the material and possibly putting asbestos into the air. Leaving asbestos containing material intact is often a safer option.

You may repair or remove asbestos in a house you own and live in. However, DEQ strongly recommends that you not repair or remove asbestos-containing materials yourself. Removing asbestos requires special equipment and detailed training. More importantly, without proper equipment and training, an individual could cause asbestos fiber contamination throughout your home and neighborhood. Call DEQ for more information and advice on the best way to handle asbestos repair or removal in a rental property.



Asbestos waste must go to a landfill authorized to accept it.

This is a sample of raw asbestos. The nature of this type of asbestos allowed it to be woven into cloth and its versatility made it the chief type of asbestos used in building materials.

5/9/03 Item J handout

OSHA Guidance

DRAFT

Table of Contents

In compliance with the *Americans with Disabilities Act* (ADA), this publication is available in alternative formats; call OR-OSHA's public relations manager, (503) 378-3272 (V/TTY).

Background

Asbestos is the generic term for a group of naturally occurring, fibrous minerals with high tensile strength, flexibility, and resistance to thermal, chemical, and electrical conditions.

In the construction industry, asbestos wais usedfound in over 3000 building products. Some of the products that contained asbestos are installed products such as shingles, floor tiles, cement pipe and sheet, roofing felts, pipe and boiler insulation, ceiling tiles, fire-resistant drywall, and acoustical products. Very few asbestos-containing products are being installed. Consequently, M most worker exposures occur during the removal of asbestos and the renovation and maintenance of buildings and structures that containing asbestos.

Asbestos fibers enter the body by inhalation or ingestion of airborne particles that become embedded in the tissues of the respiratory or digestive systems. Exposure to asbestos can cause disabling or fatal diseases such as asbestosis, an emphysema-like condition; lung cancer; mesothelioma, a cancerous tumor that spreads rapidly in the cells of membranes covering the lungs and body organs; and gastrointestinal cancer. The symptoms of these diseases generally do not appear for 20 years or more after exposure.

OSHA

Federal OSHA began regulating workplace asbestos exposure in 1970, adopting a permissible exposure limit (PEL) to regulate worker exposures. Over the years, more information on the ad rse health effects of asbestos exposure has become available, prompting the agency to revise the asbestos standard several times to better protect workers. In 1994, OSHA issued a revised final standard regulating asbestos exposure in all industries. The revised standard for the construction industry lowers the PEL from 0.2 fibers per cubic centimeter (f/cc) of air to 0.1 f/cc. OR-OSHA adopted this federal standard effective March 29, 1995. (OAR 437-003-1926.1101)

Approximately 3.2 million workers in new construction, building renovation, and maintenance and custodial[1] work in buildings and industrial facilities are affected by the new standard. OSHA estimates that at least 42 cancer deaths per year will be avoided in all industries, in addition to lives saved by earlier OSHA standards.

DEQ/LRAPA

The federal Environmental Protection Agency (EPA), the Department of Environmental Quality (DEQ) and Lane Regional Air Pollution Authority (LRAPA) also have regulations that relate to the proper handling and disposal of asbestos-containing materials to prevent exposure to asbestos fibers. EPA started regulating asbestos in the early '70s recognizing the need to protect the public and the environment from exposures asbestos fibers. The Oregon DEQ and then LRAPA started regulating asbestos on the local level by 1975.

[1] Pure custodial work in manufacturing facilities is covered by the general industry asbestos standard.

DEQ/LRAPA rules require that all public and private buildings have a survey for the presence of asbestos before any renovation or demolition work takes place. The asbestos rules also require that all asbestos-containing materials be removed from structures before any activity, including demolition and renovation work, that would disturb the material causing a potential for the release of asbestos fibers or preclude access to the materials for future removal.

Work classification

OR-OSHA's standard establishes a new classification system for asbestos construction work that clearly spells out work practices that reduce worker exposures. Four classes of construction activity are matched with control requirements.[2]

Class I asbestos work, the most hazardous class of asbestos jobs, involves the removal of asbestos-containing or presumed asbestos-containing thermal insulation and sprayed-on or troweled-on surfacing.[3] Thermal insulation includes asbestos-containing materials applied to pipes, boilers, tanks, ducts, or other structural components to prevent heat loss or gain. Surfacing materials may include decorative plaster on ceilings, acoustical materials on decking, or fireproofing on structural members.

Class II work includes the removal of other types of asbestos-containing materials that are not thermal insulation, such as flooring and roofing materials. Removing intact incidental roofing materials such as cements, mastics, coatings, and flashings is not regulated as Class II. Examples of Class II work include removal of floor or ceiling tiles, siding, roofing, or transite panels.

When a competent person deems roofing material being removed as intact, the roofing contractor may make a negative exposure assessment and avoid initial monitoring if both the following conditions are met:

1. Employees have been trained.
2. The work practices set forth in the rule are strictly followed.

Class III asbestos work includes repair and maintenance operations where asbestos-containing or presumed asbestos-containing materials are disturbed.

Class IV operations include maintenance and custodial activities in which employees contact but do not disturb asbestos-containing materials. These activities must be related to the construction project, usually resulting from Class I, II, or III activities.

DEQ/LRAPA rules approach asbestos exposure in a different manner. Recognizing that public exposures may not be as easily definable, and following the Oregon legislatures mandate that there is no safe level of exposure, DEQ/LRAPA crafted rules expressly to prevent or eliminate exposures to the public and the environment. To that end the DEQ/LRAPA asbestos rules require specific work practices to be followed when removing asbestos and that all contractors who remove friable asbestos be licensed by DEQ. Workers must be trained and certified to remove friable asbestos. The basis of the DEQ/LRAPA asbestos rules is first to make a determination whether a material is friable or nonfriable and then to handle those materials appropriately.

Friable asbestos: Is any asbestos-containing material that hand pressure can crumble, pulverize, or reduce to powder when dry. Friable asbestos materials must be removed by contractors that have obtained a DEQ license. These contractors must use workers trained and certified through a DEQ training program. Persons trained at the supervisor level through the DEQ certification program also meet OSHA's competent person requirements. Asbestos material disposal requires specific packaging and labeling and must take place at a landfill authorized to receive asbestos waste.

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[2] See Appendix, Pages 28-31, for a list of provisions by work classification.

[3] This includes thermal system insulation and surfacing material found in buildings constructed before 1981.

***Nonfriable asbestos*:** Is asbestos-containing material that hand pressure cannot crumble, pulverize, or reduce to powder when dry. (Note: The use of power tools, shattering, or the forces normally placed on nonfriable material during the course of demolition will render the nonfriable material in a friable condition.) Nonfriable asbestos materials may be removed by contractors not specifically licensed by DEQ and worker certification is not required. However, an OSHA trained competent person is requested and recommended for nonfriable removal projects. Asbestos material disposal must take place at a landfill authorized to receive asbestos waste.

Scope and application

The asbestos standard for the construction industry (OAR 437-003-1926.1101) regulates asbestos exposure for workers and DEQ/LRAP regulates asbestos exposure to the public and the environment in the following activities:

- demolishing or salvaging structures where asbestos is present
- removing or encapsulating asbestos-containing materials
- constructing, altering, repairing, maintaining, or renovating asbestos-containing structures or substrates
- installing asbestos-containing products
- cleaning up asbestos spills/emergencies
- transporting, disposing of, storing, containing, and housekeeping involving asbestos or asbestos-containing products on a construction site

Provisions of the standard

Employers must follow several provisions to comply with the asbestos standard. OR-OSHA has established strict exposure limits and requirements for exposure assessment, medical surveillance, recordkeeping, "competent persons," regulated areas, and hazard communication.

Permissible exposure limit (PEL) — Employers must ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.1 f/cc as an eight-hour time-weighted average (TWA).

Excursion limit — Employers must ensure that no employee is exposed to an airborne concentration of asbestos in excess of 1 f/cc as averaged over a sampling period of 30 minutes.

Threshold-limit value — short-term exposure Limit (TLV-STEL)
Threshold-limit value — short-term exposure limit (TLV-STEL) is the maximum concentration to which workers can be continuously exposed for a period of up to 15 minutes without suffering irritation, chronic or irreversible tissue change, or narcosis of sufficient degree to increase accident proneness, impair self-rescue, or materially reduce work efficiency, provided that no more than four excursions per day are permitted, with at least 60 minutes between exposure periods, and provided that the daily TLV-TWA also isn't exceeded. The STEL is a maximum allowable concentration, or ceiling, not to be exceeded during the 15-minute excursion.

Exposure assessments and monitoring — Employers must assess all asbestos operations for their potential to generate air-borne fibers. Employers must use exposure monitoring data to assess employee exposures.

Initial exposure assessments

The designated "competent person"[4] must assess exposures immediately before or as the operation begins to determine expected exposures. The assessment must be done in time to comply with all standard requirements triggered by exposure data or the lack of a negative exposure assessment[5] and to provide information ensuring control systems are appropriate and work properly.

The initial exposure assessment must be based on the following:

- the results of employee exposure monitoring[6]
- all observations, information, or calculations indicating employee exposure to asbestos, including any previous monitoring
- the presumption that employees performing Class I asbestos work are exposed in excess of the PEL and STEL until exposure monitoring proves they are not

Negative exposure assessments

For any specific asbestos job that trained employees perform, employers may show that exposure will be below the PEL by performing an assessment and confirming it by the following:

- "objective data" demonstrating an asbestos-containing material or activities involving it cannot release airborne fibers in excess of the PEL and STEL
- "historical data" from prior monitoring for similar asbestos jobs performed within 12 months of the current job and obtained during work operations conducted under similar conditions
- employees' training and experience were no more extensive for previous jobs than training for current employees
- data show a high degree of certainty that employee exposures will not exceed the PEL and STEL under current conditions
- current initial exposure monitoring used breathing zone air samples representing the eight-hour TWA and 30-minute short-term exposures for each employee in those operations most likely to result in exposures over the PEL for the entire asbestos job

Exposure monitoring

Employee exposure measurements must be made from breathing zone air samples representing the eight-hour TWA and 30-minute short-term exposures for each employee.

Employers must take one or more samples representing full-shift exposure to determine the eight-hour TWA exposure in each work area. To determine short-term employee exposures, employers must take one or more samples representing 30-minute exposures for the operations most likely to expose employees above the excursion limit in each work area.
Employers must allow affected employees and their designated representatives to observe any employee exposure monitoring. When observation requires entry into a regulated area, the employer must provide and require the use of protective clothing and equipment.

Periodic monitoring

For Class I and II jobs, employers must monitor daily each employee working in a regulated area, unless a negative exposure assessment for the entire operation already exists and nothing has changed. When all employees use supplied-air respirators operated in positive-pressure mode, however, employers may discontinue daily monitoring. If employees are performing Class I work using control methods not

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[4] Defined by the standard as one who can identify existing asbestos hazards in the workplace and who has the authority to correct these hazards.
[5] A negative exposure assessment demonstrates that employee exposure during an operation is consistently below the PEL.
[6] Unless there has been a negative exposure assessment. In certain less-hazardous operations, the employer may be exempt from monitoring. See OAR 437-003-1926.1101 for specific requirements.

recommended in the standard, employers must continue daily monitoring, even when employees use supplied-air respirators.

For operations other than Class I and II, employers must monitor all work in which exposures can exceed the PEL often enough to validate the exposure prediction. If periodic monitoring shows employee exposures below the PEL and STEL, the employer may discontinue monitoring.

Additional monitoring

Changes in processes, control equipment, level of personnel experience, or work practices that could result in exposures above the PEL or STEL — regardless of a previous negative exposure assessment for a specific job — require additional monitoring.

Medical surveillance

Employers must provide a medical surveillance program for all employees:

- who are or will be exposed to asbestos at or above the PEL or STEL for a total of 30 or more days per year and engage in Class I, II, or III work. *(Note: The 30-day requirement excludes days in which less than one hour is spent in Class II or III work when work practices specified by the code are followed.)*
- who wear negative-pressure respirators

A licensed physician must perform or supervise all medical exams and procedures, which are to be provided at no cost to employees and at a reasonable time of day and week. Employers must make medical exams and consultations available to employees:

- prior to employee assignment to an area where negative-pressure respirators are worn
- within 10 working days after the 30th day of exposure for employees assigned to an area where exposure is at or above the PEL for 30 or more days per year
- at least annually thereafter
- when the examining physician suggests them more frequently

If, however, the employee was examined within the past 12 months and that exam meets the criteria of the standard, another medical exam is not required.

Medical exams must include the following:

- a medical and work history
- completion of a standardized questionnaire with the initial exam (See OAR 437-003-1926.1101, Appendix D, Part 1) and an abbreviated standardized questionnaire with annual exams (See OAR 437-003-1926.1101, Appendix D, Part 2)
- a physical exam focusing on the pulmonary and gastrointestinal systems
- any other exams or tests suggested by the examining physician

Employers must provide the examining physician:

- a copy of OSHA's asbestos standard and its appendices a description of the affected employee's duties relating to exposure the employee's representative exposure level or anticipated exposure level
- a description of any personal protective equipment and respiratory equipment used
- information from previous medical exams not otherwise available

It is the employer's responsibility to obtain the physician's written opinion containing results of the medical exam and the following:

- any medical conditions of the employee that increase health risks from asbestos exposure
- any recommended limitations on the employee or protective equipment used

- a statement that the employee has been informed of the results of the medical exam and any medical conditions resulting from asbestos exposure
- a statement that the employee has been informed of the increased risk of lung cancer from the combined effect of smoking and asbestos exposure

The physician must not reveal specific findings or diagnoses unrelated to occupational exposure to asbestos in the written opinion. The employer must provide a copy of the physician's written opinion to the affected employee within 30 days of receipt.

Recordkeeping

Objective data records (kept for OSHA only, DEQ/LRAPA rules apply regardless of the following)

If employers use objective data to demonstrate that products made from or containing asbestos cannot release fibers in concentrations at or above the PEL or STEL, they must keep an accurate record for as long as it is relied on and include the following information:

- the exempt product
- the source of the objective data
- the testing protocol, test results, and analysis of the material for release of asbestos
- a description of the exempt operation and support data
- other data relevant to operations, materials, processes, or employee exposures

Monitoring records

Employers must keep the following records of all employee exposure monitoring for at least 30 years:

- date of measurement
- the operation involving asbestos exposure that was monitored
- sampling and analytical methods used and evidence of their accuracy
- number, duration, and results of samples taken
- type of protective devices worn
- names, social security numbers, and exposures of the employees

Employers must make exposure records available upon request to affected employees and former employees, their designated representatives, and OR-OSHA.

Medical surveillance records

Employers must keep all medical surveillance records for the duration of the employee's employment plus 30 years, including:

- employee's name and social security number
- the employee's medical exam results, including the medical history, questionnaires, responses, test results, and physician's recommendations
- the physician's written opinions
- employee medical complaints related to asbestos exposure
- a copy of the information provided to the examining physician Employee medical surveillance records must be available to the subject employee, to anyone having specific written consent of that employee, and to OR-OSHA.

Other recordkeeping requirements

Employers must maintain all employee training records for one year beyond the last date of employment for each employee.

Where data demonstrate presumed-asbestos-containing materials do not contain asbestos, building owners or employers must keep the records for as long as they rely on them. Building owners must maintain written notifications on the identification, location, and quantity of asbestos-containing or presumed-asbestos-containing materials for the duration of ownership and transfer the records to successive owners.

When an employer ceases to do business without a successor to keep the records, the employer must notify the director of the National Institute for Occupational Safety and Health (NIOSH) at least 90 days prior to their disposal and transmit them as requested.

"Competent person" requirements (DEQ supervisor training is equivalent)

On all construction sites with asbestos operations, employers must name a "competent person," qualified and authorized to ensure worker safety and health, as required by *Subdivision C, General Safety and Health Provisions for Construction* (OAR 437-003-1926.20). Under these requirements for safety and health prevention programs, the competent person must frequently inspect job sites, materials, and equipment.

The competent person must inspect Class I job sites at least once during each work shift and upon employee request. The competent person must inspect Class II and Class III job sites often enough to assess changing conditions and upon employee request.

At Class I or II asbestos-work job sites and all DEQ friable asbestos projects, the competent person must supervise the following:

- the integrity of regulated areas, enclosures, or other containments by on-site inspection
- procedures to control entry and exit of the job site
- employee exposure monitoring
- employee use of required protective clothing, equipment, and glove bags[7], if used
- proper setup, removal, and performance of engineering controls, work practices, and personal protective equipment
- employee use of hygiene facilities and required decontamination procedures
- notification requirements

The competent person must attend a comprehensive training course for contractors and supervisors certified by the U.S. Environmental Protection Agency (EPA) that is~~or~~ a DEQ~~state~~ approved training provider ~~or a course that is equivalent in length and content~~.

For Class III and IV asbestos work, training must include a course equivalent in length and content to the 16-hour "Operations and Maintenance" course developed by EPA for maintenance and custodial workers.[8]

Regulated areas

A regulated area is a marked site where employees work with asbestos. It includes any adjoining area(s) where debris and waste from asbestos work accumulates or where airborne concentrations of asbestos exceed or can exceed the PEL.

All Class I, II, and III asbestos work must be done within regulated areas. Only authorized personnel[9] may enter. The designated competent person supervises all asbestos work performed in the area. (See the *competent person* requirements, Pages 10 and 28.) Employers must mark the regulated area in any manner that minimizes the number of persons within the area and protects persons outside the area from exposure to

[7] A plastic bag-like enclosure of an asbestos-containing material, with glove-like appendages through which materials and tools may be handled.
[8] For more specific information, see EPA Standard on Asbestos 40 CFR 763.92(a) (2).
[9] Any person permitted by the employer and required by work duties to be in regulated areas.

airborne asbestos. Critical barriers[10] or negative-pressure enclosures may mark the regulated area. DEQ/LRAPA requires negative pressure enclosures on all friable abatement projects.

Posted warning signs marking the area must be easily readable and understandable. The signs must bear the following information:

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORY AND PROTECTIVE CLOTHING ARE
REQUIRED IN THIS AREA

Employers must supply a respirator to all persons entering regulated areas. (See *Respiratory Protection*, Page 23.) Employees must not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas.

An employer performing work in a regulated area must inform other employers on site of the:
- nature of the work
- regulated area requirements
- measures taken to protect on-site employees

The contractor creating or controlling the source of asbestos contamination must abate the hazards. All employers with employees working near regulated areas must assess each day the enclosure's integrity or the effectiveness of control methods to prevent airborne asbestos from migrating.

A general contractor on a construction project must oversee *all* asbestos work, even though he or she may not be the designated competent person. As supervisor of the entire project, the general contractor determines whether asbestos contractors comply with the standard and ensures that they correct any problems.

Communication of hazards

Notification requirements

The communication of asbestos hazards is vital to prevent further overexposure. Most asbestos-related construction involves previously installed building materials. Building owners are often the only or best source of information concerning these materials. Building owners and employers of potentially exposed employees have specific duties under the standard.

Before beginning work, building owners must identify all thermal insulation, sprayed or troweled-on surfacing materials, and resilient flooring material installed before 1981. Building owners must notify the following in writing about the possible presence, locations, and quantity of asbestos-containing materials:
- prospective employers applying or bidding for work in or adjacent to areas containing asbestos
- all workers in or adjacent to these areas
- tenants who may occupy the areas containing asbestos

All employers discovering asbestos-containing materials on a worksite must notify the building owner and other employers on site within 24 hours. They must inform building owners of the presence, location, and quantity of the asbestos-containing materials. Employers also must inform building owners and employees working in nearby areas of the precautions taken to confine airborne asbestos. Within 10 days of project completion, employers must inform building owners and other employers on site of the location and quantity of remaining asbestos-containing materials and any final monitoring results.

[10] Plastic sheeting placed over all openings to the work area to prevent airborne asbestos from migrating to an adjacent area.

At any time, employers or building owners may demonstrate that a material does not contain asbestos by inspecting the material according to the requirements of the *Asbestos Hazard Response Act* (40 CFR 763, Subpart E) and by performing tests to prove asbestos is not present and obtaining approval from DEQ/LRAPA in writing.[11]

Employers do not have to inform employees that building materials do not contain asbestos; however, employers must retain the information, data, and analysis supporting the determination. (See *Recordkeeping*, Page 9, for specific information.)

Signs

At entrances to rooms or areas containing asbestos thermal insulation and surfacing materials, the building owner must post signs identifying the material, its location, and work practices that ensure it is not disturbed.

Employers must post signs in regulated areas to inform employees of the dangers and precautions. (See *Regulated Areas*, Page 12, and Appendix, Page 28.)

Labels

Employers must attach warning labels to all products and containers of asbestos, including waste containers, and all installed asbestos products, when possible. Labels must be printed in large, bold letters on a contrasting background and used in accordance with OR-OSHA's *Hazard Communication Standard* (OAR 437-002-1910.1200). All labels must contain a statement warning against breathing asbestos fibers and contain the following legend:

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

Labels are not required when asbestos concentration is less than 1 percent by weight or a bonding agent, coating, or binder has altered asbestos fibers, prohibiting the release of airborne asbestos over the PEL or STEL during reasonable use, handling, storage, disposal, processing, or transportation. DEQ/LRAPA only require labels on asbestos waste disposal packages.

When building owners or employers identify previously installed possible asbestos-containing materials, labels or signs must be attached or posted to inform employees which materials contain asbestos. Attached labels must be clearly noticeable and readable.

Employee information and training General training requirements

Employers must provide training for all employees installing and handling asbestos-containing products and for employees performing Class I through IV asbestos operations. Training must be provided at no cost and before or upon beginning these jobs and at least annually thereafter.

Training courses must be easily understandable to employees and must inform them of the following:

- ways to recognize asbestos
- adverse health effects of asbestos exposure
- the relationship between smoking and asbestos in causing lung cancer
- operations that could result in asbestos exposure and the importance of protective controls to minimize exposure
- the purpose, proper use, fitting instruction, and limitations of respirators
- the appropriate work practices for performing asbestos jobs
- medical surveillance program requirements

[11] See OAR 437-003-1926.1101 for specific testing requirements.

- the contents of the asbestos standard
- the names, addresses, and phone numbers of public health organizations that provide information and materials or conduct smoking-cessation programs
- required signs and labels and their meanings

The employer also must provide, at no cost to employees, written materials relating to employee training and self-help smoking cessation programs.

Additional training based on work class (Some of the activities considered Class I, II, III, or IV work under OSHA rules may also be considered, inherently or through physical alteration, friable asbestos removal projects under DEQ/LRAPA rules.)
For Class I, training must be equivalent in curriculum, method, and length to the EPA Model Accreditation Plan (MAP) asbestos abatement worker training (40 CFR 763, Subpart E, Appendix C). Eight hours of annual refresher training is required. DEQ accredits training providers to train and certify workers who perform friable asbestos removal under the MAP.

For Class II work involving asbestos-containing material such as roofing, flooring, siding materials, ceiling tiles, or transite panels training must include elements found in OAR 437-003-1926.1101(k)(9)(viii). This training will include hands-on training and last at least eight hours. Annual refresher is required; no duration is specified.

For Class III operations, training must be equivalent in curriculum and method to the 16-hour "Operations and Maintenance" course developed by EPA for maintenance and custodial workers whose work disturbs asbestos-containing materials (See 40 CFR 763.92). The course must include hands-on training in proper respirator use and work practices. Annual refresher training is required; no duration is specified.

For Class IV operations, training must be equivalent in curriculum and method to EPA awareness training.[12] Training must focus on locations of asbestos-containing or presumed-asbestos-containing materials and ways to recognize damage and avoid exposure. The course must be at least two hours long. Annual refresher training is required, no duration is specified.

Employers must provide OR-OSHA and the director of NIOSH all information and training materials upon request.

Methods of compliance

Control measures

For all covered work, employers must use the following control methods to comply with the PEL and STEL and DEQ/LRAPA rules:

- local exhaust ventilation equipped with HEPA-filter[13] dust collection systems
- enclosure or isolation of processes producing asbestos dust
- ventilation of the regulated area to move contaminated air away from the employees' breathing zone and toward a filtration or collection device equipped with a HEPA filter
- engineering and work practice controls to reduce exposure to the lowest possible levels, supplemented by respirators to reach the PEL or STEL or lower
- file a notification with DEQ/LRAPA
- use waste shipment form for waste transport

[12] See OAR 437-003-1926.1101 for more information.
[13] High-efficiency particulate air (HEPA) filter capable of trapping and retaining at least 99.97 percent of all mono-dispersed particles of 0.3 micrometers in diameter.

Employers must use the following engineering controls and work practices for all operations, regardless of exposure levels:

- vacuum cleaners equipped with HEPA filters to collect all asbestos-containing or presumed asbestos-containing debris and dust
- wet methods or wetting agents to control employee exposures, except when wetting methods would cause electrical hazards, equipment malfunction, slipping hazards or other hazards
- prompt cleanup and disposal of asbestos-contaminated wastes and debris in leak-tight containers

The following work practices and engineering controls are **prohibited** for all asbestos-related work or work that disturbs asbestos or presumed asbestos-containing materials, regardless of measured exposure levels or the results of initial exposure assessments:

- high-speed abrasive disc saws not equipped with a point-of-cut ventilator or enclosure with HEPA-filtered exhaust air, DEQ/LRAPA will not allow outside containment
- compressed air to remove asbestos or asbestos-containing materials unless the compressed air is used with an enclosed ventilation system
- dry sweeping, shoveling, or other dry cleanup of dust and debris
- employee rotation to reduce exposure
- open accumulation of friable asbestos materials or asbestos containing waste
- disposal at an unauthorized site

OR-OSHA's asbestos standard established specific requirements for each class of asbestos work in construction.

Class I work

A designated competent person must supervise all Class I work, including installing and operating the control system. Employers must place barriers over all openings to regulated areas or use another barrier or isolation method to prevent airborne asbestos from migrating for the following:

- Class I jobs removing more than 25 linear or 10 square feet of thermal insulation or surfacing material
- other Class I jobs without negative exposure assessments
- areas adjacent to a Class I regulated area where employees are working

Otherwise, employers must perform perimeter area surveillance during each work shift. No asbestos dust should be visible. Perimeter monitoring must show that clearance levels are met (as contained in 40 CFR 763, Subpart E of the "EPA Asbestos in Schools" rule) or that perimeter area levels are no greater than background levels.

For all Class I jobs:

- HVAC systems must be isolated in the regulated area by sealing with a double layer of 6 mil plastic or the equivalent
- impermeable drop cloths must be placed on surfaces beneath all removal activity
- all objects within the regulated area must be covered with secured impermeable drop cloths or plastic sheeting
- for jobs without a negative exposure assessment or where exposure monitoring shows the PEL is exceeded, employers must ventilate the regulated area to move the contaminated air away from the employee breathing zone and toward a HEPA filtration or collection device, DEQ/LRAPA will not allow alternatives the negative pressure enclosure requirements for removing friable asbestos material

In addition, employees performing Class I work must use one or more of the following control methods (For the specifications, limitations, and recommended work practices of these required control methods, refer to *Occupational Exposure to Asbestos*, OAR 437-003-1926.1101):

- negative-pressure enclosure systems must be used when the configuration of the work area makes it impossible to erect an enclosure

- glove bag systems can be used to remove asbestos-containing or presumed-asbestos-containing materials from straight runs of piping
- negative-pressure glove bag systems can be used to remove asbestos or presumed-asbestos-containing materials from piping
- negative-pressure glove box systems can be used to remove asbestos or presumed-asbestos-containing materials from pipe runs
- water spray process systems may be used to remove asbestos or presumed-asbestos-containing materials from cold-line piping if employees carrying out the process have completed a 40-hour training course on its use in addition to training required for all employees performing Class I work
- a walk-in enclosure that accommodates no more than two people (mini-enclosure) may be used if the disturbance or removal can be completely contained by the enclosure

Employers may use different or modified engineering and work practice controls if the following provisions are met: (DEQ/LRAPA must approve all alternatives in writing)

- The control method encloses, contains, or isolates the process or source of airborne asbestos dust or captures and redirects the dust before it enters into the employees' breathing zone
- A certified industrial hygienist or licensed professional engineer qualified as a project designer evaluates work area, work practices, and engineering controls. That person must certify, in writing, that the planned control method adequately reduces direct and indirect employee exposure to or below PEL under worst-case conditions. The planned control method must also prevent asbestos contamination outside the regulated area. This must be determined by samplings meeting the requirements of the "EPA Asbestos in Schools" rule or perimeter monitoring
- Before using alternative methods to remove more than 25 linear or 10 sq. ft. of thermal system insulation or surfacing material, employers must send a copy of evaluation and certification to OR-OSHA's Standards and Technical Resources Section, 350 Winter St. NE, Rm. 430, Salem OR 97310

Class II work

The competent person must supervise all Class II work.

Employers must use critical barriers over all openings to the regulated area or another barrier or isolation method to prevent airborne asbestos from migrating for the following:

- all indoor Class II jobs without a negative exposure assessment
- situations where changing conditions indicate exposure above the PEL
- situations where asbestos-containing materials are not removed substantially intact

Otherwise, employers must perform perimeter area monitoring to verify that the barrier works properly. Impermeable drop cloths must be placed on all surfaces beneath removal activities.

All Class II asbestos work can use the same work practices and requirements as Class I asbestos jobs. Alternatively, Class II work can be performed more easily using simple work practices set out in the standard for specific jobs. DEQ/LRAPA require approval in writing for any alternative that involves removal of friable asbestos material or any material that may become friable when physically altered during the removal process.

For removing vinyl and asphalt flooring materials containing asbestos or installed in buildings constructed before 1981 and not verified as asbestos-free, employers must ensure employees do the following:

- **not** sand flooring or its backing
- **not** rip up resilient sheeting
- **not** dry sweep
- **not** use mechanical chipping unless performed in a negative-pressure enclosure
- use vacuums equipped with HEPA filters to clean floors
- use wet methods when removing resilient sheeting by cutting
- use wet methods to scrape residual adhesives and/or backing

- remove tiles intact, unless impossible
- omit wetting if tiles are heated and removed intact
- assume resilient flooring material, including associated mastic and backing, are asbestos-containing, unless an industrial hygienist determines it asbestos-free
- file a notification with DEQ/LRAPA for a friable asbestos removal
- use an Oregon licensed asbestos contractor
- package and dispose of asbestos wastes in accordance with DEQ/LRAPA rules

To remove asbestos-containing roofing materials, employers must ensure that employees do the following:

- remove them intact
- use wet methods when possible
- continuously mist cutting machines during use, unless the competent person determines misting to be unsafe
- immediately HEPA-vacuum all loose dust along the cut
- lower to the ground as soon as possible or by the end of the work shift any unwrapped or unbagged roofing material in a covered, dust-tight chute, crane, or hoist
- transfer unwrapped materials to a closed receptacle to prevent dispersing the dust when lowered
- isolate roof-level heating and ventilation air intake sources or shut down the ventilation system

When removing cementitious asbestos-containing siding and shingles or transite panels, employers must ensure that employees do the following:

- **not** cut, abrade, or break siding, shingles, or transite panels unless methods less likely to result in asbestos fiber release cannot be used
- spray each panel or shingle with amended water[14] before removing
- lower to the ground any unwrapped or unbagged panels or shingles in a covered dust-tight chute, crane, or hoist or place them in an impervious waste bag or wrap them in plastic sheeting as soon as possible or by the end of the work shift
- cut nails with flat, sharp instruments
- file a notification with DEQ/LRAPA
- dispose of asbestos waste at an authorized landfill

When removing asbestos-containing gaskets, employers must ensure that employees:

- remove gaskets within glove bags if they are visibly deteriorated and unlikely to be removed intact
- thoroughly wet the gaskets with amended water prior to removing
- immediately place the wet gaskets in a disposal container
- scrape, using wet methods to remove residue

For removal of any other Class II asbestos-containing material, employers must ensure employees do the following:

- **not** cut, abrade, or break the material
- thoroughly wet the material with amended water before and during removal
- remove the material intact, if possible
- immediately bag or wrap removed asbestos-containing materials or keep them wet until transferred to a closed receptacle at the end of the work shift

Employers may use different or modified engineering and work practice controls if either of the following are true: (DEQ/LRAPA must give approval in writing for such alternatives)

- They can demonstrate by employee exposure data during the use of such methods and under similar conditions that employee exposure will not exceed the PEL under any anticipated circum-stance.

[14] Water to which surfactant (a wetting agent) has been added to increase the ability of the liquid to penetrate an asbestos-containing material.

- The competent person evaluates the work area, the projected work practices, and the engineering controls, and certifies in writing that they will reduce all employee exposure to below the PEL under expected conditions. The evaluation must be based on exposure data for conditions closely resembling those of the current job and for employees with equivalent training and experience.

Class III work

Employers must use wet methods and local exhaust ventilation when feasible during Class III work. Where drilling, cutting, abrading, sanding, chipping, breaking, or sawing thermal insulation or surfacing material occurs; employers must use impermeable drop cloths as well as mini-enclosures, glove bag systems, or other effective isolation methods. Where a negative exposure assessment exists or monitoring shows the PEL is exceeded, employers must contain the area with impermeable drop cloths and plastic barriers or other isolation methods and ensure that employees wear respirators. (See also *Respiratory Protection*, Page 23.)
DEQ/LRAPA only allow maintenance activities where less than 3 linear or 3 square feet of asbestos removal takes place as part of a needed repair operation.

Class IV work

Employees conducting Class IV asbestos work must have attended an asbestos-awareness training program. Employees must use wet methods and HEPA vacuums to promptly clean asbestos-containing or presumed asbestos-containing debris. When cleaning debris and waste in regulated areas, employees must wear respirators. In areas where thermal insulation or surfacing material is present, employees must assume that all waste and debris contain asbestos. DEQ/LRAPA only allow maintenance activities where less than 3 linear or 3 square feet of asbestos removal takes place as part of a needed repair operation.

Respiratory protection

Respirators must be used for the following:

- Class I asbestos jobs
- Class II work where an asbestos-containing material is not removed substantially intact
- Class II and III work not using wet methods
- Class II and III work without a negative exposure assessment
- Class III jobs where asbestos-containing or presumed asbestos-containing thermal insulation or surfacing material is cut, abraded, or broken
- Class IV work within a regulated area where respirators are required
- work where employees are exposed above the PEL or STEL and in emergencies

Employers must provide respirators at no cost to employees, selecting the appropriate type from among those approved by the Mine Safety and Health Administration (MSHA) and NIOSH.

For all employees performing Class I work in regulated areas and for jobs without a negative exposure assessment, employers must provide full-facepiece supplied-air respirators operated in pressure-demand mode and equipped with an auxiliary positive-pressure, self-contained breathing apparatus.[15] However, a tight-fitting powered air-purifying respirator (PAPR) is permitted if the exposure assessment and monitoring show that the exposure levels do not exceed 1 f/cc as an eight-hour TWA. When the PAPR is used, either HEPA egress cartridges or auxiliary bottles of air for supplied-air respirators are allowed.

Employers must provide half-mask purifying respirators equipped with high-efficiency filters for Class II and III asbestos jobs without a negative exposure assessment and for Class III jobs where work disturbs asbestos-containing or presumed asbestos-containing thermal insulation or surfacing materials.

If a particular job has not been addressed here, and exposures are above the PEL or STEL, the asbestos standard, OAR 437-003-1926.1101, contains a table specifying types of respirators to use.

[15] Unless the "competent person" determines that wearing such a respirator is not feasible, in which case a tight-fitting powered air-purifying respirator may be worn.

Employers must institute a respiratory program in accordance with *Respiratory Protection,* OAR 437-002-1910.134. Employers must permit employees using filter respirators to change the filters when breathing resistance increases; employers must maintain an adequate supply of filters. Employers must permit employees wearing respirators to leave work areas to wash their faces and respirator facepieces to prevent skin irritation.

Employers must ensure that respirators fit properly, with minimal facepiece leakage. For employees wearing negative-pressure respirators, employers must perform initial quantitative or qualitative face-fit tests and at least every six months thereafter. The qualitative fit tests can only be used for fit testing half-mask respirators (where permitted) or for full-facepiece air-purifying respirators (where they are worn at levels where half-facepiece air-purifying respirators are permitted). Employers must conduct qualitative and quantitative fit tests in accordance with *Respiratory Protection* (OAR 437-002-1910.134) and use the tests to select facepieces that provide the required protection.

Employers must not assign any employee to tasks requiring respirator use if physical exams and the examining physician's recommendations show that he or she would be unable to function normally while using a respirator. Employers must assign such employees to other jobs or give them the opportunity to transfer to different positions in the same geographical area and with the same seniority, status, pay rate, and job benefits, if such positions are available.

Protective clothing

Employers must provide and require the use of protective clothing such as coveralls or similar whole-body clothing, head coverings, gloves, and foot coverings for the following:

- any employee exposed to airborne asbestos exceeding the PEL or STEL
- work without a negative exposure assessment
- any employee performing Class I work involving the removal of over 25 linear or 10 square feet of asbestos-containing or presumed asbestos-containing thermal insulation or surfacing materials

Employers must launder contaminated clothing to prevent the release of airborne asbestos in excess of the PEL or STEL. Any employer who gives contaminated clothing to another person for laundering must inform him or her of the contamination.

Employers must transport contaminated clothing in sealed, impermeable bags or other closed impermeable containers bearing appropriate labels. (See *Labels*, Page 14, for requirements.)

The competent person must examine employee worksuits at least once per workshift for rips or tears. Rips or tears found while the employee is working must be mended or replaced immediately.

Hygiene facilities

Decontamination requirements for Class I asbestos work

For employees performing Class I asbestos jobs involving more than 25 linear or 10 square feet of asbestos-containing or presumed asbestos-containing thermal insulation or surfacing materials, employers must create a decontamination area adjacent to and connected with the regulated area. Employees must enter and exit the regulated area through the decontamination area.

The decontamination area must be composed of an equipment room, shower area, and clean room in series. The equipment room must be supplied with impermeable, labeled bags and containers to store and dispose of contaminated protective equipment. Shower facilities must be adjacent to both the equipment and clean rooms, unless work is performed outdoors or this arrangement is impractical. If so, employers must ensure that employees remove asbestos contamination from their worksuits in the equipment room using a HEPA vacuum before proceeding to a shower non-adjacent to the work area or remove their contaminated worksuits in the equipment room, don clean worksuits, and proceed to a shower non-adjacent to the work area.

The clean room must have a locker or appropriate storage container for each employee unless work is performed outdoors or this arrangement is not possible. In such a case, employees may clean protective clothing with a portable HEPA vacuum before leaving the regulated area. Employees must change into street clothes in clean change areas.

Before entering the regulated area, employees must enter the decontamination area through the clean room, remove and deposit street clothing in a provided locker, and put on protective clothing and respiratory protection before leaving the clean area. To enter the regulated area, employees must pass through the equipment room.

Before exiting the regulated area, employees must remove all gross contamination and debris and then remove their protective clothing in the equipment room, depositing the clothing in labeled, impermeable bags or containers. Employees must shower before entering the clean room to change into street clothing.
When employees consume food or beverages at the Class I worksite, employers must provide lunch areas with airborne asbestos levels below the PEL and/or excursion limit.

Decontamination requirements for other Class I and Class II and III asbestos work without a negative exposure assessment and where exposures exceed the PEL

Employers must establish an equipment area adjacent to the regulated area for the decontamination of employees and their equipment. The area must be covered by an impermeable drop cloth on the floor (or horizontal work surface) and must be large enough to accommodate equipment cleaning and personal protective equipment removal without spreading contamination beyond the area. Before removing work clothing, employees must clean it with a HEPA vacuum. All equipment and the surfaces of containers filled with asbestos-containing materials must be cleaned prior to removal. Employers must ensure employees enter and exit the regulated area through the equipment area.

Decontamination requirements for Class IV work

Employers must ensure employees performing Class IV work within a regulated area comply with the hygiene practices required of employees performing work with higher classifications in that regulated area. Otherwise, employees cleaning up thermal system insulation or asbestos-containing debris must use decontamination facilities required for Class II and III work where exposure exceeds the PEL or no negative exposure assessment exists.

Smoking

Employers must ensure that employees performing ***any*** class of asbestos work do not smoke in any work area with asbestos exposure.

Housekeeping

Asbestos waste, scrap, debris, bags, containers, equipment, and contaminated clothing consigned for disposal must be collected and disposed of in sealed, labeled, impermeable bags or other closed, labeled impermeable containers. Employees must use HEPA-filtered vacuuming equipment and must empty it so as to minimize asbestos reentry into the workplace.

All vinyl and asphalt flooring material must remain intact unless the building owner demonstrates that the flooring does not contain asbestos. Sanding flooring material is prohibited. Employees stripping finishes must use wet methods and low abrasion pads at speeds lower than 300 revolutions per minute. Burnishing or dry buffing may be done only on flooring with enough finish that the pad cannot contact the flooring material. Employees must not dust, sweep, or vacuum without a HEPA filter in an area containing thermal insulation or surfacing material or visibly deteriorated asbestos-containing materials. Employees must promptly clean and dispose of dust and debris in leak-tight containers.

OR-OSHA Services

OR-OSHA offers a wide variety of safety and health services to employers and employees:

Consultative Services

- Offers no-cost on-site safety and health assistance to Oregon employers for help in recognizing and correcting safety and health problems in their workplaces.
- Provides consultations in the areas of safety, industrial hygiene, ergonomics, occupational safety and health programs, new business assistance, and the Safety and Health Achievement Recognition Program (SHARP).

Enforcement

- Offers pre-job conferences for mobile employers in industries such as logging and construction.
- Provides abatement assistance to employers who have received citations and provides compliance and technical assistance by phone.
- Inspects places of employment for occupational safety and health rule violations and investigates workplace safety and health complaints and accidents.

Standards & Technical Resources

- Develops, interprets, and provides technical advice on safety and health standards.
- Provides copies of all OR-OSHA occupational safety and health standards.
- Publishes booklets, pamphlets, and other materials to assist in the implementation of safety and health standards and programs.
- Operates a Resource Center containing books, topical files, technical periodicals, a video and film lending library, and more than 200 databases.
- Manages the Worksite Redesign Grant Program, which awards grants to develop and implement solutions to workplace safety, health, and ergonomic problems.

Public Education & Conferences

- Conducts conferences, seminars, workshops, and rule forums.
- Coordinates and provides technical training on topics like confined space, ergonomics, lockout/tagout, and excavations.
- Provides workshops covering basic safety and health program management, safety committees, accident investigation, and job safety analysis.
- Manages the Voluntary Protection Program and the Safety and Health Education and Training Grant Program, which awards grants to industrial and labor groups to develop occupational safety and health training materials for Oregon workers.

For more information, call the OR-OSHA office nearest you. (All phone numbers are voice and TTY). **Visit us on the World Wide Web at:** *www.orosha.org*

Salem Central Office
350 Winter St. NE, Rm. 430
Salem, OR 97301-3882
Phone: (503) 378-3272
Toll-free: (800) 922-2689
Fax: (503) 947-7461
Spanish-language phone:
1 (800) 843-8086

Salem
1225 Ferry St. SE, U110
Salem, OR 97301-4282
(503) 378-3274
Consultation: (503) 373-7819

Portland
1750 NW Naito Parkway, Ste. 112
Portland, OR 97209-2533
(503) 229-5910
Consultation: (503) 229-6193

Bend
Red Oaks Square
1230 NE Third St., Ste. A-115
Bend, OR 97701-4374
(541) 388-6066
Consultation: (541) 388-6068

Eugene
1140 Willagillespie, Ste. 42
Eugene, OR 97401-2101
(541) 686-7562
Consultation: (541) 686-7913

Medford
1840 Barnett Rd., Ste. D
Medford, OR 97504-8250
(541) 776-6030
Consultation: (541) 776-6016

Pendleton
721 SE Third St., Ste. 306
Pendleton, OR 97801-3056
(541) 276-9175
Consultation: (541) 276-2353

DEQ/LRAPA OFFICES

Copies of the DEQ rules; guidance documents; fact sheets; consultant, laboratory, abatement contractor and landfill lists; project notification and waste shipment report forms; and other asbestos information can also be found on DEQ's web page at *www.deq.state.or.us/aq/asbestos*.

For further information about the DEQ/LRAPA asbestos requirements one of the offices listed below:

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, ext. 222.

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.

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Provision	Class I	Class II	Class III	Class IV	DEQ/LRAPA	DEQ/LRAPA
Definition	Removal of thermal insulation and surfacing materials	Removal of all other asbestos not thermal insulation or surfacing materials	Maintenance and repair operations disturbing asbestos-containing materials	Housekeeping and custodial operations (including construction site cleanup)	Remove and dispose of all asbestos material before any activity that would disturb the material or preclude access to it for future removal. **Friable** asbestos material means any asbestos-containing material that had pressure can crumble, pulverize or reduce to powder when dry. (friable materials include, but is not limited to, thermal insulation, sheet vinyl, ceiling texture, boiler insulation, and any nonfriable material that is shattered, pulverized, or caused to release visible emissions)	Remove all nonfriable asbestos-containing material before any activity that would disturb the material or cause the release of asbestos fibers into the air or preclude access to the materials for future removal. **Nonfriable** asbestos material means any asbestos-containing material that cannot be crumbled, pulverized, or reduced to powder by hand pressure. (nonfriable material includes, but is not limited to vinyl tile cement siding and roofing or any other material that DEQ considers encased in a viable rigid matrix)
Regulated areas	Required (signs required)	Required (signs required)	Required (signs required)	Required (signs required)	Required for all projects (viewing windows required)	OSHA requirements apply
Competent person	Required on site: • Inspect each workshift • Contractors and supervisors training required	Required on site: • Inspect often • Contractors and supervisors training required	Required on site: • Inspect often • Operations and maintenance training required	Required on site: • Inspect often • Operations and maintenance training required	All Workers and Supervisors must be certified by DEQ (all asbestos contractors must have a DEQ license and each friable project must have a Supervisor)	OSHA requirements apply

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Air monitoring	• Initial if no negative exposure assessment (NEA) • Daily if no NEA • Terminate if <permissible exposure limit (PEL) • Additional if conditions change	• Initial if no NEA • Daily if no NEA Terminate if <PEL • Addition if conditions change	• Initial if no NEA • Periodic to accurately predict if >PEL • Terminate if <PEL • Additional if conditions change		Air clearances upon completion of a friable asbestos project by a person independent of the abatement contractor when more than 260 linear or 160 square feet of asbestos is removed within negative pressure containment.	OSHA requirements apply
Medical surveillance	Required if: • wearing negative pressure respirator • >PEL • >30 days exposure/year	Required if: • wearing negative pressure respirator • >PEL • >30 days exposure/year	Required if: • wearing negative pressure respirator • >PEL • >30 days exposure/year	Required if: • wearing negative pressure respirator • >PEL	OSHA requirements apply	OSHA requirements apply
Respirators	Mandatory for all Class I jobs	Mandatory if: • non-intact removal • no NEA • >PEL • dry removal (except for roofing) • in emergencies	Half-mask air-purifying respirator minimum if: • no NEA • thermal insulation or surfacing materials disturbed • >PEL Mandatory if: • dry removal (except for roofing) • in emergencies	Mandatory if: • in regulated area where required • if >PEL • in emergencies	OSHA requirements apply	OSHA requirements apply
Protective clothing and equipment	Required for all jobs if: • > 25 linear or 10 square feet of thermal insulation or surfacing materials removal • no NEA • >PEL	Required for all jobs if: • no NEA • >PEL	Required for all jobs if: • no NEA • >PEL	Required for all jobs if: • no NEA • >PEL	OSHA requirements apply	OSHA requirements apply
Training	Equivalent to ***Asbestos Hazard Response Act*** (AHERA) worker training	See K(9)(iii) & K(9)(iv)	Equivalent to AHERA operations and maintenance course	Equivalent to AHERA awareness training	Training required by a DEQ accredited trainer	OSHA competent person requirements apply
Decontamination procedures	Full decon unit required if > 25 linear or 10 square feet of thermal insulation or surfacing materials removal: • connected	If >PEL or no NEA: • equipment room/area required • drop cloths required • area must accommodate	If >PEL or no NEA: • equipment room/area required • drop cloths required • area must	If >PEL or no NEA: • equipment room/area required • drop cloths required	OSHA requirements apply	OSHA requirements apply

Decontamination procedures (continued)	shower/clean room required • vacuum, change, shower elsewhere • detailed procedures Lunch area required If < 25 linear or 10 square feet of thermal insulation or surfacing materials removal or >PEL or no NEA: • equipment room/area required • drop cloths required • area must accommodate cleanup • must decontaminate all personal protective equipment • must enter regulated area through equipment room/decon area No smoking in work area	cleanup • must decontaminate all personal protective equipment • must enter regulated area through equipment room/decon area No smoking in work area	accommodate cleanup • must decontaminate all personal protective equipment • must enter regulated area through equipment room/decon area If NEA, must vacuum No smoking in work area	• area must accommodate cleanup • must decontaminate all personal protective equipment • must enter regulated area through equipment room/decon area No smoking in work area		
Required work practices and engineering controls	• wet methods • HEPA vacuum • Prompt cleanup/disposal	• wet methods • HEPA vacuum • Prompt cleanup/disposal	• wet methods • HEPA vacuum • Prompt cleanup/disposal	• wet methods • HEPA vacuum • Prompt cleanup/disposal	• Wet methods • HEPA equipment • Prompt cleanup • Disposal at an authorized landfill	• Wet methods • Remove intact • Prompt clean up • Disposal at an authorized landfill
Required work practices and engineering controls to comply with PEL	• HEPA local exhaust • Enclosure • Directed ventilation • Other work practices • Supplement with respirators	• HEPA local exhaust • Enclosure • Directed ventilation • Other work practices • Supplement with respirators	• HEPA local exhaust • Enclosure • Directed ventilation • Other work practices • Supplement with respirators	• HEPA local exhaust • Enclosure • Directed ventilation • Other work practices • Supplement with respirators	• Wet methods • HEPA equipment • Prompt cleanup • Disposal at an authorized landfill	• Wet methods • Remove intact • Prompt clean up • Disposal at an authorized landfill

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Prohibited work practices and engineering controls	• High-speed abrasive disc saws without HEPA • Compressed air without capture device • Dry sweeping/ shoveling • Employee rotation	• High-speed abrasive disc saws without HEPA • Compressed air without capture device • Dry sweeping/ shoveling • Employee rotation	• High-speed abrasive disc saws without HEPA • Compressed air without capture device • Dry sweeping/ shoveling • Employee rotation	• High-speed abrasive disc saws without HEPA • Compressed air without capture device • Dry sweeping/ shoveling • Employee rotation	• Dry removal • Open storage or accumulation of friable asbestos materials or asbestos-containing waste material • Disposal at a site not authorized to handle asbestos waste	• Dry removal • Open storage or accumulation of friable asbestos materials or asbestos-containing waste material • Disposal at a site not authorized to handle asbestos waste
Controls and work practices	• Critical barriers/ isolation methods required if: - > 25 linear or 10 square feet of thermal insulation or surfacing materials removal - < 25 linear or 10 square feet of thermal insulation or surfacing materials removal only if no NEA or adjacent workers • HVAC isolation required • Drop cloths required • Directed ventilation required if no NEA or >PEL	For indoor work only: • critical barriers/isolation methods required if: - no NEA - likely >PEL - non-intact removal • drop cloths required If >PEL, must use: • local HEPA exhaust • process isolation • directed ventilation controls supplemented with respirators For removal of vinyl and asphalt flooring materials: • no sanding • HEPA vacuum • Wet methods • No dry seeping • Chipping done in negative-pressure enclosure • Intact removal, if possible • Dry heat removal allowed • Assume contains asbestos without an analysis For removal of built-up roofing materials or asbestos-cement shingles:	• critical barriers required if: - no NEA - PEL via monitoring • Drop cloths required • Local HEPA exhaust required Enclosure or isolation of operation required if: • TSI or SM is drilled, cut, abraded, sanded, sawed, or chipped.	• See Required Work Practices and Engineering Controls	• File DEQ notification and fee • Negative pressure containment • Disposal packaging • Waste shipment form	• File DEQ notification and fee • Follow DEQ guidance • Waste shipment form suggested

Controls and work practices (continued)	Also, one or more of the following controls must be used: • negative-pressure enclosure • glove bag for straight runs of pipe • negative-pressure glove bag for pipe runs • negative-pressure glove box for pipe runs • water spray process • mini-enclosure	• Intact removal, if possible • HEPA vacuum • Wet methods, if feasible • Cutting machine misting • HEPA-vacuum debris • Lower by day's end • Control dust of unbagged material • Roof vent system protected For removal of cementitious siding, shingles, or transite panels • Intact removal, if possible • Wet methods • Lower in dust-tight chute by day's end • Cut nail heads For removal of gaskets: • Use glove bags if not intact • Wet removal • Prompt disposal • Wet scraping Additional requirements: • Wet methods • Intact removal, if possible • Cutting, abrading, or breaking prohibited				

5/9/03 - Item J handout

!! CONTRACTOR ALERT !!

On May 9, 2003, the Environmental Quality Commission adopted asbestos rules that modified the asbestos regulations. These modifications change how contractors handle renovation and demolition projects.

The rule includes a change to the building survey requirement that makes DEQ's survey requirement equal to EPA's survey rule. The rule still requires surveys in all public or private buildings but excludes surveys for residential structures to those with four or fewer dwelling units. Inspections must be done by an **accredited inspector** before work begins to determine whether asbestos is present. All building owners and operators, excluding buildings with four or fewer dwelling units, 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! For residential structures with four or fewer dwelling units you should have all materials suspected to contain asbestos tested by a lab before you start work.

Contractors must ensure that they do not cause exposure to asbestos during their renovation and demolition projects. Regardless of whether a building survey is required or not, you as a contractor will be held responsible for asbestos exposure! If you disturb asbestos containing materials you will violate DEQ rules and you are libel for enforcement actions and clean up costs! OROSHA survey requirements still apply to all contractors that have employees!

Protect your self and the public by always making sure there are no asbestos-containing materials before you begin a renovation or demolition project.

If you would like more information, call DEQ at one the regional phone numbers listed below or visit our website at www.deq.state.or.us/aq/asbestos:

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.

(Revised 5/03)

5/9/03 - Item J handout

not broken or otherwise altered such that asbestos fibers could be released during removal, handling, and transport to an authorized disposal site.

(2) Accumulation of asbestos-containing material or asbestos-containing waste material is prohibited.

(3) Any person who removes non-friable asbestos-containing material not exempted under OAR 340-248-0250(1) shall comply with the following:

(a) Submit notification and fee to the Department Business Office on a Department form in accordance with OAR 340-248-0260.

(b) Removal of nonfriable asbestos-containing materials that are not shattered, crumbled, pulverized or reduced to dust until delivered to an authorized disposal site is exempt from OAR 340-248-0270(10) and OAR 340-248-0110. This exemption shall end whenever the asbestos-containing material becomes friable and releases asbestos fibers into the environment.

[**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: The publication(s) referred to or incorporated by reference in this rule are available from the office of the agency.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 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; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5620

340-248-0260
Asbestos Abatement Notifications Requirements

Written notification of any asbestos abatement project shall be provided to the Department on a Department form. 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), and (7).

(1) Submit the notifications as specified in section (4) of this rule and the project notification fee to the Department at least ten days before beginning any friable asbestos abatement project and at least five days before beginning any non-friable asbestos abatement project.

(a) The project notification fee shall be:

(A) $35 for each project less than 40 linear feet or 80 square feet, residential building, or non-friable asbestos abatement project.

(B) $70 for each project greater than or equal to 40 linear feet or 80 square feet but less than 260 linear feet or 160 square feet of asbestos-containing material.

(C) $275 for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos-containing material.

(D) $375 for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or 1600 square feet of asbestos-containing material.

(E) $650 for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.

(F) $750 for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.

(G) $1,200 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.

(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 40 linear feet or 80 square feet or less of asbestos removal.

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owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Particulate asbestos material means finely divided particles of asbestos or material containing asbestos.

Planned renovation operations means a renovation operation, or a number of such operations, in which some RACM will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Renovation means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

Resilient floor covering means asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than 1 percent asbestos as determined using polarized light microscopy according to the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy.

Roadways means surfaces on which vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

Strip means to take off RACM from any part of a facility or facility components.

Structural member means any load-supporting member of a facility, such as beams and load supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

Visible emissions means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor.

Waste generator means any owner or operator of a source covered by this subpart whose act or process produces asbestos-containing waste material.

Waste shipment record means the shipping document, required to be originated and signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material.

Working day means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

[49 FR 13661, Apr. 5, 1984; 49 FR 25453, June 21, 1984, as amended by 55 FR 48414, Nov. 20, 1990; 56 FR 1669, Jan. 16, 1991; 60 FR 31920, June 19, 1995]

§ 61.142 Standard for asbestos mills.

(a) Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill, including fugitive sources, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(b) Each owner or operator of an asbestos mill shall meet the following requirements:

(1) 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 operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.

(2) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction, including, to

January 2002	March 2002	August 2002	December 2002	May 2003	Fall 2003	Spring/Summer 2004
First rule making complete	DEQ learns that certain associations did not receive notice of proposed rule making	DEQ asks for and receives comments from associations and others about the recently adopted asbestos rules	EQC adopts temporary rule revising or repealing certain provisions	EQC approves making temporary rule permanent	DEQ forms asbestos advisory committee	DEQ completes second and final rule making

6/19/09 - Exhibit J handout

5/9/03 - Item E handout

MEMORANDUM

To: Key NR Agency Directors

From: Jim Brown

Subject: PCSRF Budget Meeting Follow-up

Date: 24 April 2003

As we discussed yesterday, I have agreed to provide the co-chairs with a $22 million dollar package for using the Pacific Coastal Salmon Recovery Fund (PCSRF) to backfill General Fund programs and fund key components of the Oregon Plan for Salmon and Watersheds. The funding constraints and principles I provided last week remain intact based on our conversation yesterday, and were used to frame the specific fund shifts and program funding decisions made identified in the attached spreadsheet. I am also continuing to operate on the premise that the program reductions identified for backfill will be accepted as one-time revenue reductions rather than as permanent program cuts. Doing so will provide a substantial measure of added credibility for this exercise to both the federal government and key stakeholders.

I am providing this memo and the spreadsheet to the co-chairs today in response to their invitation last week that we help identify appropriate fund shifts and use of the federal funds offered up by OWEB. It is my hope that the co-chair's budget will reflect the work and discussions we have had that resulted in the attached spreadsheet.

I. Available Pacific Coastal Salmon Recovery Fund

FFY 2002

$17.0 million:	Total Grant Award
$5.0 million:	Allocated
$11.631 million	Unallocated Funds

FFY 2003

$14.0 million	Total Grant Award
$00.0	Allocated
$10.4 million	Unallocated Funds Minus Earmarks

$22.031 million	**Total PCSRF Available**

II. PCSRF Constraints

1. Must support recovery of native salmon stocks via OWEB grant eligible activities: water quality, quantity, and salmon habitat restoration activities. Linkage to "core" Oregon Plan habitat restoration components is the eligibility hook since the Plan is Oregon's mechanism for addressing ESA listings, and habitat components are within the scope of OWEB's grant program.
2. Must be allocated by vote of the OWEB Board, and administered by agreement between the receiving agency and OWEB. Funds can't be redirected, administrative overhead will need to be specified, and funds will be for program implementation only through June 30, 2005.
3. Must provide auditable outcomes that support OWEB reporting requirements to NOAA Fisheries, the Inspector General's Office, and Congress.
4. Because this fund source is very soft, we can't anticipate availability for program continuation in future biennia.

III. Guiding Principles for Fund Shifting from GF to PCSRF

While it isn't desirable to move any program responsibility from General Fund to the PCSRF source, the availability of the federal funds will allow some GF Oregon Plan program cuts to be avoided in this biennium. Viewed in this context, individual programs considered for fund shifting were examined with an eye on both preserving essential elements of the Plan, and doing so in a manner most consistent with the intent (and realities) of the federal grant funds. The following are some guiding principles for federal funds use that were considered along with the fund constraints noted above:

1. Preserve key elements of Oregon Plan monitoring programs
2. Preserve capacity to provide technical assistance for landowner participants in Oregon Plan.
3. Core parts of water quality initiatives (TMDL and SB 1010) remain GF or M-66 Operational.
4. Preserve capacity of voluntary restoration entities (councils and districts).
5. Adequate funds for umbrella Oregon Plan components (IMST, Linkage of Oregon Plan to ESA).
6. Maintain adequate funds to support non- capital portion of the OWEB grant program.
7. Avoid funding core agency program responsibilities (particularly permitting and regulatory responsibilities) on federal funds.
8. No expansion of 2001-03 program funding levels.

Attachment

GRB

2003-05 Fund Shifts using M-66 LF and PCSRF FF

Fund Source	General Fund	Other Funds	M-66 LF Operations (35%)	M-66 LF Capital (65%)	PCSRF Federal Funds
ODFW					
Oregon Plan Monitoring					878,000
Oregon Plan Monitoring			(3,893,636)		3,893,636
Fish Screens Program Support	(206,424)				206,424
Spawning Surveys	(22,067)		22,067		
Habitat Biologists	(424,674)				424,674
Quantifying Fish Flows	(142,652)				142,652
Habitat Protection	(30,000)		30,000		
Aquatic Surveys		(362,724)			362,724
Fish Passage		(375,455)			375,455
Unidentified GF cuts for License Funding	(738,179)				
Totals	(1,563,996) 0	(738,179)	(3,841,569)	0 0	6,283,565
DEQ					
TMDL	(2,000,000)		2,000,000		
Volunteer Monitoring Coordinator					210,000
Oregon Plan Monitoring	(782,182)			[illegible]	782,182
Willamette TMDL Acceleration	(387,071)				387,071
Totals	(3,169,253) 0	0	2,000,000	0	1,379,253
Water Resources					
Oregon Plan Data	(800,000)				800,000
Instream water rights, tech assist	(1,200,000)				1,200,000
Totals	(2,000,000) 0	0 0	0 0	0 0	2,000,000
OWEB					
LCREP	(101,280)		101,280		
CHIP					665,000
ESA Linkage					1,000,000
Grant Program					3,000,000
Federal Grant Administration					660,000
Local Watershed Councils					1,700,000
IMST			(211,661)		611,661
Totals	(101,280) 0	0	(110,381)	0 0	7,636,661
Forestry					
Cumulative Effects	(96,346)				96,346
Data Collection and Monitoring	(973,973)				973,973
Education and Outreach	(74,967)				74,967
Forest Practices	(2,265,486)				2,265,486
Technical Assistance/Forest Mngt.	(949,577)				949,577
Totals	(4,360,349) 0	0 0	0 0	0 0	4,360,349
Agriculture					
Noxious Weed Control	(370,357)			370,357	
Plant, Pest, and Disease Control	(347,518)				347,518
Agricultural Water Quality	(2,000,000)		2,000,000		
Totals	(2,717,875) 0	0	2,000,000	370,357 0	347,518
Total All Activities	(13,912,753) 0	(738,179) 0	48,050 0	370,357 0	22,007,346

5/9/03 Item E handout

2003-05 Fund Shifts using M-66 LF and PCSRF FF

Co-Chair

Fund Source	General Fund	Other Funds	M-66 LF Operations (35%)	M-66 LF Capital (65%)	PCSRF Federal Funds
ODFW					
Fish Screens Program Support	(206,424)		206,424		
Spawning Surveys	(22,067)		22,067		
Water Quality and Policy	(264,082)				264,082
Forestry / pollution coordination	(213,595)				213,595
Assistant District Fish Biologists	(1,311,559)		830,287		481,272
Habitat Biologists	(424,674)				424,674
Wildlife Diversity	(874,113)		874,113		
Land Owner Assistance	(107,709)		107,709		
Habitat Protection	(30,000)		30,000		
District Fish Biologists		(5,030,636)			5,030,636
Aquatic Surveys		(362,724)			362,724
Fish Passage		(375,455)			375,455
Totals	(3,454,223)	(5,768,815)	2,070,600	0	7,152,438
DEQ					
TMDL Development	(3,444,935)			3,444,935	
Willamette TMDL Acceleration	(387,071)			387,071	
Biomonitoring	(782,182)				782,182
Totals	(4,614,188)	0	0	3,832,006	782,182
Water Resources					
Instream water rights, tech assist	(1,200,000)				1,200,000
Totals	(1,200,000)	0	0	0	1,200,000
OWEB					
Lower Columbia River Estuary Prog	(101,280)		101,280		
Administration			(548,433)		548,433
Local Watershed Councils			(2,400,000)		2,400,000
IMST			(211,661)		211,661
Totals	(101,280)	0	(3,058,814)	0	3,160,094
Forestry					
Data Collection and Monitoring	(1,070,319)				1,070,319
Oregon Plan Coordination	(283,921)				282,921
Education and Outreach	(167,460)				167,460
Forest Practices Enforcement	(1,328,483)		1,328,483		
Technical Assistance/Forest Mngt.	(985,577)		985,577		
Totals	(3,835,760)	0	2,314,060	0	1,520,700
Agriculture					
Agricultural water quality	(4,013,773)			4,013,773	
Noxious Weed Control	(370,357)			370,357	
Plant, Pest, and Disease Control	(1,347,518)		1,000,000		347,518
Soil & Water Conservation Districts	(2,088,008)				2,088,008
SWCD M-66 Support			(2,325,846)		2,325,846
Totals	(7,819,656)	0	(1,325,846)	4,384,130	4,761,372
Total All Activities	(21,025,107)	(5,768,815)	0	8,216,136	18,576,786
				FFY02 & FFY03 PCSRF Remaining	
Total GF and OF (OF used to backfill other GF in ODFW)	(26,793,922)				4,002,647

5/9/03, Item I handout, UMCDF

State of Oregon
Department of
Environmental
Quality

Umatilla Chemical Demilitarization Program
Status Update
Environmental Quality Commission
May 9, 2003

Umatilla Chemical Demilitarization Program

Permit Modifications: As of May 7, 2003 the Department has received a total of 190 Permit Modification Requests, including 144 Class 1 modifications (the least significant), 41 Class 2s, and five Class 3s. In addition, there have been three DEQ-initiated Permit Modifications. The Department is currently processing several permit modifications, including work on surrogate trial burn plans for the Deactivation Furnace System and the Metal Parts Furnace. We anticipate the first agent trial burn plan will be received within a week.

In July 2002 the Commission directed the Department to prepare a permit modification to address the operations of the Brine Reduction Area and the off-site shipment of liquid wastes. The Department prepared the Permit Modification and opened the public comment period on November 1, 2002. When the public comment period closed on December 23, 2002 the Department had received a total of 10 written and oral comments – three supported the permit modification and seven were opposed to it. Copies of all comments received were transmitted to the Commission on January 17, 2003. The Department is scheduled to bring this Permit Modification before the Commission at the July meeting.

Umatilla Chemical Demilitarization Program Website: Thanks to Ann Mayes in Hermiston and Jeni Cram in Headquarters, the Umatilla Chemical Demilitarization Program website is back up and running. We took the website offline in response to security concerns after the 9-11 attacks. The website can be accessed through DEQ's website. The address is http://www.deq.state.or.us/umatilla/index.htm. We invite you to take a look and email us with your questions and comments. Ann has been doing numerous presentations to local groups in Hermiston, including City Councils, high schools, and local civic groups. Last weekend Ann attended two Cinco de Mayo festivals to provide information to the Hispanic community. We will continue to engage in a proactive public information campaign in the months leading up to agent operations.

Surrogate Trial Burns:
Liquid Incinerator #1 (LIC1)
The surrogate trial burn of LIC1 was completed on February 8, 2003. Twelve tests were conducted over a 12-day period, under three different operating conditions. Eight of the tests involved spiking metals into a surrogate mixture of perchloroethylene and trichlorobenzene.

Four of the tests were conducted with a surrogate-only feed. The Department expects to receive the LIC1 surrogate trial burn report within the next week. The total time from start of surrogate shakedown activities on July 30, 2002 to the completion of the trial burn in February was just over six months.

Deactivation Furnace System (DFS)
The surrogate shakedown phase of the DFS began on February 11, 2003. The Permittees are conducting DFS shakedown testing using the surrogates monochlorobenzene and hexachloroethane. On March 29, UMCDF conducted a preliminary test using the surrogates and ten spiked metals. Results of that test showed exceedances of permitted limits for particulates and five of the metals. The Department issued a stop hazardous waste feed order on April 4. An investigation of the system by UMCDF indicated that bypassing of the filter units inside the Demister vessel (one component of the Pollution Abatement System) was the source of the excess emissions.

After replacement of the filter units with new, factory-assembled filters, restart was authorized on April 28 and another mini-burn was conducted shortly afterward to assess the effectiveness of the repairs to the Demister system. The test was halted at the mid-point due to operational problems indicated by excessive build-up of particulates on the filter in the sample train. Analysis of the samples collected during this partial run indicated emissions of very small particulates and nickel in excess of permit limits. The Permittees believe that the high chlorine content of the surrogate feed is resulting in a chemical reaction allowing highly soluble nickel chloride to pass through the Demister with the water in the gas stream, resulting in the observed results for particulates and nickel. Further investigations are underway to assess the source of the particulates and to evaluate the impact of reducing the chlorine content of the surrogate mix.

Legal Proceedings: The appeals known as "GASP I" and "GASP II" continue to move slowly through the appellate system. Another three weeks of trial time was completed in GASP III in late March and early April. The trial is set to resume on August 11 and we anticipate another two to three weeks of testimony and closing arguments. A decision on GASP III could come by the end of the year.

Other Topics of interest: The annual emergency exercise of the Chemical Stockpile Emergency Preparedness Program (CSEPP) is scheduled for June 3 and a meeting of the Governor's Executive Review Panel will probably be held in mid-July to review the results of the exercise.

The Department is preparing the process that we will follow for the EQC's decision on whether to approve the start of agent operations. Agent operations are not expected to begin before December. We will discuss the agent start-up approval process in more detail at your July meeting. In July we will also be briefing you on the Post Trial Burn Health Risk Assessment Protocol that the Department will be releasing for public comment this summer. The Department has assembled a Technical Workgroup (including members from EPA and several state agencies from Oregon and Washington) to assist with the drafting of the Protocol.

Status of other Chemical Demilitarization Sites

The **Johnston Atoll Chemical Agent Disposal System** (JACADS) has completed destruction of its chemical weapons stockpile and is now going through a closure process supervised by the EPA. The Metal Parts Furnace is the last operating furnace and is being used to process secondary wastes as the facility is dismantled. The Metal Parts Furnace is expected to be shut down later this month. Closure activities at JACADS should be completed by early 2004.

The **Tooele Chemical Agent Disposal Facility** (TOCDF) in Utah completed the processing of all GB chemical agent last year. The facility was decontaminated and re-tooled and began VX agent destruction on March 28, 2003, but shut down for several days in mid-April when a chemical reaction occurred in an agent storage tank. The facility was re-started soon after using a stand-by agent tank, but shut down again on May 3 to evaluate and correct the cause of VX migration into an observation corridor. A total of 1200 VX M-55 rockets have been processed through the Deactivation Furnace System.

The **Anniston Chemical Agent Disposal Facility** (ANCDF) in Alabama has completed surrogate trial burns on its three furnaces, although all of the trial burn reports have not yet been submitted to the state. The Alabama Department of Environment does not expect that agent operations will begin until there is resolution of the issues related to the emergency preparedness of the communities around the facility.

The **Aberdeen Chemical Agent Disposal Facility** (ABCDF) in Maryland started the neutralization process of its mustard ton containers on April 23, 2003. Aberdeen is using the "speedy neut" process where the ton containers are manually drained of liquid agent by workers wearing protective suits. The liquid agent is transferred to a storage tank and the ton containers are put back into storage to be decontaminated at a later date. The liquid agent is then mixed with hot water and the resulting hydrolysate will be shipped to a treatment facility in New Jersey. The first two ton containers were successfully drained of liquid agent, but the facility encountered difficulty in decontaminating the exterior of the containers so they could be put back into storage. The containers moved into the facility on April 23 are still there and the drained agent has not yet been neutralized. The Ton Container Cleanout Facility is under construction.

Construction of the **Newport Chemical Agent Disposal Facility** in Indiana is about 70% complete. The Newport facility is also going to use a form of "accelerated" neutralization to process its VX ton containers. However, the Army's plan to transport the hydrolysate from the neutralization process to a commercial wastewater treatment facility in Ohio has run into stiff opposition from the local community in Ohio.

The **Pine Bluff Chemical Agent Disposal Facility** in Arkansas has completed construction of its incineration facility and is undergoing systemization testing at this time. The **Pueblo, Colorado** facility had planned to use neutralization followed by bio-degradation for its stockpile of mustard-filled munitions, but is now considering accelerating the process by shipping the hydrolysate off-site. The **Blue Grass, Kentucky** facility will be a full-scale pilot facility using neutralization followed by Supercritical Water Oxidation for treatment of its stockpile. The Pueblo and Blue Grass facilities have not yet started construction.

5/8/03 EQC Meeting, Item D Handout

DIVISION 12 ADVISORY GROUP
Draft Minutes from Meeting #3 – April 2, 2003

Note: These minutes are in Draft form and have not been reviewed by the Advisory Group members for accuracy. A Final set will be available after the Group's review.

Present: Richard Angstrom (Oregon Concrete & Aggregate Producers Association)
Rich Barrett (regulated industry)
Roger Dilts (ACWA)
Sarah Doll (Oregon Environmental Council)
Jeff Dresser (Association of Oregon Industries)
Bob Emrick (Oregon Refuse & Recyclers Association)
Don Haagensen (attorney for regulated industry)
Karen King (City of Pendleton)
Rhett Lawrence (OSPIRG)
Proxy for Cliff Olson (Oregon Petroleum Marketers Association)
Linda Schoffman (Oregon Remodelers Association)
Bob Westcott (Wesco Parts Cleaners)
Robert Koster (LRAPA, auxiliary member)

Stephanie Hallock (DEQ – Director)
Anne Price (DEQ – Chair)
Jane Hickman (DEQ – coordinator, author of Minutes)

Absent: Robert vanCreveld, R.S. (Edgewater Environmental)
Dave Bennett (U.S. EPA, auxiliary member)
Dan Opalski (U.S. EPA, auxiliary member)

BACKGROUND

Don Haagensen asked why DEQ is amending Division 12 and its enforcement Guidance Manual. Roger Dilts noted that a small number of appeals and complaints reach the Environmental Quality Commission. Is there really a problem with the current system, or is DEQ merely responding to a small vocal group? Have we performed an audit to determine where inconsistencies lie? Rich Barrett stated that if there is even one appeal to the EQC, that's an indication that there is something wrong with the system. He does not see the purpose of civil penalties as deterrence unless someone does a conscious risk assessment or is a repeat violator.

Stephanie Hallock responded that the Advisory Group may very well find that the current system works fine and may not propose many changes to the rules. It's been ten years or so since the rules have undergone an in-depth review, so it is time to make sure they are achieving agency goals. The nature of polluters has changed. We have a more diverse set of people in the regulated community.

Stephanie Hallock stated that the fines must be big enough to serve as deterrence, but a $10,000 fine for an individual Oregonian in Ontario who violates asbestos regulations is too severe. Rich Barrett asked why the regulations don't allow the director to use more discretion to mitigate penalties. Director Hallock wants the *system* to address equity issues. Different directors will exercise discretion differently. The Advisory Group may approve of the current director's use of discretion but might not agree with the next direction's approach.

PRE-FORMAL ENFORCEMENT ACTIVITIES AND ISSUES

A. The Guidance Manual. Before a violator is ever referred for formal enforcement and before the Division 12 regulations are even applicable, staff refer to the Guidance Manual, which tells them how the agency will respond when an inspector has documented a violation. The Guidance Manual will need to be revised simultaneously with the enforcement regulations for several reasons:

- Members of the Environmental Quality Commission asked the Director to consider whether the agency is equitably conducting formal enforcement against small businesses, nonprofit organizations and violators from economically challenged geographic areas. The EQC directed Stephanie Hallock (DEQ director) and Anne Price (administrator of the Office of Compliance and Enforcement) to examine what criteria the agency uses in deciding which violations are referred for formal enforcement. These criteria will be listed in the Guidance Manual.

- The agency must re-examine which violations will be referred for formal enforcement, in light of evolving resource issues and shifting agency priorities.

- The current Manual is somewhat awkward to use and to revise because it requires cross-referencing. We'd like to make the Manual more user-friendly and easier to revise.

The rulemaking team will recommend a process for drafting and adopting changes to the Manual (e.g., who needs to sign off on proposed changes).

B. Equity Issues. Director Hallock stated she is most uncomfortable signing civil penalty assessments for the "small guys" – on-site system owners, homeowners who illegally remove asbestos. Small businesses in rural Oregon and individuals get her empathy and sympathy the most. Are we assessing penalties large enough for the big guys and overboard for the small guys? We never heard a peep about the $1.4 million civil penalty assessed against the owner of an underground tank – that is the best measure that a civil penalty is "in balance."

Richard Angstrom observed that equity means different things to different people. The agency can consider equity issues before commencing formal enforcement, but once it begins formal enforcement, it must adhere to due process requirements. The statute

requires the agency to use conciliation and persuasion before undertaking formal enforcement. DEQ should have used its discretion to deal with the individual Oregonian in Director Hallock's example in the compliance mode and not undertake formal enforcement. Yet we do want big civil penalties for violations with significant environmental harm.

C. Technical Assistance Issues. Most of Bob Wescott's constituents are Small Quantity Generators (SQGs). In the Northwest Region, DEQ has two inspectors handling these sources: One does complaint response; the other inspector covers both SQGs and Large Quantity Generators. Because DEQ is so short-staffed, an SQG is rarely inspected, so violations go unchecked. It is the salespeople who are training the SQGs, not DEQ. The SQGs want to comply, but they don't get good training. Fifteen years ago there was a bigger emphasis on bringing people up to speed on the rules; now there is no training. So by the time someone gets caught, they may have committed a lot of violations.

Karen King stated that there are too many regulations to know that are too complicated, despite best intentions.

According to Bob Emrick and Rich Barrett, the line between those in the regulated community who know and don't know the legal requirements is not as bright as it used to be. DEQ inspectors used to inspect more frequently and offer more technical assistance (TA), and you used to be able to assume that environmental managers of larger facilities knew the law. Now DEQ inspectors appear to be overly specialized and don't have the breadth of knowledge necessary to give adequate TA. It will be more difficult for DEQ to determine whether a violator knew or should have known the legal requirements. In fact, sometimes DEQ staff don't seem to be very familiar with the requirements themselves, which leads to confusion among environmental managers. Rich Barrett believes that when a facility has committed a violation due to confusion about the law and not through intentional conduct, DEQ should not commence formal enforcement.

Stephanie Hallock explained that staff are not visiting sources as frequently and may not be as knowledgeable since decentralization of the agency in the late 1980's. At that time, the agency relocated staff from Portland throughout the state to regional offices. An inspector is required to cover a larger geographic area with more sources. Program managers, who already have many duties, must make sure training is good all over the state.

Stephanie Hallock explained that most DEQ inspectors wear a "grey" hat – they offer technical assistance to regulated entities but also refer those out of compliance for formal enforcement. Should the agency consider separating these two functions more? Should we have some staff who do only TA and some who do only enforcement? Richard Angstrom believes the current system of mixing the two functions is necessary due to the complexity of the regulations. Law enforcement is based on good judgment. DEQ needs to take that into account when hiring. DEQ does a good job with the grey hat model.

Linda Schoffman stated that her staff feel better towards OSHA than DEQ because OSHA has TA separate from enforcement and OSHA provides training. Karen King also prefers OSHA's model of providing training when a company asks for help. DEQ doesn't provide training – DEQ refers companies to private consultants instead.

Bob Emrick appreciates DEQ's current system of combining TA and enforcement. DEQ is generally clear with a violator about where they stand in the process. DEQ has been reasonable in issuing verbal warnings with a deadline, then a written warning with a deadline, then a formal enforcement action. There is a healthy balance between use of education and the hammer. Bob Emrick stated that small municipalities and big facilities have different issues and mind sets. The small municipalities will go as long as possible without complying. The big facilities come into compliance as soon there is any bad press. They don't want an NON to begin with. The main reason he chose to serve on the Advisory Group is that he is aware of a situation in Eastern Oregon where someone tore off a bunch of asbestos, dumped it and then got a permit from DEQ to do so. That seems unfair, since Mr. Emrick's business gets a civil penalty for the slightest exceedance.

Sarah Doll stated that the issue of general deterrence is getting lost in the discussion regarding equity. An individual civil penalty has an impact beyond the individual violator receiving the penalty – it sends a message to others who are in a position to violate. DEQ may not have the resources to provide technical assistance, so we can't assume that violators not referred for formal enforcement will instead receive TA. Director Hallock suggested the Advisory Group provide comments on the rules without regard for the resources issue. The agency will try to achieve the goals of an ideal enforcement process and tailor its programs accordingly.

D. Who Should be Referred for Formal Enforcement?

- DEQ should not go forward with formal enforcement in two main instances: (1) Unavoidable accident;
  (2) First time violation, no harm and unsophisticated party (Roger Dilts)

- DEQ should focus primarily on the environmental harm caused by the violation. (Roger Dilts)

- Don't build a system where ignorance is an advantage. (Sarah Doll)

- A first-time violator should be subject to formal enforcement, unless there is confusion about the legal requirement at issue, or it's a paperwork violation, or there is poor guidance from DEQ staff, or it's a new rule. (Rich Barrett)

- If the environmental harm is permanent, such as a huge discharge or dead fish, then the case should go to formal enforcement. If the harm is small

or can be remediated, then don't send to formal enforcement. (Richard Angstrom)

- Because formal enforcement focuses on punishment and deterrence, violators should get "one bite at the apple" for ignorance. DEQ should give them time to come into compliance. (Richard Angstrom)

Anne Price asked how the issue of who "should know" play into who gets referred? Bob Emrick remarked that some violations are obvious. On the other hand, we can't expect the general public to know all environmental regulations, so maybe individuals shouldn't be held to a "should have known" standard.

Stephanie Hallock asked for the Group's opinion on whether the regulatory relationship between the state and municipalities be different than between the state and private parties. The issue crops up most frequently regarding the Clean Water Act. Some small municipalities have failing infrastructure and diminishing funds. Should governments manage environmental pollution together? Do civil penalties really help achieve deterrence in these cases? Should there be a difference between what an environmental manager at a city is expected to know vs. a private company?

Karen King approves of the proposed amendment to Division 12 that assigns smaller municipalities to a lower penalty matrix. Small cities have very little staff, and Guidance needs to consider this. Bob Westcott doesn't disagree that small municipalities should have small penalties, but DEQ should also go easy on small companies. Should look at size, aside from whether we are dealing with a municipality. Otherwise, we may run into problems with small cities saying they don't have to deal with the rules because they are a city.

Rich Barrett stated we should not let municipalities off the hook, if the goal is compliance, and we are serving that goal by fining them.

Stephanie Hallock explained that DEQ currently enters into a Mutual Agreement and Order with municipalities if their systems are failing and they don't have the money to fix them. If the city does not comply with the terms and schedule in the MAO, the MAO may provide for a moratorium on further development until the city comes into compliance. Rich Barrett stated that if a civil penalty won't achieve compliance, DEQ should probably be entering into MAOs with small companies as well.

Richard Angstrom noted that municipalities have some of the biggest construction operations in the state, bigger than many private companies. DEQ will lose credibility if we treat municipalities differently. DEQ should focus on the harm caused by the violation. An NON on all violations will take care of the problem, since a permanent record is created. DEQ should send a situation to formal enforcement when the harm is permanent and can't be reclaimed. If no harm is created, then the case should not go on to formal enforcement if the violator gets into compliance. If harm happens but can be remediated, then don't go forward if violator gets into compliance. However, once a case

is in formal enforcement, we are looking at punishment or deterrence and the penalty amount has to be enough to create an impact. Therefore, we can look at municipalities or the size of an entity differently. But at the noncompliance stage up front, all size of violators should be treated similarly. NONs need to have timeframes and be specific.

Roger Dilts commented that municipalities are inherently different from companies that don't have the resources to operate in an environmentally sound manner. Such companies probably *should* fail, but no one would argue that a municipality should or can go out of business. Cities can't go anywhere. Companies that employ people have political clout municipalities don't and can complain to legislators that environmental regulations will drive them out of business. Legislators listen to such complaints.

Bob Emrick believes there are differences between municipalities and private companies. DEQ must make the playing field level for private companies. A small business that can't afford to operate properly should suffer the consequences. If you are in business, you must include environmental compliance as a cost of doing business. DEQ should use moratoria to get municipalities into compliance.

Don Haagensen states we are trying to come up with screens for what should always go to enforcement, but there will always be exceptions. We need the flexibility to decide whether to go forward after we have issued an NON (e.g., what is an adequate deterrent, rapidity of compliance). Maybe we should identify a third party to mediate between the violator and the Department a decision on whether a particular case should be referred for enforcement. Stephanie Hallock did not think this approach would simplify the process.

E. Notices of Noncompliance. Stephanie Hallock stated that the regulations currently require that once DEQ documents a violation, we must issue a Notice of Noncompliance (NON). She thinks the Advisory Group might want to identify situations where someone gets another chance before receiving an NON. Rich Barrett stated that DEQ should put in writing the number of times a violator has before we use an NON. Don Haagensen and Sarah Doll pointed out it is important for DEQ to track the number of times inspectors have found problems at a facility.

Bob Westcott stated that there should be some escape from an NON, e.g., one time free.

Linda Schoffman suggested that DEQ think about a system similar to points on a drivers license – i.e., they go away after a timeframe. So there would be a timeframe for a violation; have gradation based on harm; and allow violators to attend an educational opportunity if they are out of compliance.

Don Haagensen reminded the Group that the problem in the past was that DEQ was using too much discretion. The NON is DEQ's way of implementing the statutory requirement to use conciliation, persuasion, etc. A "B" response (notifying the violator DEQ will refer for formal enforcement only if the violator fails to take the steps necessary to achieve compliance) tells violators what they need to do. The "B" responses are consultative.

Director Hallock observed that there is a lot of unhappiness over the title of the NON. We should make it clear that an NON is consultative where we intend it to be. Rich Barrett responded that it doesn't matter what the NON is called – the NON tells people where they need training. Sarah Doll stated that Advisory Groups members have emphasized the effectiveness of NONs in achieving compliance and deterrence, so we don't want to change them too much.

Jeff Dresser recalled that under director Bill Young, compliance was achieved through cooperation, not with a hammer. Now DEQ is viewed as the enemy. Companies fear an NON more than a civil penalty because they incur legal expenses to determine if there was ever a violation. DEQ and the companies should sit down before an NON is issued and come to agreement about whether a violation has occurred.

Rich Angstrom believes that NONs should continue to go out for all violations. The NON serves as a permanent record. And the NON has a consequence – a respondent can't later use ignorance as an excuse. Another benefit is that the NON shows the agency and violator are working together to solve the problem.

Bob Emrick disagrees that an NON should be sent for every violation. An NON is very bad for public relations. A business wants to be able to state to its customer that it has never received an NON. Richard Angstrom stated that other agencies use the NON as an educational tool, unlike DEQ. Now NONs are not a good deterrant because they are issued for even the small violations. DOGAMI uses the NON for education and has gained a good reputation. As a result, DOGAMI has been successful in getting its proposed fee increases passed in the legislature.

Bob Westcott suggested there could be an expiration date for an NON – a date when it goes off the permanent record. Linda Schoffman agreed. Maybe there could be a graduated scale, depending on what the environmental harm was and what the facility has done to avoid repeating the violation.

Linda Schoffman asked Director Hallock how agency staff feels about use of discretion. The director responded that some staff want use of discretion prescribed in detail, while others would prefer few limits on use of discretion. Both the director and staff need to be able to articulate how they exercise their discretion. Richard Angstrom noted that enforcement is based on staff using good judgment. When you lose flexibility, you lose good judgment.

Jeff Dresser stated that the EPA lists NONs into its database and violators are angry because they are being identified as significant noncompliers for what are perceived to be minor violations. Companies are affected in their ability to gets loans, insurance and contracts. Although the NON is not considered to be a formal enforcement action, it certainly can have great repercussions on a business. Roger Dilts pointed out that DEQ may use the NON as a warning letter and to tell a violator what to do, but the outside

world uses it for additional purposes (to deny loans and government contracts, etc.). Don Haagensen wondered if changing the name of the NON would help the situation.

Stephanie Hallock observed that maybe we use the NON for too many purposes. It's at the beginning of the enforcement process and establishes the dynamic for how the rest of the process goes.

Don Haagensen stated that some states have gone to ticketing in their enforcement programs for small violations that can be corrected on the spot, and the ticket can be paid on the spot. There is still a written record without the impact of an NON. Bob Westcott stated that if a company fixes the problem, it shouldn't have to resort to attorneys. A ticket may be a good idea and could help prevent the company that has fixed the problem but gets one NON from losing a government contract. Richard Angstrom stated that OSHA tracks "near misses" and a certain number triggers formal enforcement.

Sarah Doll reminded the Group not to allow NONs to lose their deterrent effect. There needs to be a mechanism to track violations. NONs also inform DEQ where to focus its TA and enforcement resources. NONs assure the public that DEQ is doing its job.

Director Hallock thinks it is important that the Advisory Group address whether we should use a different enforcement approach for individuals (such as homeowners with on-site systems, or homes that contain asbestos, or those who conduct open burning). Bob Emrick stated that such individuals who know the law, or who create great environmental harm, should receive stiff penalties. We should take both knowledge and harm into account.

Don Haagensen observed that this discussion brings out his point that there should be a post-NON process for screening characteristics of violations and taking some violators out of formal enforcement. For example, if corrections are made within five days, the case doesn't go forward. We need to sort out those that don't matter.

DIVISION 12 REGULATIONS

Richard Angstrom stated that the existing enforcement regulations do not allow the agency as much flexibility as the statutes allow. The statute lays out the factors the agency must take into consideration in assessing a civil penalty but does not assign a weight or value to any of the factors. The existing regulations do not have enough flexibility. The rules were originally written with the biggest polluters and point sources in mind. Now that those sources are causing less of an impact and the sources we regulate are increasingly smaller, we need to revise the regulations.

Director Hallock responded that the regulations are purposely prescriptive and detailed, in order to circumscribe staff's use of discretion and to further consistency and predictability. Don Haagensen noted that putting requirements in regulations rather than in guidance reduces the number of issues open to argument at a contested case hearing and therefore reduces the number of appeals.

Director Hallock encouraged the Advisory Group to identify issues it thinks are more appropriately provided for in guidance rather than in the regulations.

Anne reminded the Group that EPA will be reviewing the proposed rules and will weigh in on whether the proposed penalty calculations will result in high enough penalties. EPA feels DEQ's penalties are not high enough. Its position is that the statute requires DEQ to assess a $10,000 civil penalty per day of violation. EPA now gives DEQ the benefit of the doubt by allowing us the flexibility to assess smaller penalties, as long as the regulations allow DEQ to assess $10,000/day. EPA's position is that every violation should be able to result in a civil penalty of up to $10,000 per day. To maintain delegation of some programs, we need to somehow address EPA's concerns but not exactly how they think we should. However, if we deviate too much from EPA's concerns, EPA may overfile, which we try to avoid.

We won't know until the rulemaking package is complete whether EPA will find the proposed amendments significant enough to trigger a review of program delegation. Stephanie Hallock pointed out that delegation issues may not necessarily apply to on-site and asbestos programs and other state-only programs. DEQ simply cannot make wholesale exemptions from enforcement in delegated programs. However, DEQ is more likely to lose delegation due to shrinking budgets. Don Haagensen stated that EPA may prefer DEQ to use case-by-case exceptions to enforcement rather than screens creating categories of exemptions.

ACTION ITEMS

DEQ's Office of Compliance and Enforcement (OCE) will incorporate comments made by staff statewide and will distribute an updated draft of Division 12 to the Advisory Group before the next meeting. Advisory Group members will need to have comments to OCE by April 11th in order to have them included in the upcoming draft of Division 12. The following members indicated their intent to provide comments on the draft rule: Don Haagensen; Richard Angstrom; Rhett Lawrence (maybe); Sarah Doll; Roger Dilts; Bob Wescott (maybe). Karen King has already submitted comments and will probably submit additional comments by the deadline.

INFORMATIONAL ITEM

Anne Price will be presenting an update to the Environmental Quality Commission on the Division 12 rulemaking effort at the EQC's May 8th meeting, Room 3A at Headquarters (811 S.W. 6th Street, Portland). The update will begin at 3:00 p.m., give or take about fifteen minutes, and will probably last for approximately one hour.

HANDOUTS

1) Three regulation sections for Division 12 proposed by Don Haagensen

2) Final Minutes from first Advisory Group meeting

3) Draft Minutes from second Advisory Group meeting

4) Chart entitled "Potential Enforcement Guidance Filter Factors"

FUTURE ADVISORY GROUP MEETINGS

The next meeting will be on Wednesday, May 7th, 1:00 – 4:00 p.m. in Room 10 at DEQ Headquarters, 811 S.W. 6th Ave, Portland. The meeting following that is Tuesday, May 27th (rescheduled from the previous May 28th date), 1:00 – 4:00 p.m. in Room 10, also at DEQ Headquarters.

5/8/03 EQC Meeting Item D Handout

Division 12 Enforcement Rules – Rulemaking Schedule – Draft as of 5/5/03

Rule and Guidance Prep	Internal Rulemaking Team	Advisory Group
		4/2/03 – Third meeting: Focus on the guidance
4/4/03 - Rule Comments back from staff		
4/11/03 – Rule comments evaluated by RMT	4/14/03 – Meeting to discuss rule revisions and where to go on the guidance	
4/28/03 – Revised version of the Rules incorporating all staff comments to Advisory Group and RMT	5/1/03 – Review classifications and guidance materials	
5/1/03-5/30/03 – Finalize violation classifications	5/19/03 – Meeting to discuss classification issues, and guidance process	5/7/03 - Fourth meeting: Focus on classifications vs. rules; revised NON process; revised rulemaking schedule. 5/27/03 - Last meeting? (maybe delay pending classification and guidance work)
6/1/03 – 6/30/03 – Draft guidance	Meetings to discuss guidance issues and rule changes	6/18/03 – Last meeting of Advisory Group?
7/1/03 – 7/15/03 – Finalize rule changes		
7/16/03 – Draft public notice package to all reviewers		
8/15/03 – Notice to SOS	Continue to meet to finalize the guidance	
9/3/03 – SOS notice published		
9/30/03 - Public Comment period closes		
10/7/03 - Draft Report to Reviewers	Assistance on response to comments	
10/27/03 - Final Report due to Director		
12/4-12/5/03 – EQC Meeting		

Dates in italics are those set by the agency-wide rulemaking schedule.

5/8/03 EQC Meeting, Item D Handout

Violation Classifications:
Options for addressing magnitude or priority language in violations

Example Class I Violation:

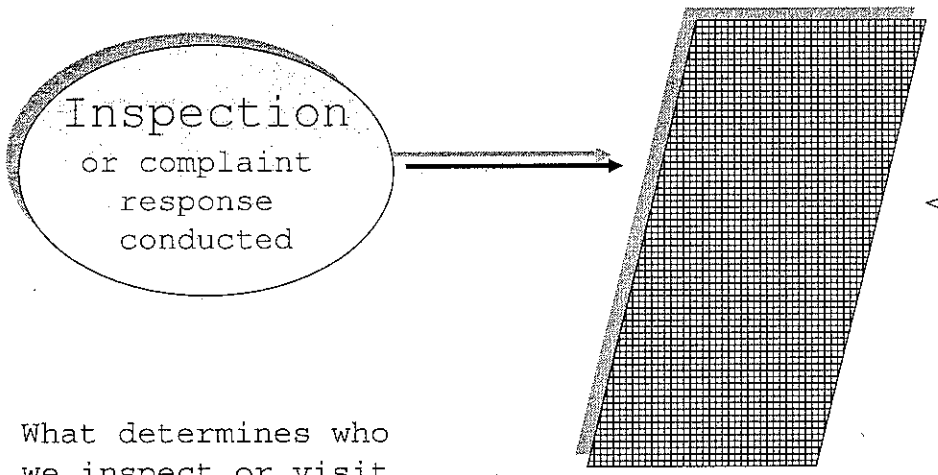
WQ 0050(1)(s): Failure to connect all plumbing fixtures to, or failure to discharge wastewater or sewage into a Department-approved system, **when such failure results in sewage on the ground surface or otherwise creates a public health threat.**

	Related Guidance Impacts	Related Magnitude Impacts	Pros/Cons
Option 1: Leave violation language as is.	Guidance on when to refer or not to refer would be more general (e.g., refer all Class I's on the first occurrence).	Magnitude would be addressed under the general magnitude language, because there is no selected magnitude for this violation.	• May give the appearance of "double counting" magnitude. • May limit the magnitudes available for a given violation due to the language in the violation itself (e.g., may never be considered a "minor" magnitude).
Option 2: Pull magnitude or priority language out and put it in the referral guidance. Resulting violation would be a Class I: **Failure to connect all plumbing fixtures to or failure to discharge wastewater or sewage into a Department-approved system.**	Guidance for this violation would state that the violation would be referred on the first occurrence "**when such failure results in sewage on the ground surface or otherwise creates a public health threat**".	Magnitude would be treated the same as above.	• Makes the violation language more consistent with the actual compliance requirement in the program rules. • May create more flexibility to address only the highest priority violations of this type. • Puts the discretion into guidance and leaves decision-making more clearly in the hands of the regional offices. • Allows for greater ease of priority adjustment over time b/c it is in guidance and not in rule.

Option 3: Pull magnitude language out and address with the magnitude approach under the penalty calculation formula only. Resulting violation would be a Class I: **Failure to connect all plumbing fixtures to or failure to discharge wastewater or sewage into a Department-approved system.**	Do not separate out higher priority violations before referring to formal enforcement.	Create selected magnitudes for this violation or use the existing general magnitude language.	• Will likely result in over-referral of low priority occurrences or require extensive "no enforcement" justification process. • Likely to be more resource intensive.

From Discovery to Compliance Assistance or Enforcement-

What goes into determining who DEQ addresses and how?



What determines who we inspect or visit in the first place?

- Priority Sectors
- Program Priorities
- Priority Complaints
- Other?

Enforcement Guidance

Provides the filter to determine who goes on to formal enforcement. Includes notice of non-compliance response language.

Formal Enforcement

Division 12, Division 11 and other enforcement policies determine what the penalty and process is.

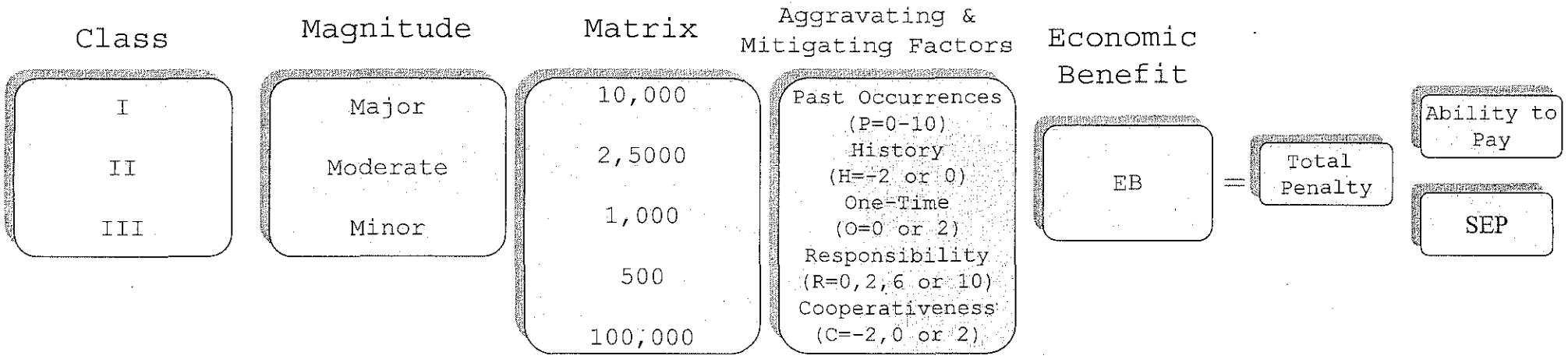
Non-Formal Enforcement

What happens varies by program:

- Technical assistance
- Notices of non-compliance w/ compliance schedules
- Other?

5/6/03 EQC Meeting Item D handout

Penalty Calculation Process



Class → Magnitude → Matrix → $Base\ Penalty + [(.1X(P+H+O+R+C)] + EB = Total\ Penalty$

Definitions

Class:

Classification addresses the nature of the violation itself. The purpose of classifications is to separate the violations so that similar types of violations are treated with the same level of severity.

Class I represents those violations that have the potential to cause the greatest environmental or HH harm or are most critical to the structure of the program.

Magnitude:

Magnitudes are intended to differentiate between actual violation incidents on the basis of their specific impact. Thus violations creating a similar degree of environmental or human health impact are at the same magnitude, or violations with equally "nasty" impacts are treated equally.

Matrix:

The matrices can allow the type of violator to be weighed against the level of penalty needed to get deterrence. It's where the "who is the violator" factor.

Aggravating & Mitigating Factors:

Aggravating and mitigating factors allow case specific facts, other than the type of violation or magnitude of the violation to be considered. These factors are intended to aggravate or mitigate penalties similarly, given similar facts.

Economic Benefit:

Intended to level the economic playing field based on what the violator should have invested or spent in order to have achieved and maintained compliance. No consideration for who the violator is.

After the total penalty is calculated:

Ability to Pay:
Procedures to determine actual ability to pay by the specific violator. Information is taken into consideration for settlement offer.

Supplemental Environmental Projects:
For penalties over $2,000, the opportunity to do environmental enhancement projects to mitigate penalty amount, if approved by DEQ.

5/8/03 EQC Handout, Item D

List of EQC Decisions, 1995-2003, where EQC Interpreted Rules
Focus on Division 12 Rules

1. 01/18/1996, **McInnis**, David, Case No. WQIW-NWR-94-311
Facts: McInnis's employees washed out chemical toilets and discharged automotive fluids on the property. The wash water ran off into a Portland storm sewer. After subsequent violations of automotive fluids into catch basins which drained into the Deering Canal, McInnis was fined by DEQ for discharging waste into the waters of the state.
Legal Issues: 1) Is discharging waste into a catch basin which drains into Deering Canal discharging into "waters of the state?"
Hearing Officer: Yes.
2) Were automotive fluids pollution under ORSB.005(3)?
Hearing Officer: Yes, because the definition is very broad and includes discharges that change the taste or odor of water. Automotive fluids change the taste and odor of water. The discharge would also tend to render such waters harmful to public health or to fish. Discharge of such fluids was pollution.
EQC Held: EQC upheld the hearing officer's Hearing Order.
Argument: Appellant McInnis argued on the facts not the law.

2. 01/28/1997, **Henry**, Russell R., Case No. AQOB-WR-94-289
Facts: Henry was fined for open burning of demolition waste within six miles of the corporate city limit of Salem.
Legal Issue: Are the DEQ and EQC bound by procedural court rules and custom?
Henry's Argument: DEQ's Notice of Appeal and Answering Brief and Motion to Deny should be dismissed for procedural shortcomings.
***EQC Held*:** The EQC found that the EQC is not bound by court rules or customs regarding either form or style of pleadings. DEQ's Notice was legally adequate. The Commission can increase a civil penalty assessed without remand to the hearings officer if a) there is sufficient notice to the parties and b) the evidence to support the increase is in the record from the hearing below or the Commission can re-open the record for additional evidence if a party so moves. EQC upheld the decision of the hearings officer.
Appeal: Henry appealed the case to the court of appeals, but later settled with the DEQ, agreeing to pay a fine.

3. 05/02/1997, **Compton, John M.**, Permit No. 95-014
(Not a Division 12 case.)
Facts: Case involves the revocation and request to decommission a sewage disposal system.
Legal Issue: Can an on-site construction permit be revoked once construction is complete?
DEQ's Argument: DEQ can revoke an on-site construction permit once construction is complete.

Compton's Argument: DEQ has no legal authority to order the decommissioning of the system since there was no factual basis for the finding of the public health or water pollution hazard.
Hearing Officer Held: Once construction of the system is complete, the Department does not have authority to revoke the on-site construction permit and must seek decommissioning of the system through enforcement proceedings.
EQC Held: EQC confirmed the decision of the hearings officer. EQC agreed that under 340-71-160, DEQ is required to institute a separate enforcement proceeding to order decommissioning of an on-site system once construction has been completed and a Certificate of Satisfactory Completion has been issued.
Furthermore: EQC directs DEQ to proceed with rulemaking, as appropriate, to clarify whether an on-site construction permit continues as an operating permit after construction is completed.

4. 08/11/1998, **City of Coos Bay**, Case No. WQMW-WR-96-277
Facts: The city obtained an NPDES permit. After a pipe ruptured between the treatment plant and sludge lagoon, DEQ fined the city for discharging wastes that reduced the quality of state waters below the EQC's water quality standard. Additionally, the city was found in violation of a condition of its NPDES permit.
Legal Issue (1): Does the City incur liability under the statute and rules because of violations due to its failure to effect permanent repairs to the pressure pipeline prior to its rupture and spill?
City's Argument: Argues that not conducting a permanent repair was not a violation under the statutes and rules for which penalties or orders could be imposed.
EQC Held: The disposal of sewage can be hazardous to the health and welfare of the public. Even though the City did not intentionally direct the partially-treated sewage into the bay, its acts or omissions were the cause of the sewage entering the bay and were sufficient to meet any "placement," "cause pollution" or "discharge" requirements of the statutes or rules. Likewise, the City's choice not to repair the pipeline led to its permit violation, so it is responsible.
Legal Issue (2): Can a party be liable under ORS 468B.050(1) for a discharge when the party has an NPDES permit?
City's Argument: As long as it had a permit, it could not be held to violate ORS 468B.050(1).
EQC Held: The city is liable under ORS 468B.050. The city's interpretation is inconsistent with the express language in the statute and the statutory scheme as a whole.
Legal Issue (3): Can a party be liable under ORS 468B.050(1)(b) for discharging wastes into the waters of the state without a permit authorizing such discharge if it has not been proven the party had the intent to violate the statute?
City's Argument: Based on the word "discharge" in the statute, a party must intentionally mean to violate the statute for it to be a violation, and this *mens rea* must be proven.
EQC Held: No, strict liability applies for violations of ORS 468B.050. Strict liability is the longstanding custom of EQC and DEQ. Nothing in the statute leads the EQC to believe "discharge" was meant to be read to require intent. Strict liability for administrative violations follows from ORS 468.130(2)(f). When the legislature has intended to require a culpable mental state, it has generally done so expressly. Strict

liability is more consistent with the general legislative policies governing water quality protection.
Legal Issue(4): Can a party be liable under ORS 468B.050(1)(b) for discharging wastes that reduce the quality of state waters below the water quality standard established by the EQC when it has not been proven the party had the intent to violate the statute?
City's Argument: a) There is a legislative scheme evident in ORS 468B.025(1)(a) which requires proof of negligence and in ORS 468B.025(1)(b) which requires proof of intent. b) The City argues the verbs "cause," "discharge" and "violate" in the statute show an intent requirement. c) The City argues that since the violations are also public nuisances, it should be inferred a culpable mental state is required.
EQC Held: Yes, a party is liable under this statute without proof of intent to violate the statute. a) The statutes referred to do not establish a widespread legislative intent to require proof of intent. When placed in their historical context, these statutes can not be viewed as proving any general rule regarding an intent requirement. b) The plain ordinary meaning of these verbs do not require or suggest intent be an element of the violation. c) The EQC finds no relevance in the fact that ORS 468B.025(3) finds these violations are also public nuisances. The legal authority relied upon by the City applies only to tort suits brought by a private party to recover money damages.
Appeal: The Oregon Court of Appeals reversed the EQC on the fine given under ORS 468B.050(1)(a) (*Legal Issue 2 above*). The Court of Appeals held that ORS 468B.050(1)(a) establishes when a permit is required but says nothing about violations of that permit. The EQC's contention that any discharge in violation of the conditions of a permit amounts to discharging without a permit in violation of 468B.050(1)(a) is wrong. The Court held that violations of a permit are covered under ORS 468B.025(2), and that the two statutes are designed to work together.

5. 10/30/1998, **Ferguson, William H.**, Case No. AQFB-WR-96-351
Facts: Ferguson (respondent) removed a sample of duct wrap for testing from a renovation project after he had been informed by a Department Asbestos Control Analyst that the wrap might contain asbestos. Respondent was fined for not following ORS and OAR asbestos rules.
Legal Issue (1): Was Respondent (Ferguson) engaged in an "asbestos abatement project" before his notification from the Asbestos analyst that his site might contain asbestos?
Hearing Officer: No. Despite the definition in OAR-340-032-5590(3) and the strict liability in ORS 468.140(1)(f), Respondent was not engaged in an asbestos abatement project before the asbestos notification. He had taken all reasonable steps, so liability did not attach prior to notification. (* For some reason, this led the hearings officer not to apply liability directly after notification as well, unlike the ECQ.)
DEQ: Strict liability applies to the respondent's violation.
ECQ Held: Strict liability does apply in this situation. When the Respondent handled the material after learning it might contain asbestos, liability attached. The hearings officer erred in his determinations on this matter.
Legal Issue (2): When the Respondent bagged and removed the material, did he violate OAR 340-32-5620(1) by failing to notify the DEQ of an asbestos abatement project?
ECQ held: Since the Respondent did not know the material in the building contained asbestos (because it had not yet been tested), and since the Respondent was only involved

in the asbestos abatement to the extent that he bagged an initial sample, it is not appropriate to assess violation under this provision of the rule.

6. 03/17/2000, **Cascade General**, Case No. HW-NWR-97-176

Facts: Cascade flushed Tectyl products through the engines of a Navy ship. After the job, Cascade hired a company to take the used Tectyls, along with used oil, away for recycling.

Legal Issue 1: Were the Tectyls hazardous waste?

Cascade General's Argument: No, the Tectyls were used oil and, thus, exempt from the definition of hazardous waste and the manifest requirement.

DEQ's Argument: The Tectyls were hazardous waste because the flashpoints of Tectyls were less than 140 degrees Fahrenheit, a characteristic of hazardous waste. DEQ interpreted the definition of used oil in EQC's rules to exclude corrosion inhibitors such as Tectyls.

EQC held: The Tectyls were hazardous waste. Since the Tectyls have a low flashpoint characteristic of hazardous waste, Cascade General had the burden of proving they were not. Cascade General's affirmative defenses fail because a) the Tectyls were not a virgin commercial product; b) the Tectyls were not mixed with enough oil to raise their flashpoint above the hazardous waste characteristic, and the mixing took place after property transfer; and c) the Tectyls do not fall under the "used oil" exception because some of the Tectyls which were disposed of had not been run through the ship, so they were not "used." (The EQC did not reach the question of whether the Tectyls which had been run through the ship qualified as "used oil.")

Legal Issue 2: Did Cascade perform an adequate hazardous waste determination?

DEQ's Argument: Cascade General did not perform a correct determination as it did not arrive at an accurate conclusion.

Hearing Officer: Found Cascade did perform an adequate hazardous waste determination. Cascade's determination revealed the Tectyls had a characteristic of hazardous waste. It simply discounted the results.

EQC Held: A majority of the Commission failed to either affirm or reverse the Hearing Officer's decision, so the Hearing Officer's decision on this point stands.

7. 12/19/2001, **Reggie H. Huff**, Case No. WQ/I-NWR-00-125

Facts: Huff discharged a solution containing ethylene glycol and metal leaching into a storm drain, believing it was connected to the city's sanitary system.

Legal Issue 1: Was the waste "likely to escape or be carried into waters of the state" as prohibited in ORS 468B.025(1)?

Huff's Argument: The ethylene glycol solution was dumped down a storm drain which connected to a dry sump system. Since the solution would have been absorbed by the ground, the solution would never reach any waters of the state, including groundwater.

DEQ's Argument: The dry sump system is designed so fluid held within can seep into the surrounding ground, which can contain groundwater. Rainwater can flush the dry sump system, driving fluid into the ground and groundwater. Therefore, any fluid placed in a dry sump system can reach waters of the state.

Hearing Officer: Held that the fluid put into dry sump system fell under 468B.025 prohibition against placing waste in a location where such wastes are "likely to escape or be carried into the waters of the state by any means…"
EQC Held: The EQC affirmed the order of the Hearing Officer with the following clarification: "The Commission concludes the term "likely" as used in ORS468B.025 should be given its ordinary and common meaning and applied on a case-by-case basis. The Hearing Officer correctly found that the waste water was placed in a storm drain. The storm drain was designed to convey storm water into the surrounding ground and groundwater. Under these circumstances, the waste water was placed in a location where it was likely to reach waters of the state."
Appeal: Reggie Huff has appealed the EQC decision to the Court of Appeals. The appeal is ongoing.

8. 02/11/2002, **Ronald C. LaFranchi**, Case No. WP/M-SPWR-00-009
Facts: A LaFranchi truck carrying gasoline collided with a pickup truck. The tanks of gasoline rolled down an embankment near Knowles Creek. After all the clean up, some gasoline still made it into Knowles Creek. The LaFranchi truck driver was found negligent for his role in the accident.
Legal Issue: When a Respondent's employee acts negligently, is it correct to assign a negligent "R" factor to the Respondent when calculating the penalty formula?
LaFranchi's Argument: Ron LaFranchi was not negligent, so he should not be penalized for negligence.
DEQ's Argument: An employer is responsible for his employees.
Hearing Officer: The DEQ cannot penalize the Respondent for the negligence of his employee. The DEQ would have to establish that the Respondent himself acted negligently. In this case, the DEQ would have to prove the Respondent had knowledge that his employee was in some way deficient and failed to act on that knowledge.
EQC Held: Under OAR 349-012-0045(1)(C)(D), "the act of the respondent" includes both direct acts and also the acts of employees for which the Respondent is legally responsible. As long as an employee is acting within the scope of his employment, his employer is responsible for his actions. Therefore, the DEQ was correct in assessing the Respondent with a negligent "2" penalty in its penalty formula on the basis that the Respondent's employee was proven negligent in this action.

9. 08/20/2002, **City of Scappoose,** Case No. WQ/M-NWR-00-010
Facts: The City of Scappoose's representative incorrectly conducted NPDES monitoring tests and intentionally reported inaccurate data. A DEQ inspection led to the bad reporting becoming known.
Legal Issue 1: Did the respondent violate a condition of its NPDES permit by intentionally reporting false test results on its discharge monitoring report?
DEQ Argument: The City of Scappoose, acting through its plant superintendent, Wabschall, intentionally reported false test results on the monthly DMR for December 1998 the City filed with DEQ, and thus violated its NPDES permit.
The City's Argument: Wabschall's actions do not meet the definition of "intentional" in the DEQ administrative rules. Since Wabschall knew the data from the tests were

inaccurate, his estimates based on that data were not intentionally false. He believed his estimates had a sound basis.
Hearing Officer: Under the permit conditions, the city was required to report accurate test results reached by following specified test methodology. Wabschall's estimating obviously did not satisfy the permit requirements, so he was intentionally reporting inaccurate data. Thus, the City of Scappoose violated its NPDES permit monitoring condition.
Legal Issue 2: If respondent intentionally reported false test results, was its conduct flagrant?
DEQ Argument: When he reported inaccurate monitoring data, Wabschall committed a flagrant violation.
Hearing Officer: The DEQ did not prove by a preponderance of the evidence that Wabschall consciously set out to commit the violation. Acting fragrantly implies planning or deliberately setting out in advance to violate the law. Although Wabschall had a knowledge of the law and the NPDES permit provisions, the DEQ did not prove that he set out to violate the law. If Wabschall had planned to violate the law, he could have recorded false test data which would have made it nearly impossible to discover the violation. In this case, he recorded his flawed test results and admitted he had used estimates when asked. He did intentionally report false test values, but DEQ did not prove he flagrantly did so.
EQC Held: Affirmed the Hearing Order of the Hearing Officer.
Appeal: The City of Scappoose has appealed the EQC decision to the Court of Appeals on the grounds that the order erroneously interprets provisions of law and that a correct interpretation of the law would result in no civil penalty. The case has been settled and the City withdrew its appeal.

10. 01/09/2003, **Caleb Siaw,** Case No. WQ/D-NWR-99-186
Facts: Respondent signed an MAO with the DEQ regarding a sewage system the respondent operates at his mobile home park. Despite agreeing to in the MAO, the respondent failed to submit information to complete his application for a WPCF permit. Despite agreeing to in the MAO, the respondent failed to submit holding tank receipts for the previous month.
Issues: The main issues in the case do not involve any interpretation of DEQ Division 12 statutes or regulations and, therefore, are not reported here.
Legal Issue: Under ORS 468.140, does the DEQ have the discretion to issue a fine based upon one daily civil penalty for each month a violation occurred, or must the DEQ either issue a fine for only one day of violation or every day of violation?
Hearing Officer: The DEQ can assess a penalty based upon one daily civil penalty for each month a violation occurred. Although the DEQ did not specify the day of each month on which it sought penalty (which the DEQ should have done), it did state that it elected a penalty for each month in which a daily violation occurred. Thus, the DEQ was essentially acting within its statutory power.
EQC Held: Affirmed the Hearing Order of the Hearing Officer.
Appeal: Caleb Siaw has appealed the EQC decision to the Court of Appeals. The appeal is ongoing.

11. 01/30/2003(EQC Appeal date), **Jackson & Sons**, Case No. 02-GAP-00020

Facts: Jackson & Sons mounded pea gravel around a 2500 gallon aboveground tank full of gasoline and applied for and obtained an underground storage tank permit from the DEQ. After receiving a letter from DEQ to stop using the tank, Jackson & Sons removed the pea gravel.

Legal Issue: Does Jackson's tank meet the legal definition of an underground storage tank subject to EQC regulation?

Jackson Argument: Commonsense shows the tank was not beneath the surface of the ground. Since the regulations define underground storage tanks as those tanks "beneath the surface of the ground," this tank was not an underground storage tank.

DEQ Argument: A tank, including pipes, is an underground storage tank when ten percent or more is "beneath the surface of the ground." OAR 340-150-0010 (adopting by reference 40 CFR 280.12) defines "beneath the surface of the ground" as "beneath the surface of the ground or otherwise covered with earthen materials." Jackson's tank was not under the ground; however, the tank was more than ten percent covered with earthen materials, thus meeting the definition of "beneath the surface of the ground." Therefore, the tank was an underground storage tank under the EQC's rules.

Hearing Officer: Jackson's tank did not meet the definition of an underground storage tank because it was not beneath the surface of the ground. DEQ did not meet its burden of proof, showing this tank meet the definition. By administrative rule, DEQ adopted the definition of underground storage tank prescribed by the US EPA in 40 CFR 280. OAR 340-150-0002. These statutes and rules characterize an underground storage tank as "beneath the surface of the ground." The descriptive phrase "beneath the surface of the ground" is not given a specific or peculiar meaning by statute or rule.

EQC Held: At the hearing, the EQC affirmed the Hearing Officer's Hearing Order.

5/8/03 EQC Meeting, Item D Handout

DEPARTMENT OF ENVIRONMENTAL QUALITY

Note: Unfortunately the redline feature does not work very well when developing a document like this that has involved moving many sections and incorporating comments from many different sources. Therefore, not everything that looks "new" is. And, particularly in some of the sections that have been moved, not everything that shows up as "old" is actually in the current version of Division 12 on the books. I'm sorry for this confusion, but either the technology can't keep with us or we can't keep up with it! So – if there is a particular section in which you are most interested in how it was changed from present version to this draft, I recommend that you compare the two versions side-by-side.

DIVISION 12

ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

340-012-0026

Policy

{Changes: Explains the purpose of the different components of the civil penalty equation.

Purpose: Make penalty assessments more understandable.}

(1) The goals of enforcement ~~is~~ are to:

(a) Protect ~~the~~ public health and the environment;

(b) Obtain and maintain compliance with the Department's statutes, rules, permits and orders;

(c) Deter future violators and violations; and

(d) Ensure an appropriate and consistent statewide enforcement program.

(2) The Department endeavors by conference, conciliation and persuasion to solicit compliance.

(3) The Department addresses all documented violations in order of priority, depending on impact to public health and the environment, using increasing ~~seriousness at the most appropriate~~ levels of enforcement necessary to achieve the goals set forth in section (1) of this rule.

(4) The Department subjects Vviolators who do not comply with an initial enforcement action ~~are subject~~ to increasing levels of enforcement until they come into compliance ~~is achieved~~.

(5) The Department assesses c~~C~~ivil penalties ~~are assessed~~ based on the class of violation, the magnitude of violation, the application of the penalty matrices and aggravating and mitigating factors, and the economic benefit realized by the violator:

(a) Classification of Violation. Each of the violations is classified as Class I, Class II ~~and~~ or Class III ~~violations~~. The classifications~~purpose of the different classes is to~~ distinguish among the violations based on whether non-compliance is more or less likely to result in actual or potential impact to ~~human~~ public health or the environment, without regard to the specific facts in a case. Class I ~~represents~~ violations hav~~ing~~e the greatest likelihood of actual or potential impact to ~~human~~ public health or the

environment. Class II violations are less ~~likely~~likely than Class I violations to have actual or potential impact to public health or the environment. Class ~~3~~ III ~~represents~~ violations have~~ing~~ the least likelihood of actual or potential impact to ~~human~~ public health and the environment. (See OAR 340-012-0050 to 340-012-0125)

(b) Magnitude of Violation. ~~The magnitude of the violation serves~~The Department applies ~~to apply~~ the specific facts of a violation to ~~roughly~~ determine the degree of impact to human health and the environment resulting from that particular violation occurrence. (See OAR 340-012-0130 and 340-012-0135)

(c) Base Penalty Matrices. The Department uses the base penalty matrices ~~are used~~ to determine a base penalty appropriate to achieve deterrence based on~~in light of both~~ the specific violation, the ~~and~~ general violation type and~~, based on~~ the classification and magnitude of the violation. (See OAR 340-012-0140)

(d) Aggravating and Mitigating Factors. The Department uses the aggravating and mitigating factors ~~are used~~ to adjust the base penalty to reflect additional characteristics of the specific violator and violation. These factors include the duration of the violation, the violator's past compliance history, the mental state of the violator, and the violator's cooperativeness in achieving compliance or remedying the situation. (See OAR 340-012-0145)

(e) Economic Benefit. The Department adds t~~T~~he economic benefit gained by the violator ~~is added~~ to the civil penalty ~~calculation~~ to ~~deter regulated parties from avoiding investing in regulatory compliance and to~~ level the playing field between the violator and those regulated parties who have borne the expense of maintaining compliance. (See OAR 340-012-0150)

Stat. Auth.: ORS 459.995, ORS 466, ORS 467, ORS 468.020, ORS 468.996, ORS 468A & ORS 468B
Stats. Implemented: ORS 183.090, ORS 454.635, ORS 454.645, ORS 459.376, ORS 459.995, ORS 465.900, ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.090 - ORS 468.140, ORS 468A.990, ORS 468.992, ORS 468B.025, ORS 468B.220 & ORS 468B.450
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92

340-012-0028

Scope of Applicability

Amendments to OAR 340-012-0028 to 340-012-0170 apply to all formal enforcement actions initiated by the Department on or after the effective date of such amendments. Any formal enforcement actions initiated before the effective date of an amendment ~~shall~~ will be subject to OAR 340-012-0028 to 340-012-0170 as in effect before that amendment. The violations identified in these rules are intended to be used only for purposes of setting penalties for violations of the law and the rules set forth in OAR Chapter 340.

Stat. Auth.: ORS 454, ORS 459.995, ORS 466, ORS 467, ORS 468.020 & ORS 468.996
Stats. Implemented: ORS 183.090, ORS 454.635, ORS 454.645, ORS 459.376, ORS 459.995, ORS 465.900, ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.090 - ORS 468.140, ORS 468A.990, ORS 468.992, ORS 468B.025, ORS 468B.220 & ORS 468B.450
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0080

340-012-0030

Definitions

{Changes: Clarifies the meaning of "formal enforcement action" and changes name of "Notice of Noncompliance" to "Letter of Deficiency." Adds new term "grossly negligent," a new mental state to be considered as an aggravating factor in civil penalty assessments. Clarifies definition and applicability of "prior significant action" to provide that when a Respondent settles a formal enforcement action by paying a civil penalty for one or more violations cited in a Notice, the remaining violations for which a civil penalty was not assessed or paid will be considered as an aggravating factor in any future formal enforcement actions. Adds a definition for "willful" which currently is used in the rules but is not defined. Adds a definition for "resident owner-occupant," a category of violators that will be subject to a lower penalty matrix for some program violations.
Purpose: To avoid confusion by people who receive a Notice of Noncompliance/Letter of Deficiency and mistakenly assume they are party to a formal enforcement action. Adds additional mental state so penalty can be aggravated when Department doesn't have proof that Respondent knew conduct was a violation but where Respondent knew or had reason to know that the result was not lawful, with indifference tantamount to a willingness that the result occur. }

Unless otherwise required by context or below, all other terms used in this Division have the meaning given to the term in the appropriate Division of OAR Chapter 340 or in the absence of such definition, their common and ordinary meaning:

(1) "Class ~~One~~ I Equivalent" or "Equivalent", which is used only for the purposes of determining the value of the "P" factor in the civil penalty formula, means two Class ~~Two~~ II violations, one Class ~~Two~~ II and two Class ~~Three~~ III violations, or three Class ~~Three~~ III violations.

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

(3) "Compliance" means meeting the requirements of the applicable statutes, and Commission's and Department's rules, permits or orders.

(4) "Conduct" means an act or omission.

(5) "Director" means the Director of the Department or the Director's delegates.

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

(7) "Documented Violation" means any violation that the Department or other government agency records after observation, investigation or data collection, or for which the Department receives independent evidence sufficient to support proceeding with formal enforcement.

(8) "Flagrant" means the ~~Respondent~~ violator had actual knowledge that the conduct was unlawful and consciously set out to commit the violation.

(9) "Formal Enforcement Action" means a written document that~~which~~ is issued to a Respondent for a documented violation,~~–~~and includes Notices of Permit Violation, Notices of Civil Penalty Assessments, Mutual Agreement and Orders, Department and EQC orders, and any other documentation which entitles Respondent to a contested case hearing.

(10) "Grossly negligent" means conduct the Respondent knew or should have known was not lawful, or would have an unlawful result~~that the conduct or result was not lawful, and with disregard for the consequences of that conduct.~~

(11) "Intentional" means the Respondent acted with a conscious objective to cause the result of the conduct.

(12) "Letter of Deficiency (former Notice of Noncompliance)" means a written notice documenting the violations noted during an inspection, site visit or through other means. Letter of Deficiency is not a formal enforcement action in that it does not provide the ~~Respondent~~ violator with a right to a contested case hearing.

(13) "Magnitude of the Violation" means the extent and effects of a violator's specific deviation from statutory requirements or Commission or Department rules, standards, permits or orders. In determining magnitude the Department considers all reasonably available applicable information, including such factors as: concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. Deviations are categorized as major, moderate or minor as set forth in OAR 340-012-0130 and -0135.

(14) "Negligence" or "Negligent" means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting a violation.

(15) "Order" means:

(a) Any action satisfying the definition given in ORS Chapter 183.310; or

(b) Any other action so designated in ORS Chapters 454, 459, 465, 466, 467, 468, 468A, or 468B.

(16) "Penalty Demand Notice" means a written notice issued by the Department to a party demanding payment of a stipulated penalty pursuant to the terms of an agreement entered into between the party and the Department.

(17) "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. ~~, but is not limited to, any individual, partnership, corporation, association, governmental subdivision or agency, or any other public or private organization of any character or type.~~

(18) "Prior Significant Action" means any violation cited in a formal enforcement action, which becomes final by payment of a civil penalty or by a final order of the Commission or the Department, or by judgment of a court. Payment of a civil penalty assessed in a formal enforcement action causes all the violations cited in the formal enforcement action to become final by operation of law, unless superceded by a Commission or Department Order.

(19) "Reckless" or "Recklessly" means the Respondent was aware of and consciously disregarded a substantial and unjustifiable risk that the result of the conduct will occur or that the circumstance exists. The risk must be of such a nature and degree that disregarding that risk constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

(20) "Resident Owner-Occupant" means the person who owns or leases a single family dwelling and who occupies that dwelling at the time of violation.

(21) "Respondent" means the person against whom a formal enforcement action is initiated.

(22) "Systematic" means any documented violation that occurs on a regular basis.

(23) "Violation" means a transgression of any statute, rule, regulation, order, license, permit, or any part thereof and includes both acts and omissions. Violations are categorized as Class One (or I), Class Two (or II) or Class Three (or III).

(24) "Willful" means the Respondent had a conscious objective to cause the result of the conduct and Respondent knew or had reason to know that the result was not lawful.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 459.376, ORS 459.995, ORS 465.900, ORS 468.090 – ORS 468.140, ORS 466.880 – ORS 466.895, ORS 468.996 – ORS 468.997, ORS 468A.990 – ORS 468A.992 & ORS 468B.220
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0038

Letters of Deficiency

{Changes: Specifies the purpose of the Letter of Deficiency (formerly Notice of Noncompliance) and the instances where it will be issued.
Purpose: To make the enforcement process more understandable and predictable.}

~~(1)~~ A Letter of Deficiency May be issued for all classes of documented violations [will be revised once the enforcement guidance is fully drafted] and provides notice of a violation, and the consequences of the violation or continued noncompliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved. The notice states whether or not the need for formal enforcement action is being evaluated by the Department. The Letter of Deficiency may state what violations the Department has documented to have occurred along with information regarding what is required, if anything, to ensure compliance and what might happen regarding formal enforcement if compliance is not achieved;

(b) ~~May be issued for all classes of documented violations [will be revised once the enforcement guidance is fully drafted];~~

340-012-0041

Formal Enforcement Actions

{Changes: Adds explanation of what a Respondent can expect when he receives a formal enforcement action. Modifies the instances where a Notice of Permit Violation will be issued.
Purpose: To limit issuance of Notices of Permit Violations for only violations of non-federal requirements and programs that are not federally delegated.}

(1) Formal enforcement actions may require the Respondent to take action within a specified time frame through an Order or a Notice of Permit Violation, and may assess penalties through a Notice of Civil Penalty Assessment, an Order or a Penalty Demand Notice.

(2) Notice of Permit Violation (NPV): [moved from -0040]

(a) Except as provided in subsection (2)(h), before assessing a civil penalty for a violation of the terms or conditions of state-only requirements in a Water Pollution Control Facilities Permit, an Air Contaminant Discharge Permit or a Solid Waste Disposal Permit, the Department shall issue a Notice of Permit Violation to the Respondent.

(b) An NPV ~~shall~~ will be issued for the first occurrence of a documented Class I violation that is not excepted under subsection (2)(h) below, or repeated or continuing documented Class II or Class III violations when a Letter of Deficiency has failed to achieve compliance or satisfactory progress toward compliance. A permittee ~~shall~~ cannot not receive more than three LODs for Class ~~Two~~ II violations of the same permit within a 36-month period without being issued an NPV. [Note: this will be reassessed when the enforcement guidance is fully drafted.]

(c) The NPV is in writing, specifies the violation and states that a civil penalty will be imposed for the permit violation unless the Department receives, within five working days following service of the NPV, one of the following:

(A) A written response from the Respondent certifying that Respondent is complying with all terms of the permit from which the violation is cited. The response ~~shall~~ must include a sufficient description of the information on which the Respondent is certifying compliance to enable the Department to determine that compliance has been achieved; or

(B) A written proposal, acceptable to the Department, describing how Respondent will bring the facility into compliance with the permit. At a minimum, an acceptable proposal must include the following:

(i) A detailed plan and time schedule for achieving compliance in the shortest practicable time;

(ii) A description of the interim steps that will be taken to reduce the impact of the permit violation until Respondent is in compliance with the permit;

(iii) A statement that the Respondent has reviewed all other conditions and limitations of the permit and no other violations of the permit were discovered.

(d) If a compliance schedule proposed and approved by the Department under paragraph (2)(d)(B) provides for a compliance period of more than six months, the compliance schedule must be incorporated into an Order as described in paragraph (4)(b)(C) that provides for stipulated penalties in the event of any failure to comply with the approved schedule. The stipulated penalties are set at amounts equivalent to the base penalty amount appropriate for that violation as set forth under OAR 340-012-0140;

(e) If the NPV is issued by a regional authority, the regional authority may require that the Respondent submit information in addition to that described in paragraph (4)(d)(B).

(f) The certification allowed in paragraph (2)(d)(A) of this rule must be signed by a Responsible Official based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" of Respondent means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(B) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, State, Federal, or other public agency: either a principal executive officer or appropriate elected official.

(g) The Department may issue a Notice or Order without first issuing an NPV if any of the following applies:

(A) The violation is intentional;

(B) The water or air permit violation would not normally occur for five consecutive days;

(C) The Respondent has received a Notice of Permit Violation, or other formal enforcement action with respect to any violation of the permit within 36 months immediately preceding the documented violation; or

(D) The requirement to provide such notice would disqualify a state program from federal approval or delegation.

(h) For purposes of subsection (2)(h), a "permit" includes permit renewals and modifications. The Department need not provide the Respondent with an additional advance warning if the Respondent has received a Notice of Permit Violation, or other formal enforcement action with respect to the permit within 36 months immediately preceding the documented violation.

(3) Notice of Civil Penalty Assessment (CPA):

(a) Is issued pursuant to ORS 468.130, 468.140, and OAR 340-012-0042 and 340-012-0045; and

(b) May be issued for the occurrence of any class of documented violation that is not limited by the NPV requirement of OAR 340-012-0041(2).

(4) Order:

(a) Is issued pursuant to ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B;

(b) May be issued for any class of violation; and

(c) May be in the form of a Commission or Department Order, or any written order that has been consented to in writing by the parties adversely affected thereby including but not limited to a Mutual Agreement and Order (MAO):

(A) Commission Orders are signed by the Commission, or the Director on behalf of the Commission;

(B) Department Orders are issued by the Director;

(C) All other Orders:

(i) May be negotiated; and

(ii) Must be signed by the Director and the authorized representative of each other party.

(5) Penalty Demand Notice (PDN):

[Need to develop the section]

(6) The enforcement actions described in sections (2) through (5) of this rule in no way limit the Department or Commission from seeking legal or equitable remedies as provided by ORS Chapters 454, 459, 465, 466, 467, 468, 468A, and 468B.

Stat. Auth.: ORS 454.625, ORS 459.376, ORS 465.400 - ORS 465.410, ORS 466.625, ORS 467.030, ORS 468.020, ORS 468A.025, ORS 468A.045, & ORS 468B.035
Stats. Implemented: ORS 454.635, ORS 454.645, ORS 459.376, ORS 459.995, ORS 465.900, ORS 466.210, ORS 466.880 - ORS 466.895, ORS 468.090 - ORS 468.140, ORS 468A.990, ORS 468.992, ORS 468B.025, ORS 468B.220 & ORS 468B.450
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

NPV-related citations from -0040. Need to be worked in to those above.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 459.376, ORS 468.090 - ORS 468.140, ORS 468A.990 & ORS 468B.025
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 25-1979, f. & ef. 7-5-79; DEQ 22-1984, f. & ef. 11-8-84; DEQ 16-1985, f. & ef. 12-3-85; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0043 (used to be -0035)

Consolidation of Proceedings [May be moved to Division 11]

{Changes: Moves prior section and adds clarification that proceedings may not only be consolidated but may be bifurcated at Department's discretion.
Purpose: To make process more understandable and predictable.}

Each and every violation is a separate and distinct offense, and in cases of continuing violations, each day of violation is a separate and distinct violation. Proceedings for the assessment of multiple civil penalties for multiple violations may, however, be consolidated into a single proceeding or bifurcated at the Department's discretion.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468.997
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 21-1992, f. & cert. ef. 8-11-92

340-012-0045

Civil Penalty Determination Procedure

{Changes: Mostly new section. Clarifies when this procedure will be used to calculate the civil penalty. Provides that if there is not sufficient evidence to determine which selected magnitude applies, the general magnitude findings will apply.

Purpose: Intended to provide a road map for the penalty calculation process. Resolves current issue of what to do if a selected magnitude is identified in the rules, Department has evidence a violation occurred but insufficient evidence to determine which selected magnitude should apply. In these cases, the general magnitude procedures will apply.}

(1) In addition to any liability, duty, or other penalty provided by law, the Department may assess a civil penalty for any violation of a statutory requirement or Commission or Department rule, permit or order by service of a written notice of assessment of civil penalty upon the Respondent. Except for civil penalties assessed under OAR 340-012-0155, and 340-012-0165, the amount of the civil penalty is determined using the following procedures:

(a) Determine the class of each violation by consulting OAR 340-012-0050 to 340-012-0125;

(b) Determine the magnitude of the violation by first consulting the selected magnitude categories in OAR 340-012-0135. If OAR 340-012-0135 does not specify a selected magnitude or if insufficient information exists to determine which selected magnitude applies, the procedures under OAR 340-12-0130 will apply.

(c) Using the class and magnitude of violation, determine the appropriate base penalty (BP) for each violation established by the matrices of OAR 340-012-0140.

(d) Determine the application of aggravating or mitigating factors (P, H, O, M and C) as set forth in OAR 340-012-0145.

(e) Determine the appropriate economic benefit (EB) according to procedures set forth in OAR 340-012-0150.

(~~3~~2) The results of the determinations made under this rule are applied in the following formula: BP + [(.1 x BP) x (P + H + O + M + C)] + EB to calculate the penalty.

(4~~3~~) In addition to the factors listed in paragraph 1 of this section ~~(2) of this rule~~, the Department may consider any other relevant rule of the Commission and ~~shall~~ will state the effect the consideration had on the penalty. On review, the Commission ~~shall~~ will consider the civil penalty determination procedure, as described in OAR 340-012-0045 and any other relevant rule of the Commission. [We are evaluating whether this section is needed.]

(5~~4~~) The Department may develop and use other approaches to assessing penalties as allowed by statute and implementing regulations. [Intended to allow exceptions to the Division 12 penalty calculation process, like the tanks compliance ticket approach. Actual wording will be more fully developed.]

Note: The violations in sections -0050 through -0125 originate in the program-specific rules. These sections include program Oregon Administrative Rules (OARs) adopted by the Commission through October 30, 2002. Additional rules involving violation classifications (e.g., spills, contingency planning and ballast water) have been adopted by the EQC since October 30, 2002. These violations will be added in the next draft. The only exception is the Underground Storage Tanks Program; the rules adopted in January 2003 are included as the baseline for the changes noted.

340-012-0050

Air Quality Classification of Violations

{Changes: Adds some specific violations to classification, especially regarding vapor recovery and vehicle inspection program violations and reclassifies some violations,.
Purpose: Updates classifications to reflect program priorities and achieve cross-program consistency.}

The Department classifies v~~V~~iolations pertaining to air quality ~~shall be classified~~ as follows:

(1) Class ~~One~~I:

(a) Violati~~oning of~~ a requirement or condition of a Commission or Department ~~O~~order~~,~~ or variance;

(b) ~~Failure~~ Failing to install control equipment or meet performance standards ~~as required~~required by New Source Performance Standards ~~under~~ contained in ~~OAR~~ OAR chapter 340, ~~d~~Division 238 or required by National Emission Standards for Hazardous Air Pollutant Standards ~~under~~ contained in OAR chapter 340, ~~division~~ division 244;

(c) ~~Failure~~ Failing to meet volatile organic compound (VOC) emission standards, operational requirements, or VOC content limitations ~~under~~ contained in OAR chapter 340, ~~D~~division 232 in an ozone nonattainment or maintenance area;

(d) Operating a source required to have a permit, other than a Basic Air Contaminant Discharge Permit (ACDP), without first obtaining the appropriate permit;

(e) Constructing a source required to have a New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit without first obtaining the appropriate permit;

(f) Constructing a new Major Hazardous Air Pollutant (HAP) source without complying with ~~the requirements of~~ Section 112g of the federal Clean Air Act;

(g) Violation of a compliance schedule in a permit;

(h) Exceeding a hazardous air pollutant emission limitation;

(i) Exceeding an opacity or criteria pollutant emission limitation (including a grain loading standard) in a permit, rule or order, other than a daily emission limit, in a non-attainment or maintenance area;

(j) Violation of an operational or process standard (e.g., production level, material usage, fuel usage, boiler steaming rate) in a permit, rule or order in a non-attainment or maintenance area for that pollutant where the standard is a surrogate parameter for an emission limit.;

(k) Exceeding an opacity or ~~criteria~~ emission limit~~ation~~ (including a grain loading standard) or violation of an operational or process standard in a permit where the limit~~ation~~ or standard was established to limit emissions pursuant to NSR, ~~or~~ PSD or Title V regulations;

(l) ~~Failure~~ Failing to perform testing, or monitoring (used to demonstrate compliance with an emission limit) required by a permit, rule or order;

(m) Systematically ~~failure~~ failing to keep records required by a permit, rule or order;

(n) ~~Failure~~ Failing to provide access to premises or records when required by statute, rule, permit or order;

o) Submitting ~~an Oregon~~ Title V ~~s~~Semi-~~annual~~ Annual Compliance Certification or ~~Oregon~~ Title V Annual Operating Report more than 30 days after the due date required by the permit;

(p) ~~Failure~~ Failing to file a timely new or renewal application for ~~an Oregon~~ Title V Operating Permit within 30 days of the timeline in OAR chapter ~~340~~ 340, division 218;

(q) Submitting a report, Title V ~~s~~Semi-~~a~~Annual Compliance Certification, or ~~Oregon~~ Title V Annual Operating Report, ~~Title V actual or calculated emission fee data~~, or any part thereof, that does not accurately reflect the monitoring, record keeping or other documentation held or performed by the permittee;

(r) Negligently or willfully submitting falsified, inaccurate or incomplete Title V emission fee data;

(s) Fail~~ure~~ing to comply with Emergency Action Plans;

(t) ~~Violationing~~Violating ~~of~~ a work practice requirement for asbestos abatement projects ~~that~~ and causesing a potential for public exposure to asbestos or potential release of asbestos into the environment;

(u) Stora~~ge~~ing or causing open accumulation of friable asbestos material or asbestos-containing waste material (ACWM) that causes a potential for public exposure to asbestos or potential release of asbestos into the environment;

(v) Causing ~~Visible~~ visible emissions of asbestos-containing material during an asbestos abatement project or during collection, processing, packaging, transportation, or disposal of asbestos-containing waste material;

(w) Conducting ~~of~~ an asbestos abatement project without being ~~by a person not licensed~~ as an asbestos abatement contractor;

(x) Violation ~~of~~ng a disposal requirement for packaging, storing, transporting, or disposing of friable ACWM ~~that~~ and causesing a potential for public exposure to asbestos or potential release of asbestos into the environment;

(y) Failing to hire a licensed contractor to conduct an asbestos abatement project ~~which~~ that results in the potential for public exposure to asbestos or potential release of asbestos into the environment;

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

(aa) Selling, offering to sell, or advertising to sell a non-certified woodstove by a commercial operation or entity;

~~(bb) Failure to use Department approved vapor control equipment, when transferring fuel;~~

(~~cc~~bb) Fail~~ure~~ing to install certified vapor recovery equipment;

(~~dd~~cc) ~~Failure~~ Failing to replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of a stage I or stage II vapor collection systems;

(~~ee~~dd) ~~Failure~~ Failing to install vapor recovery piping required by~~in accordance with standards set forth in~~ OAR chapter 340, ~~d~~division 150;

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

(~~gg~~ff) Transferring vehicle ownership, yet maintaining vehicle usage, with the result of avoiding DEQ Inspection and Maintenance Testing;

(~~hh~~gg) Altering or avoiding Vehicle Inspection Program testing process to fraudulently produce a Certificate of Compliance with the DEQ Inspection and Maintenance Test;

(~~ii~~hh) Registering a vehicle in a vehicle emissions testing area without obtaining required Certificate of Compliance with DEQ Inspection and Maintenance Test;

(~~jj~~ii) Removing, disconnecting, plugging or otherwise making inoperable, factory-installed vehicle pollution control systems;

(~~kk~~jj) Failure of vehicle to pass the DEQ Vehicle Inspection Program smoke test within sixty days after receipt of letter from DEQ indicating that the vehicle was observed with excessive smoke emissions;

(~~ll~~kk) Causing emissions that are a hazard to public safety;

(~~mm~~ll) Any otherwise unclassified violation related to air quality that causes a significant harm or poses a risk of harm to public health or the environment.

(2) Class ~~Two~~II:

(a) Violating standards in permits or rules for fugitive emissions, particulate deposition, or odors;

(b) Constructing a source required to have a permit, other than a Basic or NSR/PSD ACDP, without first obtaining the appropriate permit;

~~(c) Operating a source required to have a Basic ACDP without first obtaining a Basic ACDP;~~

(~~d~~c) Modifying a source with an existing air permit, in such a way as to cause an increase in potential to emit but without triggering NSR/PSD, without first notifying and receiving approval from the Department;

(e~~d~~) Exceeding an opacity or criteria pollutant emission limit~~ation~~ (including a grain loading standard) in a permit, rule or order in an attainment area; ~~;~~

(~~f~~e) Exceeding an opacity or criteria emission limit (including a grain loading standard) in a permit, rule or order in a nonattainment or maintenance area where the limit is a daily limit or where the exceedance involves a pollutant other than that causing the nonattainment or maintenance status;

(f) ~~Violationng~~Violating ~~of~~ an operational or process standard (e.g., production level, material usage, fuel usage, boiler steaming rate) in a permit, rule or order in an attainment area where the standard is a surrogate parameter for an emission limit;

(g) ~~Failure~~ Failing to perform testing or monitoring (required by a permit, rule or order) used to demonstrate compliance with ~~something~~ a condition other than an emission limit unless otherwise classified;

(h) Submitting ~~Oregon~~ Title V ~~s~~Semi-~~annual~~ Annual Compliance Certification or ~~Oregon~~ Title V Annual Operating Report more than 30 days after the due date, or submitting an ACDP annual report ~~greater~~ more than 30 days after the due date ~~required by the permit~~;

(i) ~~Failure~~ Failing to pay Title V emission fees;

(j) Submitting inaccurate Title V emission fee data;

(k) ~~Failure~~ Failing to maintain on site records when required by ~~a~~ permit ~~to be maintained on site~~;

(l) ~~Failure~~ Failing to comply with notification and reporting requirements in a permit unless otherwise classified;

(m) ~~Failure~~ Failing ~~by an owner or operator of a facility~~ to perform an asbestos survey when required;

(n) ~~Failure~~ Failing to comply with asbestos abatement licensing, certification, or accreditation requirements ~~set forth in~~of OAR sections 340-248-0120, -0130, -0140 or -0150;

(o) ~~Failure~~ Failing to provide notification of an asbestos abatement project;

(p) ~~Violation~~ Violating~~of~~ a work practice requirement for asbestos abatement projects that does not cause a potential for public exposure to asbestos and does not release asbestos into the environment;

(q) ~~Violation~~ Violating~~of~~ a disposal requirement for asbestos-containing waste material that does not cause a potential for public exposure to asbestos and does not release asbestos into the environment;

(r) ~~Failure~~ Failing to ~~by an owner or operator of a facility that requires an asbestos survey to~~ keep a copy of ~~the~~ an asbestos survey ~~report~~ on site at the facility during any demolition or renovation activity;

(s) Openly burning ~~of~~ commercial, construction, demolition, and industrial wastes in violation of OAR 340-264-0080 through 01~~7~~80;

(t) ~~Failure~~ Failing to display permanent labels on a certified woodstove;

(u) Alteringation ~~of~~ a permanent label for a certified woodstove;

(v) Operating a vapor recovery system without first obtaining a piping test performed by a licensed service provider as required by OAR chapter 340, division 160;

(w) Failing to use Department-approved vapor control equipment when transferring fuel;

(x) Failing~~ure~~ to obtain Department approval before installing a Stage II vapor recovery system not ~~already~~ registered ~~with the Department as specified~~as required by ~~in~~ Department rules;

(~~x~~y) Installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons using approved recovery and recycling equipment;

(~~y~~z) Selling, or offering to sell, or giving as a sales inducement any aerosol spray product which contains as a propellant any compound prohibited under ORS 468A.655;

(aa~~z~~) Selling any chlorofluorocarbon or halon containing product prohibited under ORS 468A.635;

(~~aa~~bb) Violation of OAR 340-242-0620 by a person who has performed motor vehicle refinishing on 10 or more on-road motor vehicles in the previous 12 months;

(~~bb~~cc) Any violation of the Employee Commute Option rules contained in OAR 340-242-0010 through -0290;

(~~cc~~dd) Any violation related to air quality that is not otherwise classified in these rules.

(3) Class Three:

(a) Constructing or operating a source required to have a Basic ACDP without first obtaining a Basic ACDP;

(b) Modifying a source with an existing ~~A~~air ~~Permit~~permit, in such a way as to not cause an increase in potential to emit, without first notifying and receiving approval from the Department;

~~(c) Exceeding opacity limitation in a permit, rule or order by less than five percent;~~

(c) Violations of permit conditions or Title V permit deviations not otherwise classified as Class I or Class II violations, provided the Department determines that the violations or deviations were unavoidable or unintentional, not frequent or recurring and corrected as soon as possible after being detected;

(d) Submitting an ACDP annual report late, but less than 30 days after the due date ~~required by the permit~~;

(e) Submitting ~~i~~Improper notification, or fail~~ure~~ing to revise a notification when required, of an asbestos abatement project;

(f) Fail~~ure~~ing to submit an air clearance report (ASN-5) for an asbestos abatement project that demonstrates compliance with standards.

(g) All open burning violations unless classified elsewhere;

(h) Failure to display a temporary label on a certified woodstove;

(i) Violation of OAR 340-242-0620 by a person who has performed motor vehicle refinishing on fewer than 10 on-road motor vehicles in the previous 12 months. [Publications: The publication(s) referenced in this rule is available from the agency.]

Stat. Auth.: ORS 468.020, ORS 468A.025 & ORS 468A.045
Stats. Implemented: ORS 468.020 & ORS 468A.025
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84;

DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-012-0052

Noise Control Classification of Violations

{Changes: No substantive changes.}

Violations pertaining to noise control are classified as follows:

(1) Class ~~One~~I:

(a) Violating~~ion of~~ a requirement or condition of a Commission or Department order or variance;

(b) Violations that exceed noise standards by 10 decibels or more;

(c) Exceeding the ambient degradation rule by five decibels or more;

(d) ~~Failure~~ Failing to submit a compliance schedule required by OAR 340-035-0035(2);

(e) Operating a motor sports vehicle without a properly installed or well-maintained muffler or exceeding the noise standards set forth in OAR 340-035-0040(2);

(f) Operating a new permanent motor sports facility without submitting of projected noise impact boundaries;

(g) ~~Failure~~ Failing to provide access to premises or records when required by law, rule, or order;

(h) ~~Violation~~ Violating~~of~~ motor racing curfews set forth in OAR 340-035-0040(6);

(i) Any otherwise unclassified violation related to noise control that causes a significant harm or poses a risk of harm to public health or the environment.

(2) Class ~~Two~~II:

(a) Violations that exceed noise standards by three decibels or more;

(b) Advertising or offering to sell or selling an uncertified racing vehicle without displaying the required notice or obtaining a notarized affidavit of sale;

(c) Any violation related to noise control ~~which is~~ not otherwise classified in these rules.

(3) Class III

Violations ~~that~~ exceeding noise standards by one or two decibels are Class III violations.

Stat. Auth.: ORS 467.030 & ORS 468.020
Stats. Implemented: ORS 467.050 & ORS 467.990
Hist.: DEQ 101, f. & ef. 10-1-75; DEQ 22-1984, f. & ef. 11-8-84; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0055

Water Quality Classification of Violations

*{Changes: Adds some specific violations to classifications, especially violations of requirements regarding general permits; stormwater and erosion control; biosolids management; underground injection control systems; municipal pretreatment}*Violations pertaining to water quality are classified as follows:

(1) Class ~~One~~I:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Causing pollution of waters of the State; ~~(ORS 468B.025(1)(a));~~

(c) Reducing the water quality of waters of the State below water quality standards ~~(ORS 468B.025(1)(b));~~

(d) Any discharge of waste that enters waters of the state, either without a waste discharge permit or from a discharge point not authorized by a waste discharge permit ~~(ORS 468B.050(1)(a));~~

(e) Operating a discharge source or conducting a disposal activity without registering ~~Failure to register~~ for an NPDES or WPCF general permit that covers that discharge or disposal activity; ~~by a source covered under the permit prior to conducting a discharge/disposal activity that is covered under the permit~~;

(f) Failure to comply with statute, rule, or permit requirements regarding notification of a spill or upset condition ~~which~~ that results in a non-permitted discharge to waters of the state ~~public waters (ORS 468B.050(1)(c));~~

(g) Violation of a permit compliance schedule contained in Schedule C of the permit ~~related to effluent limitations, biosolids management, reclaimed water, groundwater quality protection programs as required by OAR 340-40-0030, or stormwater/erosion control plans (ORS 468B.025(2));~~

(h) Failure to submit stormwater ~~/erosion~~ pollution control or erosion control plans in accordance with ~~the~~ an NPDES ~~or WPCF general~~ permit;

(i) ~~Any otherwise unclassified~~ violation of any pretreatment standard or requirement by a user of a municipal treatment works that either impairs or damages the treatment works, or causes significant harm or poses a risk of harm to public health or the environment;

(j) Operati~~onng of~~ a disposal system without first obtaining a WPCF or NPDES waste discharge permit ~~(ORS 468B.050(1));~~;

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

(l) Any otherwise unclassified violation related to water quality that causes ~~a~~ significant harm or poses a risk of significant harm to public health or the environment. ~~(ORS 468B.025(1)(a)).~~

(m) Unauthorized changes, modifications, or alterations to a facility operating under a WPCF or NPDES permit that causes or has the potential to cause harm to public health ~~hazard~~ or violation of permit effluent limitations or that degrades the effectiveness of the pollutant control systems ~~(ORS 468B.055).~~;

(n) Negligently or willfully submitting false, inaccurate, or incomplete information required by statute, rule, permit condition or order; ~~(ORS 468B.025(2));~~

(o) Operati~~o~~nng or supervisi~~o~~nng ~~of~~ a wastewater treatment system without proper certification ~~whereth~~at ~~results in an~~where an unpermitted discharge or a violation of permit effluent limitations has occurred~~(OAR 340-049)~~.

(p) ~~Failure~~ Failing to submit a discharge monitoring report required by permit condition ~~(ORS 468B.025(2));~~

~~(q) Managing biosolids without a Department approved biosolids management plan (OAR 340-050 and ORS 468B.025(2)).~~

(~~r~~q) Applying biosolids on a parcel of land that does not have Department site authorization; ~~(OAR 340-050 and ORS 468B.025(2)).~~

~~(s) Managing biosolids that do not meet the pollutant, pathogen and vector attraction reduction requirements under OAR 340-050-0026.~~

~~(t) Failure to comply with pollutant monitoring recordkeeping and reporting requirements under OAR 340-050-0035(4) and (6)(b).~~

(r) Land applying biosolids that do not meet the pollutant, pathogen and vector attraction reduction requirements under OAR 340-050-0026;

(~~u~~s) ~~Failure~~ Failing to connect all plumbing fixtures to, or failure to discharge wastewater or sewage into, a Department-approved system, where there is a discharge of sewage on the ground surface or ~~when such failure creates a risk of harm to~~ public health; ~~threat (ORS 468B.080);~~

(v) Failure~~ing~~ to implement an approved storm water control plan.

~~(w) Constructing, operating, maintaining, or converting an injection system or conducting an injection activity that causes a violation of any primary drinking water regulation (Federal Safe Drinking Water Act) (OAR 340-044-0014(1)).~~

~~(x) Operating a prohibited type of Class I, II, III, IV or V injection activity (OAR 340-044-0015).~~

~~(y) Controlling or operating an underground injection system without a permit unless the system is either exempt or authorized by rule.~~

~~(z) Failure by the owner/operator to decommission an underground injection system or to convert the system to another type of system that will prevent the movement of contaminants into groundwater;~~

~~(aa) Failure of a pretreatment delegated municipality to issue an industrial wastewater discharge permit to a significant industrial user as required by 40 CFR 403.8(f)(1)(iii);~~
~~(bb) Failure of a pretreatment delegated municipality to require compliance with applicable pretreatment standards and requirements by industrial users as required by 40 CFR 403.8(f)(1)(i);~~

~~(cc) Failure of a pretreatment delegated municipality to include effluent limits based on applicable general pretreatment standards, categorical pretreatment standards, local limits, and State and local law in an industrial wastewater discharge permit issued to a significant industrial user as required by 40 CFR 403.8(f)(1)(iii)(C);~~

(dd) Failure of a pretreatment delegated municipality to require compliance with applicable pretreatment standards and requirements by industrial users as required by 40 CFR 403.8(f)(1)(i);

(ee) Failure of a pretreatment delegated municipality to require submission of a Base Line Monitoring Report (BMR) in accordance with 40 CFR 403.12(b) or a Final (90 day) Compliance Report (FCR) in accordance with 40 CFR 403.12(d) as required by 40 CFR 403.8(f)(1)(iv)(B);

(ff) Failure of a pretreatment delegated municipality to carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance with applicable pretreatment standards and requirements by industrial users as required by 40 CFR 403.8(f)(1)(v);

(gg) Failure of a pretreatment delegated municipality to notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status as required by 40 CFR 403.8(f)(2)(iii);

(hh) Failure of a pretreatment delegated municipality to notify industrial users of applicable pretreatment standards and any applicable requirements under Sections 204(b) and 405 of the Clean Water Act and Subtitles C and D of the Resource Conservation and Recovery Act (RCRA) including the RCRA reporting requirements of 40 CFR 403.12(p) as required by 40 CFR 403.8(f)(2)(iii);

(ii) Failure of a pretreatment delegated municipality to randomly sample and analyze the effluent from industrial users and conduct surveillance activities to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards as required by 40 CFR 403.8(f)(2)(v);

(jj) Failure of a pretreatment delegated municipality to investigate instances of noncompliance with pretreatment standards and requirements, as indicated in reports and notices required by pretreatment program, Federal, State and local law, or indicated by analysis, inspection, or surveillance activities described in 40 CFR 403.8(f)(2)(v), as required by 40 CFR 403.8(f)(2)(vi);

(kk) Failure of a pretreatment delegated municipality to comply with the public participation requirements of 40 CFR Part 25 in the enforcement of national pretreatment standards as required by 40 CFR 403.8(f)(2)(vii));

(ll) Failure of a pretreatment delegated municipality to maintain sufficient resources and qualified personnel to carry out the authorities and procedures described in 40 CFR 403.8(f)(1) and (2) as required by 40 CFR 403.8(f)(3);

(mm) Failure of a pretreatment delegated municipality to maintain pretreatment program records in accordance with State and Federal record keeping requirements as required by 40 CFR 403.12(o);

(nn) Failure of a pretreatment delegated municipality to make available to the public all pretreatment program information submitted to the municipality by industrial users to the extent provided by 40 CFR 2.302 as required by 40 CFR 403.14(c);

(oo) Failure of a pretreatment delegated municipality to submit a pretreatment program modification request and receive Department approval before implementation in accordance with requirements of 40 CFR 403.18 as required by 40 CFR 403.18;

(2) Class ~~Two~~II:

(a) ~~Failure~~ Failing to submit a report or plan as required by statute, rule, permit, order, or license not otherwise classified in these rules~~, except for a report required by permit compliance schedule or discharge monitoring report~~;

(b) Any violation of OAR Chapter 340, Division 49 regulations pertaining to certification of wastewater system operator personnel unless otherwise classified;

(c) Placing wastes such that the wastes are likely to enter waters of the state by any means;

~~(d) Failure to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a Department approved system.~~

(~~e~~d) Any violation of a management, monitoring, or operational plan established pursuant to a waste discharge permit, that is not otherwise classified in these rules.

(~~f~~e) Fail~~ure~~ing to submit a timely discharge monitoring report;

(~~g~~f) Failure ~~to register an underground injection system (OAR 340-044-0020)~~ of a designated management agency (DMA) to submit a TMDL implementation plan as required by OAR 340-042-0080(3) within a timeframe requested by the Department or failure to submit a plan that addresses all components required by OAR 340-042-0080(3);

~~[moved to Class I]~~

~~(h) Failure to meet Class V storm water category requirements for an industrial or commercial facility where hazardous substances, toxic materials, and petroleum products are used, handled, or stored (OAR 340-044-0018(3)).~~

~~(i) Failure to meet Class V stormwater category requirements for an industrial, commercial or residential facility with a large parking lot (OAR 340-044-0018(3)(f)).~~

~~(j) Failure to meet Class V stormwater category requirements for municipalities or other government units with 50 or more injection systems (OAR 340-044-0018(3)(b)).~~

~~(k) Failure of a designated management agency (DMA) to submit a TMDL implementation plan [as required by OAR 340-042-0080(3)] within a timeframe requested by the Department or failure to submit a plan that addresses all necessary components required by OAR 340-042-0080(3).~~

(~~h~~g) Any violation related to water quality ~~which is~~ not otherwise classified.

(3) Class ~~Three~~III:

340-012-0057

Underground Injection Control Program Classification of Violations

(1) Class I:

(a) ~~(a)~~ Violation of a requirement or condition of a Commission or Department Order;

(b) Constructing, operating, maintaining, modifying or converting an injection system or conducting an injection activity that causes a violation of any primary drinking water regulation in an aquifer that is or could be used as a drinking water source;

(c) Operating a prohibited type of Class I, II, III, IV or V underground injection system;

(d) Installing or operating an underground injection system without a permit unless the system is either except or authorized by rule;

(e) Failure by the owner or operator to decommission or convert an unused or abandoned underground injection system or to ~~convert~~convert the system to another type of system that will prevent the movement of contaminants into groundwater;

(2) Class II:

(a)~~Failure~~ Failing to register an underground injection system;

(b) Failing to meet Class V stormwater category requirements for an industrial or commercial facility where ~~no~~ hazardous substances, toxic materials, and petroleum products are used, handled, or stored; ~~(OAR 340-044-0018(3)(e)).~~

(~~b~~c) ~~Failure~~ Failing to meet Class V stormwater category requirements for an industrial, commercial or residential facility with a small parking lot (OAR 340-044-0018(3)(g)).

(c) ~~Failure~~ Failing to meet Class V stormwater category requirements for an industrial, commercial, or residential ~~property, parking area or driveway (OAR 340-044-0018(3)(h)).~~facility with a large parking lot;

(d) Failing to meet Class V stormwater category requirements for municipalities or other government units with 50 or more injection systems;

(~~d~~e) Failing to obtain certification of a professional geologist, engineering geologist, or professional engineer registered with the state of Oregon for decommissioning an injection system, except for on-site sewage disposal and stormwater runoff from rooftops;

(f) Failing ~~ure~~ to properly decommission ~~an injection system, except for on-site sewage disposal systems,~~ drilled ~~wells,/boreholes~~wells, boreholes, sewage drill~~/drain~~ holes and sewage drain holes in a manner that renders the system completely inoperable by plugging and sealing to 18 feet to prevent the vertical movement of fluids.~~stormwater runoff from rooftops, through a certified professional geologist, engineering geologist, or professional engineer registered with the State of Oregon (OAR 340-044-0040(3)(b)).~~

~~(e) Failure to properly decommission drilled wells, drilled boreholes, sewage drill holes and drain holes, in a manner that renders the system completely inoperable by plugging and sealing to 18 feet to prevent the vertical movement of fluids (OAR 340-044-0040(3)(A), (B), (C)).~~

(3) Class III:

(a) Failing to meet Class V stormwater category requirements for an industrial or commercial facility where no hazardous ~~susbstances~~substances, toxic materials, or petroleum products are used, handled, or stored;

(b) Failing to meet Class V stormwater category ~~requriekments~~requirements for an industrial, commercial or residential facility with a small parking lot;

(c) Failing to meet Class V sttormwater category requirements for a residential ~~proeeprty~~property, parking area or driveway;

~~(a)~~ (d) Failing to properly decommission in injection system, except for on-site sewage disposal systems, drilled wells, boreholes, sewage drill holes, sewage drain holes and stormwater runoff from rooftops, through a certified professional geologist, engineering geologist, or professional engineer registered with the state of Oregon;

(e) Failing to properly decommission drilled wells, drilled boreholes, sewage drill holes and drain holes, in a manner that renders the system completely inoperable by plugging and sealing to 18 feet to prevent the vertifical movement of fluids;

(f) Failure of a rule-authorized Class V stormwater injection system to meet all basic requirements for authorization by rule; ~~(OAR 340-044-0018(3)(a)).~~

(g) Fail~~ure~~ing to meet Class V stormwater category requirements for municipalities or other government units with fewer than 50 injection systems. ~~(OAR 340-044-0018(3)(e)).~~

Stat. Auth.: ORS 468.020 & ORS 468B.015
Stats. Implemented: ORS 468.090 - ORS 468.140, ORS 468B.025, ORS 468B.220 & ORS 468B.305
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0060

On-Site Sewage Disposal Classification of Violations

{Changes: Changes made to make consistent with program rules.}

Violations pertaining to On-Site Sewage Disposal are classified as follows:

(1) Class ~~One~~I:

(a) Violating a requirement or condition of a Commission or Department order;

(b) Performing, sewage disposal services without a current sewage disposal service license from the Department ~~(ORS 454.635)~~;

(c) Installing or causing to be installed an on-site sewage disposal system or any part thereof, or repairing any part thereof, without first obtaining a permit ~~(ORS 454.635)~~;

(d) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by the Department ~~(ORS 454.635)~~;

(e) Operating or using an on-site sewage disposal system that is failing by discharging sewage or effluent onto the ground surface or into waters of the State; ~~(ORS 454.635);;~~

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

(g) Any otherwise unclassified violations related to on-site sewage disposal thatwhich cause significant harm or pose a risk of significant harm to public health, welfare, safety or the environment; (ORS 454.635).

(h) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization or permit from the Agent and such the operation or use of that causes a discharge of sewerage onto the ground surface or into waters of the State; (ORS 454.635).

(i) Operating or using a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion, and suchthe operation or use causes a discharge of sewerage onto the ground surface or into waters of the State; (ORS 454.635).

(j) Failing to obtain an authorization notice from the Agent before affecting change to a dwelling or commercial facility that results in the potential increase in the projected peak sewage flow from the dwelling or commercial facility in excess of the sewage disposal system's peak design flow and the change results in a discharge of sewerage onto the ground surface or into waters of the State. (ORS 454.635).

(k) Negligently or wilfullywillfully submitting false, inaccurate, or incomplete information required by statute, rule, permit condition or order. Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a Department approved system , unless otherwise classified in OAR 340-012-0055 or 340-012-0060 (ORS 468B.080)

(2) Class TwoII:

(a) Failure by a person who has repaired, installed or caused to be installed an on-site sewage disposal system, or any part thereof, to meet the requirements for satisfactory completion within 30 days after written notification or posting of a Correction Notice at the site;

(b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization from the Agent;

(c) Providing any sewage disposal service in violation of any statute, rule, license, or permit, provided that the violation is not otherwise classified in these rules;

(d) Placing into service, reconnecting to, changing the use of an on-site sewage disposal system andor increasing the projected daily sewerage flow into thean existing on-site sewerage disposal system without first obtaining an authorization notice, construction permit, alteration permit or repair permit;

(e) Installing or causing to be installed a nonwater-carried waste disposal facility without first obtaining written approval or a permit from the Agent;

(f) Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a Department approved on-site system, unless otherwise classified in OAR 340-012-0055 or 340-012-0060;

(g) Advertising or representing one's self as being in the business of performing sewage disposal services without a current sewage disposal service license from the Department (ORS 454.635);

(h) Any violation related to on-site sewage disposal which that is not otherwise classified in these rules.

Stat. Auth.: ORS 454.050, ORS 454.625 & ORS 468.020
Stats. Implemented: ORS 454.635, ORS 454.645 & ORS 468.090 - ORS 468.140
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 4-1981, f. & ef. 2-6-81; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0065

Solid Waste Management Classification of Violations

{Changes: Makes adjustment to classifications for household hazardous waste violations and failure to timely submit a permit renewal application.
Purpose: Reflects change in program priorities for these violations.}

Violations pertaining to the management, recovery and disposal of solid waste shall be classified as follows:

(1) Class ~~One~~I:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Establishing, expanding, maintaining or operating a disposal site without first obtaining a registration or permit;

(c) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to the Department and obtaining Department approval;

(d) Disposing of or authorizing the disposal of solid waste at a location not permitted by the Department to receive that solid waste;

(e) Violation of the freeboard limit which results in the actual overflow of a sewage sludge or leachate lagoon;

(f) Violation of the landfill methane gas concentration standards;

(g) Violation of any federal or state drinking water standard in an aquifer beyond the solid waste boundary of the landfill, or an alternative boundary specified by the Department unless otherwise authorized by the Department;

(h) Violation of a permit-specific groundwater concentration limit, as defined in OAR 340-040-0030(3) at the permit-specific groundwater concentration compliance point, as defined in OAR 340-040-0030(2)(e);

(i) Failure to perform the groundwater monitoring action requirements specified in OAR 340-040-0030(5), when a significant increase (for pH, increase or decrease) in the value of a groundwater monitoring parameter is detected;

(j) Impairment of the beneficial use(s) of an aquifer beyond the solid waste boundary or an alternative boundary specified by the Department;

(k) Deviation from the Department approved facility plans which results in ~~an~~ safety hazard, public health hazard or damage to the environment;

(l) Failure to properly construct and maintain groundwater, surface water, gas or leachate collection, treatment, disposal and monitoring facilities in accordance with the facility permit, the facility environmental monitoring plan, or Department rules;

(m) Failure to collect, analyze and report ground water, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or Department rules;

(n) Violation of a compliance schedule established pursuant to~~contained in~~ a solid waste ~~disposal or closure~~ permit or plan required by rule;

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

(p) Knowingly disposing, or accepting for disposal, materials prohibited from disposal at a solid waste disposal site by statute, rule, permit or order;

(q) Accepting, handling, treating or disposing of clean up materials contaminated by hazardous substances by a landfill in violation of the facility permit and plans as approved by the Department or the provisions of OAR 340-093-0170(3);

(r) Accepting for disposal infectious waste not treated in accordance with statutes and Department rules;

(s) Accepting for treatment, storage or disposal wastes defined as hazardous under ORS 466.005, et seq., or wastes from another state which are hazardous under the laws of that state without approval from the Department;

(t) Mixing for disposal or disposing of ~~principal~~ recyclable material that has been properly prepared and source separated for recycling;

(u) Failure to follow a Department approved Construction Quality Assurance (CQA) plan when constructing a waste cell;

(v) Failure to comply with a Department approved Remedial Investigation Workplan developed in accordance with OAR 340-040-0040;

(w) Failure to establish and maintain financial assurance as required by statute, rule, permit or order;

(x) Open burning in violation of OAR 340-264-0060(3);

(y) Any otherwise unclassified violation related to the management, recovery and disposal of solid waste which causes significant harm or poses a risk of harm to public health or the environment.

(z) Failure to comply with any solid waste permit or rule requirement pertaining to permanent household hazardous waste collection facility operations;

(2) Class ~~Two~~II:

(a) Violation of a condition or term of a Letter of Authorization;

(b) Failure of a permitted landfill, solid waste incinerator, a municipal solid waste compost facility operator or a metropolitan service district to report amount of solid waste disposed in accordance with the statutes and rules of the Department;

(c) Failure to accurately report weight and type of material recovered or processed from the solid waste stream in accordance with the statutes and rules of the Department;

(d) Failure of a disposal site to obtain certification for recycling programs in accordance with the statutes and rules of the Department before accepting solid waste for disposal as specified in ORS 459.305(1);

(e) Acceptance of solid waste by a permitted disposal site from a person that does not have an approved solid waste reduction program as specified in ORS 459.055(3) and ORS 459.305(1) and (3);

(f) Failure to comply with landfill cover requirements, including but not limited to daily, intermediate, and final covers, and limitation of working face size;

(g) Unless otherwise classified failure to comply with any plan approved by the Department;

(h) Failure of a municipal solid waste landfill to establish and maintain a facility operating record;

(i) Any violation related to solid waste, solid waste reduction, or any violation of a solid waste permit not otherwise classified in these rules.

(j) Operating a Household Hazardous Waste (HHW) collection event or site without first obtaining Department approval or failing to comply with approved plans for HHW collection events as required in ORS 459.415.

(k) Receiving special waste in violation of or without a Department approved Special Waste Management Plan;

(l) Failing to timely submit a permit renewal application.

(3) Class ~~Three~~III:

(a) Failure to post required signs;

(b) Failure to control litter;

(c) Unless otherwise classified failure to notify the Department of any name or address change of the owner or operator of the facility within ten days of the change.

(d) Failure to timely submit a permit renewal application.

Stat. Auth.: ORS. 459.045 & ORS 468.020
Stats. Implemented: ORS 459.205, ORS 459.376, ORS 459.995 & ORS 468.090 - ORS 468.140
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-012-0066

Solid Waste Tire Management Classification of Violations

{Changes: No substantive changes}

Violations pertaining to the storage, transportation and management of waste tires or tire-derived products shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Establishing, expanding, or operating a waste tire storage site without first obtaining a permit;

(c) Systematic failure to maintain written records of waste tire generation, storage, collection, transportation, and disposal, as required;

(d) Disposing of waste tires or tire-derived products at an unauthorized site;

(e) Violation of the compliance schedule or fire safety requirements of a waste tire storage site permit;

(f) Hauling waste tires or advertising or representing one's self as being in the business of a waste tire carrier without first obtaining a waste tire carrier permit as required by statutes and rules of the Department;

(g) Causing or allowing an unpermitted waste tire carrier to transport waste tires;

(h) Failure to establish and maintain financial assurance as required by statute, rule, permit or order;

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

(j) Any otherwise unclassified violation related to the storage, transportation or management of waste tires or tire-derived products that causes significant harm or poses a risk of harm to public health or the environment.

(2) Class Two:

(a) Violation of a waste tire storage site or waste tire carrier permit not otherwise classified;

(b) Failure to submit a permit renewal application before the expiration date of the existing permit within the time required by statute, rule, or permit;

(c) Hauling waste tires in a vehicle not identified in a waste tire carrier permit or failing to display required decals as described in a waste tire carrier permit;

(d) Violation of a condition or term of a Letter Authorization;

(e) Any violation related to the storage, transportation or management of waste tires or tire-derived products that is not otherwise classified in these rules.

(3) Class Three:

(a) Failure to submit required annual reports in a timely manner;

(b) Failure to keep required records on use of vehicles;

(c) Failure to post required signs;

(d) Failure to submit a permit renewal application in a timely manner;

(e) Failure to submit permit fees in a timely manner;

(f) Failure to maintain written records of waste tire generation, storage, collection, transportation, and disposal.

Stat. Auth.: ORS 459.785 & ORS 468.020
Stats. Implemented: ORS 459.705 - ORS 459.790, ORS 459.992 & ORS 468.090 - ORS 468.140
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

{Changes: Separates and specifies additional classification listings for general UST requirements and release detection and monitoring; cleanup of leaking USTs; and general requirements and release detection and monitoring for heating oil tanks.
Purpose: To provide clarity and predictability to regulated community.}

340-012-0067

Underground Storage Tank ~~and Heating Oil Tank~~ Classification of Violations

Violations pertaining to underground storage tank (UST) systems are classified as follows:

(1) Class ~~One~~I:

(a) Violating a requirement or condition of a Commission or Department order;

~~(b) Failure to report a release or suspected release from an UST system or a heating oil tank;~~

(~~e~~b) Failure to perform an investigation or confirmation of a suspected release;

(~~d~~c) Failure to establish or maintain the required financial responsibility mechanism;

(~~e~~d) Failure to provide or allow access to premises or records;

(~~f~~e) Failure to apply for and ~~be issued~~obtain the appropriate general permit registration certificate before decommissioning, installing or operating an UST, not otherwise classified;

(~~g~~f) Failure to install spill and overfill protection equipment that will prevent a release or to be able to demonstrate to the department that the equipment is properly functioning;

(~~h~~g) Failure to install, operate or maintain a method or combination of methods for release detection for an UST system such that the method can detect a release from any portion of the UST system;

(~~i~~h) Failure to install or use equipment that is properly designed and constructed to protect any portion of the UST or piping from corrosion;

(~~j~~i) Failure to operate and maintain corrosion protection such that it continuously provides protection to the UST system;

(~~k~~j) Failure to permanently decommission an UST system;

(~~l~~k) Failure to obtain approval from the department before installing or operating vapor or groundwater monitoring wells as part of a release detection method;

(~~m~~l) Installing, repairing, replacing or modifying an UST system in violation of any rule adopted by the department, not otherwise classified;

(~~n~~m) Systematic failure to conduct testing, monitoring or to keep records;

(~~o~~n) Providing ~~installation, modification, repair, replacement, decommissioning or testing~~tank services ~~on an UST system or providing soil matrix cleanup services at an UST facility~~ without the appropriate UST service ~~or soil matrix cleanup service~~ provider license;

(~~po~~) Using fraud or deceit to obtain ~~an UST~~tanka tank services provider~~, soil matrix cleanup service provider, heating oil tank service provider~~ or supervisor license or demonstrating negligence or incompetence in performing ~~UST or other~~ tank services;

(p) Supervising tank services without the appropriate supervisor license;

(~~qp~~) Failure to assess the excavation zone of a decommissioned or abandoned UST when directed to do so by the department; and

(~~rq~~) Any otherwise unclassified violation related to UST system that causes or poses significant harm to public health or the environment.

(2) Class ~~Two~~II:

(a) Failure to conduct release detection monitoring and testing activities for USTs or piping, not otherwise classified;

(b) Failure to conduct corrosion protection monitoring and testing activities for USTs or piping, not otherwise classified;

(c) Failure to conform to performance standards and requirements and third party evaluation and approval for UST system release detection methods or equipment or corrosion protection equipment, not otherwise classified;

(d) Continuing to use a method or methods of release detection after period allowed by rule has expired;

(e) Failure to use or maintain spill or overfill prevention equipment, not otherwise classified;

(f) Failure to meet all requirements for a financial responsibility mechanism, not otherwise classified;

(g) Failure to have a trained UST system operator for an UST facility after March 1, 2004;

(h) Failure to apply for a modified general permit registration certificate;

(i) Failure to have an operation certificate for all compartments or chambers of a multichambered or multicompartment UST when at least one compartment or chamber has an operation certificate;

(j) Installing, repairing, replacing or modifying an UST or UST equipment ~~or conducting a soil matrix cleanup~~ without providing the required notifications;

(k) Failure to decommission an UST in compliance with the statutes and rules adopted by the department, including, but not limited to, performance standards, procedures, notification, general permit registration and site assessment requirements;

(l) Providing installation, modification, decommissioning or testing services on an UST system ~~or providing soil matrix cleanup services~~ at an UST facility that does not have the appropriate general permit registration certificate;

(m) Failure by a distributor to obtain the identification number for each UST and operation certificate number before depositing a regulated substance into an UST;

(n) Failure by a distributor to maintain a record of all USTs into which it deposited a regulated substance;

(o) Allowing the installation, modification, decommissioning or testing of an UST system or soil matrix cleanup at an UST facility by any person not licensed by the department;

(p) Failure to provide information as required by permit, rule or statute ~~OAR 340-150-0135(6)~~ or as requested by the department;

(q) Failure to submit checklists or reports for UST installation, modification or suspected release confirmation activities;

(r) Failure to comply with integrity assessment inspection schedules or requirements for internally lined USTs;

~~(s) Allowing the performance of heating oil tank services or supervision of heating oil tank services by any person not licensed by the department;~~

~~(t) Providing heating oil tank services at a heating oil tank without a heating oil tank service provider or supervisor license;~~

(~~t~~s) Failure by an owner or permittee to pass the appropriate national examination before performing installation, decommissioning or testing services on an UST system;

~~(vt) Supervising the installation, modification, repair, replacement, decommissioning, testing or soil matrix cleanup of an UST system without a supervisor license;~~

(~~w~~ut) Failure by an owner or permittee to provide the identification number for each UST or operation certificate number to persons depositing a regulated substance into an UST; and

(~~x~~vu) Any other violation related to UST systems ~~or heating oil tanks~~ not otherwise classified.

(3) Class ~~Three~~III:

(a) Failure by a person who sells an UST to notify the new owner or permittee of the ~~d~~Department's general permit registration requirements;

(b) Failure to maintain release detection records for USTs or piping if the failure does not constitute a significant operational compliance violation;

(c) Failure to maintain required manufacturer's information or third party evaluation documents for approved methods or equipment;

(d) Failure to maintain training records for an UST system operator; and

(e) Failure to keep records of UST system repair, modification or replacement work.

Stat. Auth.: ORS 466.746, 466.994 & 468.020
Stats. Implemented: ORS 466.706 - 466.835 & 466.994
Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & ~~e~~cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0075
Underground Storage Tank Cleanup Classification of Violations
Violations pertaining to a release from an underground storage tank shall be classified as follows:
(1) Class ~~One~~I:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Failure to report a release from an underground storage tank;

(c) Failure to initiate or complete the investigation or cleanup of a release from an underground storage tank;

(d) Failure to provide access to premises or records;

(e) Failure to conduct free product removal;

(f) Failure to properly manage petroleum contaminated soil;

(g) Failure to mitigate fire, explosion or vapor hazards;

(h) Using fraud or deceit to obtain a soil matrix cleanup services provider or supervisor license or demonstrating negligence or incompetence in performing soil matrix cleanup services;

(i) Providing soil matrix cleanup services without obtaining the appropriate service provider license;

(j) Supervising soil matrix cleanup services without first obtaining the appropriate supervisor license;

(~~hk~~) Any otherwise unclassified violation related to a release from an underground storage tank which causes or poses significant harm to public health and the environment.

(2) Class ~~Two~~II:

(a) Failure to report a suspected release from an underground storage tank;

(b) Failure to take immediate action to prevent further release from an underground storage tank.

(c) Failure to submit reports or other documentation from the investigation or cleanup of a release from an underground storage tank;

(d) Failure to submit a corrective action plan (CAP);

~~(e) Providing cleanup of a release from an underground storage tank without obtaining an underground storage tank service provider license;~~

~~(f) Supervising cleanup of a release from an underground storage tank without first obtaining an underground storage tank supervisor license;~~

(g~~e~~) Any other violation related to a release from an underground storage tank not otherwise classified in these rules.

340-012-0080
Heating Oil Tank Classification of Violations
Violations pertaining heating oil tanks shall be classified as follows:
(1) Class ~~One~~I:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Failure to report a release from a heating oil tank;

(c) Failure to initiate and complete the investigation or cleanup of a release from a heating oil tank;

(d) Failure to submit reports from the investigation or cleanup of a release from a heating oil tank;

(e) Failure to provide access to premises or records;

(f) Failure to initiate and complete free product removal;

(g) Failure by a service provider to certify that heating oil tank services they provided ~~performed~~ were conducted in compliance with all applicable regulations;

(h) Failure of a responsible party or ~~licensed~~ service provider to conduct corrective action after the Department rejects a certified report;

(i) Using fraud or deceit to obtain a heating oil tank services provider or supervisor license or demonstrating negligence or incompetence in performing heating oil tank services;

(j) Providing heating oil tank services without first obtaining the appropriate service provider license;

(j) Supervising heating oil tank services without first obtaining the appropriate supervisor's license;

(ij) Any otherwise unclassified violation related to a heating oil tank which causes or poses significant harm to public health and the environment.

(2) Class ~~Two~~II:

(a) Failure to submit a corrective action plan (CAP);

~~(b) Providing heating oil tank services without first obtaining a heating oil tank service provider license;~~

(eb) Failing to properly decommission a heating oil tank;

(c) Failure of a heating oil tank service provider to hold and continuously maintain insurance.

~~(d) Supervising heating oil tank services without first obtaining a heating oil tank supervisor's license;~~

(ed) Performing heating oil tank services not in compliance with all applicable statutes, rules, or permits not otherwise classified;

~~(f) Failure of a heating oil tank service provider to hold and continuously maintain insurance.~~

(3) Class ~~Three~~III:

(a) Failure of a heating oil tank service provider to fulfill the requirements of a heating oil services license not otherwise classified.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995 and ORS 468.020
Stats. Implemented: ORS 466.746 & 466.994
Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 21-1992, f. & cert. ef. 8-11-92;DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0095
Hazardous Waste Management and Disposal Classification of Violations
{Changes: Adjusts some violation classifications, including eliminating all Class III violations.
Purpose: To reflect program priorities.}

Violations pertaining to the management and disposal of hazardous waste, including universal wastes, shall be classified as follows:
(1) Class ~~One~~I:
(a) ~~Failure~~ Failing to comply with any term, requirement, or condition of a Department or Commission order;
(b) ~~Failure~~ Failing to make a complete and accurate hazardous waste determination of a residue as required by OAR 340-102-0011;

(c) Failure of a hazardous waste treatment, storage or disposal (TSD) facility to meet general waste analysis requirements or to develop and follow a written waste analysis plan;
(d) ~~Operationing of~~Operating a TSD facility without first obtaining a permit or without having interim status as an existing management facility pursuant to OAR 340-105-0010;
(e) ~~Accumulation~~ Accumulating~~of~~ hazardous waste on site for longer than the applicable on-site accumulation period;
(f) Transporting or offering for transport hazardous waste for off-site shipment without first preparing a manifest;
(g) Accepting for transport hazardous waste ~~which~~ that is not accompanied by a complete and accurate manifest;
(h) ~~Failure~~ Failing to submit a manifest discrepancy report or exception report when required;
(i)~~(i)~~ Failure of a TSD facility to meet facility security requirements;
(j) Failure of a TSD facility to meet ignitable, reactive, or incompatible hazardous waste management requirements;
(k) Illegally disposaling of hazardous waste;
(l) ~~Failure~~ Failing to meet land disposal restriction notification requirements;

(m) ~~Failure~~ Failing to manage waste pesticide as required by OAR 340-109-0010;
(n) Illegal treatment or dilution of a universal waste by a universal waste handler;
(o) ~~Use~~ Using or offerering for use, of any empty or decontaminated pesticide container for storage of food, fiber or water intended for human or animal consumption;
(p) Mixing, solidifying, or otherwise diluting any hazardous waste to circumvent land disposal restrictions;
(q) Shipping of universal waste by a universal waste handler to a place other than an off-site collection site, destination facility or foreign destination in violation of **40 CFR 273.18** or **273.38**;
(r) ~~Failure~~ Failing to comply with hazardous waste tank integrity assessment or certification requirements;
(s) Failure of an owner or operator of a TSD facility to meet closure plan, post closure plan,- and/or closure cost estimate requirements;
(t) Failure of an owner or operator of a TSD facility to retain an independent registered professional engineer to oversee closure activities and certify conformity with an approved closure plan;
(u) Failure of an owner or operator of a TSD facility to establish and maintain financial assurance for closure or post closure care;
(v) Systematic failure of an owner or operator of a TSD facility or a generator of hazardous waste to conduct required inspections or to maintain required inspection records;
(w) Failure of an owner or operator of a TSD facility or generator to correct promptly any hazardous condition discovered during an inspection;
(x) ~~Failure~~ Failing to prepare and maintain an up-to-date facility Contingency Plan;
(y) ~~Failure~~ Failing to follow an emergency procedure contained in a Contingency Plan or other emergency response plan when failure to do so could result in serious harm;
(z) ~~Storage~~ Storing or ~~accumulation~~ accumulating~~of~~ hazardous waste in a tank or container that is leaking or presenting a threat of release;
(aa) Generator storage or accumulation of more than 100 containers of hazardous waste without placing the waste in a storage unit that meets the requirements of OAR 340-102-0034;
(bb) ~~Failure~~ Failing to follow hazardous waste, universal waste, or pesticide waste container or tank labeling requirements or lacking ~~of~~ knowledge of container contents;

(cc) Failure by a generator to mark a hazardous waste container with a required accumulation date or failure to document the length of time hazardous waste has accumulated on-site;

(dd) ~~Failure~~ Failing to comply with the export requirements for hazardous wastes;
(ee) ~~Violation~~ Violating ~~of any~~a TSD facility permit, provided that the violation is equivalent to any Class I violation set forth in these rules;
(ff) ~~Failure~~ Failing to comply with hazardous waste generator annual reporting requirements, Treatment, Storage, Disposal and Recycling facility annual reporting requirements, or annual registration information;
(gg) ~~Failure~~ Failing to properly install or maintain groundwater monitoring wells such that detection of hazardous waste or hazardous constituents that migrate from the waste management area cannot be immediately detected;

(hh) ~~Failure~~ Failing to develop and/or follow an approved groundwater sampling and analysis plan;
(ii) ~~Failure~~ Failing to obtain an EPA Identification Number;
(jj) Failure of a large-quantity hazardous waste generator or TSD facility to properly control volatile organic hazardous waste emissions;
(kk) ~~Failure~~ Failing to provide access to premises or records when required;
(ll) ~~Failure~~ Failing to fully comply with Personnel Training requirements;
(mm) ~~Failure~~ Failing to decommission a ground-water monitoring well as required.
(nn) ~~Failure~~ Failing to keep a container of hazardous waste closed except when necessary to add or remove waste;
~~(oo)~~
~~Any otherwise unclassified violation related to the generation, management and disposal of hazardous waste, which causes or poses a significant risk of harm to public health or the environment.~~
(oo) Failure to place hazardous waste in a container, tank or containment building or a drip pad that complies with the requirements of 40 CFR Parts 264 and 265.
(pp) Negligently or willfully submitting to the Department false, inaccurate or incomplete information required by statute, rule, order or permit condition.
(qq) Negligently or willfully recording false, inaccurate, or incomplete information in a record required to be kept by a hazardous waste generator, transporter or TSD facility by Department statute, rule, order or permit condition.
(rr) Failure to immediately clean up a spill of hazardous waste;
(ss) Any otherwise unclassified violation related to the generation, management and disposal of hazardous waste which causes or poses a significant risk of harm to public health or the environment.

(2) Class II:
(a) Failure to retain a copy of documentation used to determine whether a residue is a hazardous waste, if required;
(b) Failure to maintain aisle space adequate to allow unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment;
[Note: old b-g are gone.]
(c) Failure to manage universal waste in a manner that prevents releases into the environment;
(d) Any otherwise unclassified violation related to the generation, management and disposal of hazardous waste is a Class II violation.

All class three violations have been deleted.

[Publications: The publication(s) referenced in this rule is available from the agency.]
Stat. Auth.: ORS 459.995, ORS 466.070 - ORS 466.080, ORS 466.625 & ORS 468.020
Stats. Implemented: ORS 466.635 - ORS 466.680, ORS 466.880 - ORS 466.992 & ORS 468.090 - ORS 468.140

Hist.: DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 9-1986, f. & ef. 5-1-86; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-012-XXX

Dry Cleaner Classification of Violations

(1) Class I:
(a) Placing hazardous waste generated at a dry cleaning facility at any location other than an appropriately labeled hazardous waste storage container;
(b) Discharging dry cleaning wastewater to a sanitary sewer, storm sewer, septic system, boiler or into the waters of the state;
(c) Failure to have a secondary containment system under and around the dry cleaning machine as required by OAR 340-124-0040(3)(a) and under and around stored solvent as required by OAR 340-012-0040(3)(c).
(d) Failure by persons generating hazardous waste at a dry cleaning facility in amounts of 220 pounds a month or less or who never store onsite more than 2,200 pounds of hazardous waste to dispose of hazardous waste within one year of the date the waste was placed in the hazardous waste container;
(e) Failure by persons generating hazardous waste at a dry cleaning facility in amounts of 220 pounds a month or less or who never store onsite more than 2,200 pounds of hazardous waste to label a hazardous waste storage container with the date the waste was first placed in the container;
(f) Failure to store hazardous waste in closed containers;
(g) Failure top treat ~~azardous~~hazardous waste dry cleaning wastewater in equipment meeting the criteria in OAR 340-124-040(2)(c) or (2)(d);
(h) Failure of a dry cleaning business owner or dry cleaning operator to submit an annual report to the Department;
(i) Failure of a dry store operator to submit an annual report to the Department;
(j) Failure to report a release of more than one pound of dry cleaning solvent in a 24-hour period released outside of a containment system;
(k) Failure to repair the cause of a release of dry cleaning solvent within a containment system;
(l)Any otherwise unclassified violation related to the generation, management and disposal of hazardous waste which causes or poses a significant risk of harm to public health or the environment.
(2) Class II:
(a) Failure to remove dry cleaning solvent remaining in the dry cleaning machine and solvent containing residue in accordance with OAR 340-124-0040(1)(h) and 340-124-0055.
(b) Failure to disconnect utilities from a dry cleaning machine at a dry store in accordance with OAR 340-124-0055;
(c) Failure to comply with the containment requirements in OAR 340-124-0040(3)(b), (3)(d), (3)(e), (3(f) and (3)(g).
(d) Failure to prominently post the Oregon Emergency Response ~~Ssytem~~System telephone number so the number is immediately available to all employees of the dry cleaning facility;
(e) Failure of a person delivering perchloroethylene solvent to a dry cleaning facility to use closed direct-coupled delivery according to OAR 340-124-0040(6) when delivering perchloroethylene dry cleaning solvent;
(F) Failure of a dry cleaning operator at a dry cleaning facility to have closed direct-coupled delivery for perchloroethylene according to OAR 340-124-0040(6);
(g) Failure to label hazardous waste storage container with the words "hazardous waste;"

(h) Failure to immediately clean up a release of a dry cleaning solvent within a containment system;
(i) Any violation pertaining to the generation, management and disposal of hazardous waste from a dry cleaning facility which is not otherwise classified in these rules is a Class II violation.
(3) Class III:
(a) Failure to notify the Department of change or closure at a dry cleaning facility or dry store according to 340-124-0050.
(oo)~~(pp) Failure~~ Failing to place hazardous waste in a container, tank or containment building or a drip pad that complies with the requirements of 40 CFR Parts ~~365~~264 and 265.
(~~qq~~pp) Negligently or willfully submitting to the Department false, inaccurate or incomplete information required by statute, rule, order or permit condition.

(~~rr~~qq)~~)~~ Negligently or willfully recording false, inaccurate, or incomplete information in a record required to be kept by a hazardous waste generator, transporter or TSD facility by Department statute, rule, order or permit condition.
(rr) In addition to the above, the following Class I violations apply to entities regulated under OAR 340-124:
(A) Placing hazardous waste generated at a dry cleaning facility at any location other than in an appropriately labeled hazardous waste storage container;
(B) Discharging dry cleaning wastewater to a sanitary sewer, storm sewer, septic system, boiler or into waters of the state;
(C) Failing to have a secondary containment system under and around the dry cleaning machine as required by OAR 340-124-0040(3)(a) and under and around stored solvent as required by OAR 340-124-0040(3)(c);
(D) Failure by persons generating hazardous waste at a dry cleaning facility in amounts of 220 pounds a month or less, or who never store on site more than 2,200 pounds of hazardous waste, to dispose of hazardous waste within one year of the date the waste was placed in the hazardous waste container;
(E) Failure by persons generating hazardous waste at a dry cleaning facility in amounts of 220 pounds a month or less, or who never store on site more than 2,200 pounds of hazardous waste, to label a hazardous waste storage container with the date the waste was first placed in the container;
(F) Failing to store hazardous waste in closed containers;
(G) Failing to treat hazardous waste dry cleaning wastewater in equipment meeting the criteria in OAR 340-124-0040(2)(c) or (2)(d);
(H) Failure of a dry cleaning business owner or dry cleaning operator to submit an annual report to the Department;
(I) Failure of a dry cleaning store operator to submit an annual report to the Department;
(J) Failing to report a release of more than one pound of dry cleaning solvent released in a 24-hour period outside of a containment system;
(K) Failing to repair the cause of a release of dry cleaning solvent within a containment system;
(ss) Failing to immediately clean up a spill of hazardous waste;
(tt) Any otherwise unclassified violation related to the generation, management and disposal of hazardous waste that causes or poses a significant risk of harm to public health or the environment.

(2) Class ~~two~~II:
(a) ~~Failure~~ Failing to retain a copy of documentation used to determine whether a residue is a hazardous waste, if required;
(b) ~~Failure~~ Failing to maintain aisle space adequate to allow unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment;
~~[Note: old b-g are gone.]~~
(c) ~~Failure~~ Failing to manage universal waste in a manner that prevents releases into the environment;

(d) In addition to the above, the following Class II violations apply to entities regulated under OAR 340-124:

(A) Failing to remove dry cleaning solvent remaining in the dry cleaning machine and solvent-containing residue in accordance with OAR 340-124-0040(1)(h) and 340-124-0055;

(B) Failing to disconnect utilities from a dry cleaning machine at a dry cleaning store in accordance with OAR 340-124-0055;

(C) Failing to comply with the containment requirements in OAR 340-124-0040(3)(b), (3)(d), (3)(e), (3)(f) and (3)(g);

(f) Failure of a dry cleaner, to comply with waste minimization requirements in ORS 465.505(1)(a)-(g);

(e) Failure of a dry cleaner, to comply with waste minimization reporting requirements in ORS 465.505(3);

(f) Failure of a dry cleaner, to immediately report a release of dry cleaning solvent in excess of 1 pound;

(g) Any violation pertaining to the generation, management or disposal of hazardous waste which is not otherwise classified.

(3) Class three:

All class three violations have been deleted.

[Publications: The publication(s) referenced in this rule is available from the agency.]

Stat. Auth.: ORS 459.995, ORS 466.070 - ORS 466.080, ORS 466.625 & ORS 468.020

Stats. Implemented: ORS 466.635 - ORS 466.680, ORS 466.880 - ORS 466.992 & ORS 468.090 - ORS 468.140

Hist.: DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 9-1986, f. & ef. 5-1-86; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-012-0100

PCB Classification of Violations

{Changes: No substantive changes.}

Violations pertaining to the management and disposal of polychlorinated biphenyls (PCB) shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department Order;

(b) Treating or disposing of PCBs anywhere other than at a permitted PCB disposal facility;

(c) Establishing, constructing or operating a PCB disposal facility without a permit;

(d) Failure to provide access to premises or records when required to ~~bystatute~~by statute, rule, permit or order;

(e) Any otherwise unclassified violation related to the management and disposal of PCBs that causes a significant harm or poses a risk of harm to public health or the environment.

(2) Class Two:

(a) Violating a condition of a PCB disposal facility permit;

(b) Any violation related to the management and disposal of PCBs which is not otherwise classified in these rules.

Stat. Auth.: ORS 459.995, ORS 466.625, ORS 467.030, ORS 468.020 & ORS 468.996
Stats. Implemented: ORS 466.255, ORS 466.265 - ORS 466.270, ORS 466.530 & ORS 466.880 - ORS 466.992
Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-012-0105

Used Oil Management Classification of Violations

{Changes: Specifies as Class I violations pertaining to oil releases and submission of false information to the Department.
Purpose: To clarify that spills of used oil will be treated with same level of severity as those of other oil products. To improve integrity of program and provide clarity and predictability to regulated community.}

Violations pertaining to the management of used oil shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Department or Commission Order;

(b) Using used oil as a dust suppressant or pesticide, or otherwise spreading used oil directly in the environment;

(c) Collecting, processing, storing, disposing of, or transporting used oil without first obtaining an EPA Identification number;

(d) Burning used oil with less than 5,000 Btu per pound for the purpose of "energy recovery" in violation of OAR 340-111-0110(3)(b);

(e) Offering used oil for sale as specification used oil-fuel when the used oil does not meet used oil-fuel specifications;

(f) Offering to sell off-specification used oil fuel to facility not meeting the definition of an industrial boiler or furnace, or failing to obtain proper certification under 40 CFR 179.75;

(g) Burning off-specification used oil in a device not that does not meet the definition of an industrial boiler or furnace and is not otherwise specifically exempted under 40 CFR 279.60(a);

(h) Storing or managing used oil in a surface impoundment;

(i) Storing used oil in containers that are leaking or present a threat of release;

(j) Failure by a used oil transporter or processor to determine whether the used oil exceeds that permissible halogen content for used oil;

(k) Failure to develop and follow a written waste analysis plan when required by law;

(l) Failure by a used-oil processor or transporter to manage used-oil residues as required under 40 CFR 279(10)(e);

(m) Any otherwise unclassified violation related to the management of used oil which causes significant harm or poses a risk of harm to public health or the environment;

(n) Failure to provide access to premises or records when required to do so by law, rule, permit or order.

(o) Failure by any person having ownership or control over used oil to immediately cleanup spills or releases or threatened spills or releases;

(p) Failure by a used oil transporter or processor to contain a release of used oil;

(q) Failure by a used oil transporter or processor to stop a release of used oil;

(r) Failure by a used oil transporter or processor to repair or replace a used oil container or tank before returning them to service;

(s) Negligently or willfully submitting to the Department false, inaccurate, or incomplete information required by statute, rule, order or permit condition.

(2) Class Two:

(a) Failure to close or cover used oil tanks or containers as required by OAR 340-111-0032(2);

(b) Failing to submit annual used oil handling reports;

(c) Failure by a used-oil transfer facility, processors, or off-specification used-oil burners to store used oil within secondary containment;

(d) Failure to label each container or tank in which used oil was accumulated on site with the words "used oil";

(e) Failure of a used-oil processor to keep a written operating record at the facility in violation of 40 CFR 279.57;

(f) Failure by a used-oil processor to prepare and maintain a preparedness and prevention plan;

(g) Failure by a used-oil processor to close used-oil tanks or containers when required by 40 CFR 279.54(h);

(h) Any violation related to the management of used oil which is not otherwise classified.

(3) Class three: Failure to label one container or tank in which used oil was accumulated on site, when there are five or more containers or tanks present, properly labeled with the required words "used oil."

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 459.995, ORS 468.020, ORS 468.869, ORS 468.870 & ORS 468.996
Stats. Implemented: ORS 459A.580 - ORS 459A.585, ORS 459A.590 & ORS 468.090 - ORS 468.140
Hist.: DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0110

Environmental Cleanup Classification of Violations

{Changes: Specifies as Class I the violation of submitting false information to the Department and corrects an erroneous statutory citation.
Purpose: To improve integrity of program and provide clarity and predictability to regulated community.}

Violations of ORS 465.200 through 465.420 and related rules or orders pertaining to environmental cleanup shall be classified as follows:

(1) Class One:

(a) Violation of a requirement or condition of a Commission or Department order;

(b) Failure to provide access to premises or records when required to do so by statute, rule, permit or order;

(c) Any otherwise unclassified violation related to environmental investigation or cleanup that causes a significant harm or poses a risk of harm to public health or the environment.

(d) Negligently or willfully submitting to the Department false, inaccurate, or incomplete information required by statute, rule, order or permit condition.

(2) Class Two:

(a) Failure to provide information under ORS 465.250;

(b) Any violation related to environmental investigation or cleanup which is not otherwise classified in these rules.

Stat. Auth.: ORS 465.280, ORS 465.400 - ORS 465.410, ORS 465.435 & ORS 468.020
Stats. Implemented: ORS 465.210 & ORS 468.090 - ORS 468.140
Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0115 [Moved from -0069]

Oil and Hazardous Material Spill and Release Classification of Violations

{Changes: Specifies additional violations as Class I that might otherwise be classified as Class II "by default," adds two Class III violations.

*Purpose: To reflect program priorities and provide predictability to regulated community.}*Violations pertaining to spills or releases of oil or hazardous materials regulated in OAR 340-142 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;

(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 manage 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) Negligently or willfully submitting to the Department false, inaccurate, or incomplete information required by statute, rule, order or permit condition;

(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 that describes all aspects of the spill and steps taken to prevent a recurrence;

(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

(e) Any violation related to the spill or release of oil or hazardous materials which is not otherwise classified in these rules.

(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, 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

340-012-0120

Contingency Planning Classification of Violations

{Changes: Shifts violations from Spills section and additionally specifies violations as Class I, II or III. Purpose: To reflect program priorities and provide clarity and predictability to regulated community.}

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;

(q) 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) Negligently or willfully submitting to the Department false, inaccurate, or incomplete information required by statute, rule, order or permit condition.

(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

340-012-0125

Ballast Water Management Classification of Violations

{Changes: Adds new program violations.
Purpose: To implement ballast water management requirements added by statute in last legislative session.}

Violations pertaining 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;

(d) Negligently or willfully submitting to the Department false, inaccurate, or incomplete information required by statute, rule, order or permit condition.

(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.

[Add back in?]Stat. Auth.: ORS 783.600 to ORS 783.992

Stats. Implemented: ORS 783.620

340-012-0130

Determination of Violation Magnitude

{Changes: Provides that if a selected magnitude exists but there is not sufficient information reasonably available to the Department to determine the application of that selected magnitude, the general magnitude findings will apply. Provides that magnitude will be minor if violation had no more than de minimis potential for or actual adverse impact on the environment. Clarifies that Department must consider information that is reasonably available, not all applicable information.
Purpose: To resolve current interpretation issue in cases where evidence does not support finding of an otherwise applicable selected magnitude – issue: do general magnitudes then apply, or must Department drop formal enforcement because it cannot prove which selected magnitude applies. Also provides more flexibility to make a finding of minor magnitude.}

(1)For each civil penalty assessed, the magnitude will be moderate, unless:

(a) A selected magnitude exists under 340-012-0135 and information is reasonably available to the Department to determine the application of that selected magnitude; or

(b) The Department determines, using information reasonably available to the Department, that the magnitude should be major under section (2) or minor under section (3).

(2) The magnitude of the violation ~~shall~~ will be major if the Department finds that the violation had a significant adverse impact on the environment, or posed a significant threat to public health. In making a determination of major magnitude, the Department ~~shall~~ will consider all reasonably available information, including such factors as: the degree of deviation from statute and from ~~the Commission and~~ Department 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 the magnitude determination.

(3) The magnitude of the violation ~~shall~~ will be minor if the Department finds that the violation had no more than de minimis potential for or actual adverse impact on the environment and, posed no more than de minimis threat to public health, or other environmental receptors. In making a determination of minor magnitude, the Department ~~shall~~ will consider all reasonably available information regarding ~~including~~ such factors as: The degree of deviation from the ~~Commission's and~~ Department's statutes, rules, standards, permits or orders, the concentration, volume, percentage, duration, and 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 the magnitude determination.

340-012-0135

Selected Magnitude Categories

{Changes: Provides additional selected magnitudes for many programs and changes some selected magnitudes by making them more specific.
Purpose: To provide more predictability for regulated community and consistency in civil penalties.}

(1) Magnitudes for select violations pertaining to air quality are determined as follows:

(a) Opacity limitation violations:

(~~i~~A) Major - Opacity measurements or readings that exceed ~~40 percent over~~ the applicable limitation by greater than 40 percent opacity (i.e., greater than 60 percent opacity when the standard is 20 percent opacity);

(~~ii~~B) Moderate - Opacity measurements or readings that exceed ~~20 percent over~~ the applicable limitation by 20 percent opacity or more but are less than 40 percent opacity ~~over the limitation~~(i.e., between 40 percent opacity and 60 percent opacity when the standard is 20 percent opacity);

(~~iii~~C) Minor - Opacity measurements that exceed the applicable limitation by less than 20 percent opacity ~~or less~~(i.e., greater than 20 percent opacity but less than 40 percent opacity when the standard is 20 percent opacity).

(b) Operational limitations or process standards:

(~~i~~A) Major - Greater than 1.5 times any applicable limitation;

(~~ii~~B) Moderate - From 1.3 up to and including 1.5 times any applicable limitation;

(~~iii~~C) Minor - Less than 1.3 times any applicable limitation.

(c) Criteria emission limitations:

(~~i~~A) Major:

(~~A~~i) Exceeding the annual emission limitation as established by permit, rule or order by more than the annual significant emission rate (SER);

(~~B~~ii) Exceeding the monthly emission limitation as established by permit, rule or order by more than ten percent of the annual SER;

(~~C~~iii) Exceeding the daily emission limitation as established by permit, rule or order by more than 0.5 percent of the annual SER;

(~~D~~iv) Exceeding the hourly emission limitation as established by permit, rule or order by more than 0.1 percent of the annual SER.

(~~ii~~B) Moderate:

(~~A~~i) Exceeding the annual emission limitation as established by permit, rule or order by from 50 percent up to and including 100 percent of the annual SER;

(~~B~~ii) Exceeding the monthly emission limitation as established by permit, rule or order by five percent up to and including ten percent of the annual SER;

(~~C~~iii) Exceeding the daily emission limitation as established by permit, rule or order by 0.25 percent up to and including 0.50 percent of the annual SER;

(~~D~~iv) Exceeding the hourly emission limitation as established by permit, rule or order by 0.05 percent up to and including 0.10 percent of the annual SER.

(~~iii~~C) Minor:

(~~A~~i) Exceeding the annual emission limitation as established by permit, rule or order by less than 50 percent of the annual SER;

(~~B~~ii) Exceeding the monthly emission limitation as established by permit, rule or order by less than five percent of the annual SER;

(~~C~~iii) Exceeding the daily emission limitation as established by permit, rule or order by less than 0.25 percent of the annual SER;

(~~D~~iv) Exceeding the hourly emission limitation as established by permit, rule or order by less than 0.05 percent of the annual SER.

(d) Asbestos violations:

(~~i~~A) Major - More than 260 linear feet or more than 160 square feet of asbestos-containing material removed or disturbed;

(~~ii~~B) Moderate - From 40 linear feet up to and including 260 linear feet or from 80 square feet up to and including 160 square feet of asbestos-containing material removed or disturbed;

(~~iii~~C) Minor - Less than 40 linear feet or 80 square feet of asbestos-containing material removed or disturbed;

(~~iv~~D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of five percent or more.~~more than ten percent asbestos or it may be decreased by one level if the material was comprised of less than five percent asbestos.~~

~~(v) The magnitude of the asbestos violation may be increased by one level based upon the kind of ACM involved, the manner in which the ACM was rendered friable, the potential for human exposure and the size of the area of asbestos contamination.~~

(e) Open burning violations:

(~~i~~A) Major - Initiating or allowing the initiation of open burning of more than ~~five~~ ten cubic yards of any material other than materials listed in OAR 340-264-0060(3), or ~~of~~ more than ~~10~~ five cubic yards of any materials ~~that are prohibited from being open burned anywhere in the State by~~listed in OAR 340-264-0060(3) or the open burning of more than 15 tires;

(~~ii~~B) Moderate - Initiating or allowing the initiation of open burning of from five~~one~~ up to and including ~~five~~ ten cubic yards of any material other than materials listed in OAR 340-264-0060(3), or of from ~~five~~ one cubic yards up to and including ~~ten~~ five cubic yards of any materials ~~that are prohibited from being open burned anywhere in the State by~~listed in OAR 340-264-0060(3) or the open burning of between 5 and 15 tires;

(~~iii~~C) Minor - Initiating or allowing the initiation of open burning of less than five~~one~~ cubic yards of any material or of less than ~~five~~ one cubic yards of any materials that are listed in~~prohibited from being open burned any where in the State by~~ OAR 340-264-0060(3) or the open burning of fewer than 5 tires;;

~~(iv~~D) ~~For the purposes of determining the magnitude of a violation only, 10~~ ten loose ~~(or 12 ricked or stacked interlocking) passenger/light truck tires or 2~~ two loose ~~(or 1~~ one ~~ricked or stacked interlocking) truck tires shall be deemed the equivalent in volume to one cubic yard.~~

(f) Violations related to beginning construction or operation without the appropriate permit:

(~~i~~A) Major – Beginning construction or operating a major source in a nonattainment area (where the source is major for the nonattainment pollutant) or a federal major source in any area of the state;

(~~ii~~B) Moderate – Beginning construction or operating a major source in an area of the state designated as in attainment;

(~~iii~~C) Minor – Beginning construction or operating any other source required to have a permit without first obtaining the appropriate permit.

(g) Violations related to the alteration of a vehicle's factory installed pollution control equipment committed by commercial repair facilities ~~shall~~ are~~be~~ major magnitude.

(2) Magnitudes for select violations pertaining to Water Quality are determined as follows:

(a) Violating wastewater discharge limitations:

(~~i~~A) Major:

(~~A~~i) Discharging wastewater that exceeds any applicable range for flow rate, concentration limitation, or mass limitation, except for toxics, pH, and bacteria, by more than 30 percent of that rate or limitation.

(~~B~~ii) Discharging wastewater that exceed any applicable concentration limitation or mass load limitations for toxics by more than 10 percent of that rate or limitation.

(~~C~~iii) Discharging wastewater having a pH of more than 1.5 above or below any applicable pH range.

(~~D~~iv) Discharging wastewater that exceeds the effluent limitation by more than 1,000 bacteria per 100 milliliters (bact./100 mls).

(~~E~~v) Discharging wastewater when the source is failing to achieve the applicable removal rate by more than 10 percent of that rate.

(~~I~~vi) Any violation of reuse or biosolids requirements or permit conditions that results in a risk to public health ~~hazard~~.

(~~J~~vii) Any violation that results in a documented fish or wildlife kill.

(~~ii~~B) Moderate:

(~~A~~i) Discharging wastewater that exceeds any applicable range for flow rate, concentration limitation, or mass limitation, except for toxics, pH, and bacteria, by from 10 percent to 30 percent of that rate or limitation.

(~~B~~ii) Discharging wastewater that exceeds any applicable concentration limitation or mass load limitations for toxics by from 5 percent to 10 percent of that limitation.

(~~C~~iii) Discharging wastewater having a pH from 0.5 to 1.5 above or below any applicable pH range.

(~~D~~iv) Discharging wastewater that exceeds the effluent limitation by from 100 to 1,000 bact./100 mls over that limitation.

(~~E~~v) Discharging wastewater when the source is failing to achieve the applicable removal rate by 5 percent to 10 percent of that rate.

(~~iii~~C) Minor:

(~~A~~i) Discharging wastewater that exceeds any applicable range for flow rate, concentration limitation or mass limitation, except for toxics, pH, and bacteria, by ~~from~~ less than 10 percent ~~to 30 percent~~ of that rate or limitation.

(~~B~~ii) Discharging wastewater that exceeds any applicable concentration limitation or mass load limitations for toxics by from 5 percent to 10 percent of that limitation.

(~~C~~iii) Discharging wastewater having a pH of less than 0.5 above or below any applicable pH range.

(~~D~~iv) Discharging wastewater that exceeds the effluent limitation by less than 100 bact./100 mls.

(~~E~~v) Discharging wastewater when the source is failing to achieve any applicable removal rate by less than 5 percent of that rate.

(b) Violating numeric water quality standards:

(~~i~~A) Major

(~~A~~i) Reducing or increasing any criteria by 25 percent or more of the standard except for toxics, pH, and turbidity.

(~~B~~ii) Increasing toxics by any amount by more than 100 percent of the acute standard or by 100 percent or more of the chronic standard.

(~~C~~iii) Reducing or increasing pH by 1.0 pH unit or more from the standard.

(~~D~~iv) Increasing turbidity by 50 nephelometric turbidity units (NTU) or more over the standard.

(~~ii~~B) Moderate

(~~A~~i) Reducing or increasing any criteria by more than 10 percent but less than 25 percent of the standard, except for toxics, pH, and turbidity.

(~~B~~ii) Increasing toxics by more than 10 percent but less than 100 percent of the chronic standard.

(~~C~~iii) Reducing or increasing pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard.

(~~D~~iv) Increasing turbidity by more than 20 NTU but less than 50 NTU over the standard.

(~~iii~~C) Minor:

(~~A~~i) Reducing or increasing any criteria by 10 percent or less of the standard, except for toxics, pH, and turbidity;

(~~B~~ii) Increasing toxics by 10 percent or less of the chronic standard;

(~~C~~iii) Reducing or increasing pH by 0.5 pH unit or less from the standard;

(~~D~~iv) Increasing ~~a~~ turbidity ~~standard~~ by 20 NTU or less over the standard.

(~~iv~~D) The magnitude of the violation may be increased by one level if the reduction or increase:

(~~A~~i) Occurred in a stream that is water-quality limited for that criterion; or

(~~B~~ii) Introduced oxygen-demanding pollutants or turbidity to a stream where salmonids are rearing or spawning; or

(~~C~~iii) Introduced bacteria to shell-fish growing waters or during the period June 1 through September 30.

(c) Causing pollution of waters of the state, violating a narrative water quality standard, or discharging wastes to waters of the state without a permit authorizing such discharge~~.~~:

(~~i~~A) Major: The magnitude ~~shall be~~is major if one or more of the thresholds set forth below is exceeded.

(~~A~~i) The dilution of the discharge ~~was~~ is less than one, when calculated as follows: $D = ((Q_R + Q_I)/4)/Q_I$, where Q_R is the receiving stream flow and Q_I is the qu~~a~~nantity of the incident;

(~~B~~ii) The quantity (Q_I) of the discharge was greater than one million~~100,000 of~~ gallons per day (MGD);

(~~C~~iii) The duration of the discharge was ~~longer~~ more than 5 days;

(~~D~~iv) The resulting water quality from the discharge is as follows:

(~~H~~I) For discharges of toxics: C_S/D is greater than C_{Acute}, where C_S is the concentration of the discharge or spill, D is the dilution of the discharge as determined under subsection (i) above, and C_{Acute} is the concentration for acute toxicity (as defined by the applicable water quality standard).

(~~H~~II) For discharges affecting temperature, the discharge exceeded the incipient lethal temperature for salmonids of 77° F.

(~~H~~III) For BOD_5 discharges: C_{BOD-5}/D is more than 10.00 where C_{BOD-5} is the BOD_5 concentration of the discharge or spill and D is the duration of the discharge as determined under section iii above;

(~~E~~v) Any violation of reuse or biosolids requirements or permit conditions that result in a risk to public health ~~hazard~~; or

(~~F~~vi) Any violation that results in a documented fish or wildlife kill.

(~~ii~~B) Moderate: The magnitude ~~shall be~~is moderate if one or more of the thresholds set forth below is exceeded.

(~~A~~i) The dilution of the discharge (D) ~~was~~ is greater than ~~equal than~~ one but less than 10 when calculated as follows: $D = ((Q_R + Q_I)/4)/ Q_I$, where Q_R is the receiving stream flow and Q_I is the quantity of the incident.

(~~B~~ii) The quantity (Q_I) of the discharge was more than 1000 gallons per day but less than 100,000 gallons per day.

(~~C~~iii) The duration of the discharge was more than one day, but less than five days.

(~~iii~~C) Minor

(~~A~~i) The dilution of the discharge (D) was greater ~~then~~ than 10 when calculated as follows: $D = ((Q_R + Q_I)/4)/ Q_I$, where Q_R is the receiving stream flow and Q_I is the quantity of the incident.

(~~B~~ii) The quantity (Q_I) of the discharge was less than 1,000 gallons per day.

(~~C~~iii) The duration of the discharge was less than one day.

(~~iv~~D) The magnitude of the violation may be increased one level if the discharge or spill:

(~~A~~i) Occurred to a water body that is water-quality limited (listed on the most current 303(d) list) and the pollutants in the spill would likely aggravate the water quality problem for which the water body is listed; or

(~~B~~ii) Will likely depress oxygen levels or increase turbidity and/or sedimentation in a stream in which salmonids are rearing or spawning; or

(~~C~~iii) Will increase bacteria levels in shell-fish growing waters or ~~between~~ during the 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:

(i) Major - Failure to make the determination on five or more waste streams;

(ii) Moderate - Failure to make the determination on three or four waste streams;

(iii) Minor - Failure to make the determination on one or two waste streams;

(iv) 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;

(v) 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:

(i) 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;

(ii) Moderate - Disposal of 50 to 150 gallons of hazardous waste, or the disposal of one to three gallons of acutely hazardous waste;

(iii) 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:

(i) 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;

(ii) 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;

(iii) 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 are determined as follows:

(a) Operating a solid waste disposal facility without a permit:

(i) Major - If the volume of material disposed of exceeds 400 cubic yards;

(ii) Moderate - If the volume of material disposed of is between 40 and 400 cubic yards;

(iii) Minor - If the volume of materials disposed of is less than 40 cubic yards;

(iv) 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.

(i) Major - If the amount of solid waste is underreported by more than 15 percent of the amount received;

(ii) Moderate - If the amount of solid waste is underreported by from 5 percent to 15 percent of the amount received;

(iii) Minor - If the amount of solid waste is underreported by less than 5 percent of the amount received.

(5) Magnitudes for select violations pertaining to spills of oil or hazardous materials may be adjusted as follows:

(a) Failure to clean up spills involving the following quantities spilled to land and not threatening waters of the State.

(i) Major – Greater than 10 times the reportable quantity (RQ).

(ii) Moderate – From the RQ to 10 times the RQ.

(iii) Minor – Less than the RQ.

(b) Overdue Notification violations.

(i) Major – Notifying more than one week after the spill or release.

(ii) Moderate – Notifying from 48 hours to one week after the spill or release.

(iii) Minor – Notifying between 24 and 48 hours after the spill or release.

(c) Overdue Notification violations are raised in relation to RQ.

(i) Minor or moderate magnitude violations identified in section (5)(b) are increased to major magnitude violations if the spill or release was more than 10 times the RQ.

(ii) A minor magnitude violation in section (5)(b) is increased to a moderate magnitude violation if the spill or release was from twice the RQ up to and including 10 times the RQ.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.065 & ORS 468A.045
Stats. Implemented: ORS 468.090 - ORS 468.140 & ORS 468A.060
Hist.: DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0140

Determination of Base Penalty

[Comment: This matrix approach is one attempt at trying to address equity in specific deterrence based on "who" the violator is. In reviewing this, remember that there will be enforcement guidance prior to formal enforcement that will clearly identify who gets TA or another opportunity to comply before going to enforcement In addition, there is a new section on Department discretion to raise violators up to a higher matrix (see 340-012-0160); and the consideration of ability to pay is still available.]

{Changes: Adds a new mid-range ($7,500) penalty matrix; provides additional differentiation of violations to be assigned to different matrices.

Purpose: To more precisely tailor civil penalty amount to achieve deterrence, consistency and equity.}(1) The Base Penalty or BP is determined by locating the type, class and magnitude of the violation in the matrices set forth in this section.

(2) $10,000 Penalty Matrix.

(a) The $10,000 penalty matrix applies to the following:

(A) Any violation related to air quality statutes, rules, permits or orders committed by a person that has or should have a Title V, NSR or PSD permit.

(B) Open burning violations as follows:

(i) All open burning conducted by a permitted industrial facility.

(ii) Violations of OAR 340-264-0060(3) in which the volume of prohibited materials burned is greater than or equal to 25 cubic yards except when committed by a residential owner-occupant.

(iii) Open burning of more than 15 tires except when committed by a residential owner-occupant.

(C) All asbestos violations except those listed in subsections ~~(3), (4), or~~ (5) below.

(D) All Vehicle Inspection Program violations except those listed in section (3), (4), or (5) below.

(E) Any violation of ORS 468B.025(1)(a) (except placing wastes where they are likely to enter waters of the state), 468B.025(1)(b), and ORS 468B.050(1)(a).

(F) Any violation related to ~~ORS 164.785 and water quality statutes,~~ rules, permits or orders issued or promulgated pursuant to ORS 468 or ORS 468B by: ~~violations committed by~~:

(i) A person that has or should have a National Pollutant Discharge Elimination System (NPDES) permit or a Water Pollution Control Facility (WPCF) permit for a municipal or private utility wastewater treatment facility with a permitted flow of ~~greater~~ more than 5 million gallons per day; ~~or~~

(ii) A person that has or should have a major industrial source NPDES Permit;

(iii) ~~A~~ A person that has or should have an MS4 NPDES stormwater discharge permit and has a population of 100,000 or more;

(iv) A person that has or should have a WPCF stormwater discharge permit issued to a municipality and has a population of 100,000 or more; or,

(v) A person that has or should have a WPCF permit for a major sugar beet processing, potato or other vegetable processing, and fruit processing industry as defined in OAR 340-045-0075(7)(b)(B) or for a major mining operation as defined in OAR 3409-045-0075(7)(b)(L).

(G) Any violation related to underground storage tanks statutes, rules, permits or orders.

(H) Any violation related to hazardous waste statutes, rules, permits or orders committed by a person that the Department determines to have been a large quantity generator at the time of the violation.

(I) Any violation related to hazardous waste statutes, rules, permits or orders committed by a person that has or should have a treatment, storage or disposal facility permit.

(J) Any violation related to oil and hazardous material spill and release statutes, rules, or orders.

(K) Any violation related to polychlorinated biphenyls management and disposal statutes.

(L) Any violation of ORS Chapter 465 or environmental cleanup rules or orders.

(M) Any violation of ORS Chapter 459 or any violation related to solid waste statutes, rules, permits, or orders committed by:

(i) A person that has or should have a solid waste disposal permit;

(ii) A municipality, county or metropolitan service district with a population greater than 25,000, as determined by the most recent national census.

(N) Any negligent or willful submission of false, inaccurate or incomplete information to the Department in violation of any provision of ORS 454, 459, 465, 466, 468, 468A or 468B, or any rule adopted, or permit or order issued pursuant to ORS 454, 459, 465, 466, 468, 468A or 468B.

(O) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil to waters of the state ~~shall~~ will incur a civil penalty not to exceed $20,000 dollars for each violation. [See ORS 468.0140] The amount of the penalty is determined by doubling the values contained in the $10,000 penalty matrix in section (2) of this rule in conjunction with the formula contained in OAR 340-012-0045.

(b) The $10,000 penalty matrix values are as follows:

(A) Class I:

(i) Major -- $8000;

(ii) Moderate -- $6000;

(iii) Minor -- $3000.

(B) Class II:

(i) Major -- $6000;

(ii) Moderate -- $3000;

(iii) Minor -- $1000.

(C) Class III:

(i) Major -- $1000;

(ii) Moderate -- $750;

(iii) Minor -- $500.

(c) Except for penalties under section (O), no civil penalty assessed pursuant to the $10,000 penalty matrix may be less than $500 or more than $10,000 for each day of each violation.

(3) $7,500 Penalty Matrix [this matrix is new]

(a) The $7,500 penalty matrix applies to the following:

(A) Any violation related to air quality statutes, rules, permits or orders committed by a person that has or should have an ACDP permit, excluding NSR and PSD permits.

(B) Vehicle Inspection Program violations committed by a person other than an auto repair facility.

(C) Any violation related to ~~ORS 164.785 and water quality statutes,~~ rules, permits or orders issued or promulgated pursuant to ORS 468 or ORS 468B by:~~, except those violations specified under sections (2), (4) and (5) of this rule, committed by:~~

(i) A person that has or should have an ~~National Pollutant Discharge Elimination System~~ (NPDES) permit or a ~~Water Pollution Control Facility~~ (WPCF) permit for a municipal or private utility wastewater treatment facility with a permitted flow of ~~greater~~ more than or equal to 2 million, but less than 5 million, gallons per day; or

(ii) A person that has or should have a minor industrial source NPDES permit; ~~or~~

(iii) A person that has or should have an NPDES stormwater discharge permit, except ~~for~~ permits issued ~~to~~for construction sites of greater than one acre, but less than five acres;~~.~~

(iv) A person that has or should have an MS4 NPDES stormwater discharge permit and has a population of less than 100,000 but more than 10,000; or.

(v) A person that has or should have a WPCF permit for a minor mining and/or processing operation as defined in OAR 340-045-0075(7)(b)(M).

(D) Any violation of ORS Chapter 459 or any violation related to solid waste statutes, rules, permits, or orders committed by:

(i) a person that has or should have a waste tire permit;

(ii) a municipality, ~~count~~ county or service district with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(E) Any violation related to hazardous waste management statutes, rules, permits or orders committed by a person the Department determines to have been a small quantity generator at the time of the violations.

(b) The values for the $7,500 penalty matrix are as follows:

(A) Class I:

(i) Major –$7,500;

(ii) Moderate -- $5,000;

(iii) Minor -- $2,000.

(B) Class II:

(i) Major -- $5,000;

(ii) Moderate -- $2,000;

(iii) Minor -- $750.

(C) Class III:

(i) Major -- $750;

(ii) Moderate -- $500

(iii) Minor -- $200.

(c) Except for penalties under subsection (O), ~~N~~no civil penalty assessed pursuant to the $7,500 penalty matrix may be less than $200. ~~The total civil penalty for a single violation may not exceed~~or more than $10,000 for each day of each violation.

(4) $2,500 Penalty Matrix.

(a) The $2,500 penalty matrix applies to the following:

(A) Any violation related to air quality statutes, rules, permits or orders committed by a person not specifically listed under another penalty matrix under this rule.

(B) Any violation of open burning requirements at a residence committed by a residential owner-occupant, involving more than 25 cubic yards of any materials that are listed in OAR 340-264-0060(3) or more than 15 tires;

(C)Any violation related to ~~ORS 164.785 and water quality statutes,~~ rules, permits or orders issued or promulgated pursuant to ORS 468, ORS 468B or ORS 454 by:~~committed by:~~

(i) A person that has or should have an NPDES or WPCF Permit for a municipal or private utility wastewater treatment facility with a permitted flow of less than 2 million gallons per day; ~~or~~

(ii) A person that has or should have an NPDES stormwater discharge permit for a construction site that is less than five but more~~greater~~ than one acre in size; ~~or~~

(iii) A person that has or should have an MS4 NPDES stormwater discharge permit and has a population of 10,000 or less;

(iv) A person who is or should be licensed as an on-site sewerage disposal service provider; ~~or~~

(~~iv~~) Unless classified elsewhere in this rule, a person that has or should have a WPCF permit issued pursuant to OAR 340-044; or,

(vi) Any other person not specifically listed under another penalty matrix under this rule.

(~~C~~D) Any violation related to hazardous waste management statutes, rules, permits or orders committed by:

(i) A person that is a conditionally exempt generator if the violation(s) committed do not impact the person's generator status;

(ii) Any person not specifically listed under this or another penalty matrix under this rule.

(~~D~~E) Any violation of ORS Chapter 459 or any violation related to solid waste statutes, rules, permits, or orders committed by:

(i) A municipality with a population less than 5,000, as determined by the most recent national census; or

(ii) Any person not specifically listed under another penalty matrix under this rule.

(b) The values for the $2,500 penalty matrix are as follows:

(A) Class I:

(i) Major -- $2500;

(ii) Moderate -- $1500;

(iii) Minor -- $750.

(B) Class II:

(i) Major -- $1500;

(ii) Moderate -- $750;

(iii) Minor -- $500.

(C) Class III:

(i) Major -- $500;

(ii) Moderate -- $200;

(iii) Minor -- $100.

(c) Except for penalties under subsection (O), nNo civil penalty assessed pursuant to the $2,500 penalty matrix ~~shall~~ may be less than $100 or more than ~~. The total civil penalty may not exceed~~ $10,000 for each day of each violation.

(5) $1,000 Penalty Matrix.

(a) The $1,000 penalty matrix applies to the following:

(A) Any violation of open burning requirements at a residence committed by a residential owner-occupant unless classified elsewhere.

(B) Any violation of on-site requirements by a person who is not licensed and should not be licensed as an on-site sewage disposal service provider ~~at a residence committed by a residential owner-occupant~~.

(C) Any violation of asbestos requirements at a residence committed by a residential owner-occupant.

(D) Any violation of requirements for dry cleaning facilities.

(E) 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 are subject to the $2,500 matrix set forth in section (4) of this rule.

(G) Failure of a city, county or metropolitan service district of failing to provide the opportunity to recycle as required by law.

(H) Any violation of ORS Chapter 467 or any violation related to noise control rules or orders.

(I) Any violation of laws, rules, orders or permits relating to woodstoves, except violations relating to the sale of new woodstoves.

(J) Any violation of ORS 468B.485 and rules adopted thereunder relating to the financial assurance requirements for ships transporting hazardous materials or oil.

(b) The values for the $1,000 penalty matrix are as follows:

(A) Class I:

(i) Major -- $1000;

(ii) Moderate -- $750;

(iii) Minor -- $500.

(B) Class II:

(i) Major -- $750;

(ii) Moderate -- $500;

(iii) Minor -- $250.

(C) Class III:

(i) Major -- $250;

(ii) Moderate -- $150;

(iii) Minor -- $50.

(c) No civil penalty assessed pursuant to the $1,000 matrix may be less than $50 or more than $1,000 for each day of each violation.

Stat. Auth.: ORS 468.020 & ORS 468.090 - ORS 468.140
Stats. Implemented: ORS 459.995, ORS 459A.655, ORS 459A.660, ORS 459A.685 & ORS 468.035
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-012-0145

Determination of Aggravating or Mitigating Factors

{Changes: Provides that if respondent's prior enforcement history results in aggravation of civil penalty, respondent's history of correcting prior violations cannot completely negate that aggravation unless the Respondent took extraordinary efforts to correct or minimize the impacts of the prior violations. Increases penalty in relation to number of days of violation. Proposes two options for the mental state factor. Provides that respondent will receive more credit for cooperativeness if Respondent acts immediately upon notification or knowledge of the violation, less credit if Respondent does not act for 30 or more days following knowledge of the violation.

Purpose: To more precisely tailor civil penalty amount to achieve deterrence, consistency and equity.}(1) Each of the aggravating or mitigating factors is determined according to the procedures listed below and then applied to the total civil penalty formula as presented in OAR 340-012-045(2).

(2) "P" is whether the Respondent has any **prior** significant actions. A violation is deemed to have become a Prior Significant Action on the date the first Formal Enforcement Action in which it is cited was initiated. The values for "P" and the finding ~~which~~ that supports each are as follows:

(A) 0 if no prior significant actions or there is insufficient information on which to base a finding;

(B) 1 if the prior significant action is one Class II violation or two Class III violations;

(C) 2 if the prior significant action(s) is one Class ~~I or~~I or equivalent violation;

(D) 3 if the prior significant actions are two Class I or equivalent violations;

(E) 4 if the prior significant actions are three Class I or equivalent violations;

(F) 5 if the prior significant actions are four Class I or equivalent violations;

(G) 6 if the prior significant actions are five Class I or equivalent violations;

(H) 7 if the prior significant actions are six Class I or equivalent violations;

(I) 8 if the prior significant actions are seven Class I or equivalent violations;

(J) 9 if the prior violations significant actions are eight Class I or equivalent violations;

(K) 10 if the prior significant actions are nine Class I or equivalent violations, or if any of the prior significant actions were issued for violation of ORS 468.996;

(L) In determining the appropriate value for prior significant actions as listed above, the Department may reduce the appropriate value by:

(i) 2 if the prior significant actions were all initiated more than three years before the current action; or

(ii) 4 if the prior significant actions were all initiated more than five ~~yearsbefore~~years before the current action.

(iii) In making the above reductions under paragraph (2)(L)(i) or (ii), the value of the "P" factor may not be reduced to less than zero.

(~~L~~M) Prior significant actions that are more than ten years old are not included in determining the value for "P".;

(3) "H" is Respondent's **history** in correcting prior significant actions or taking reasonable efforts to minimize the effects of the prior significant actions. If "P" is a positive number, the sum of the "P" and "H" values may not be less than 1 unless the Respondent took extraordinary efforts to correct or minimize the effects of the prior significant actions. The values for "H" and the finding that supports each are as follows:

(A) -2 if Respondent took all feasible steps to correct or minimize the majority of all prior significant actions;

(B) 0 if there is no prior history or if there is insufficient information on which to base a finding of -2.

(4) "O" is whether the violation was repeated or **ongoing**. The values for "O" and the finding that supports each are as follows:

(A) 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;

(B) 2 if the violation existed for more than one day and up to six days or recurred on the same day;

(C) 3 if the violation existed for one week up to and including four weeks;

(D) 4 if the violation existed for more than four weeks.

(E) The Department may, at its discretion, assess penalties for each day a violation occurs. If the Department does so, the O factor for each affected violation may be set at 0.

(5) "M" is the **mental** state of the violator. [Depending on which option is chosen, this up front part will be rewritten.] The values for "M" and the finding that supports each are as follows:

[Two options for mental state follow. The first one uses terms and an approach similar to the language in the current Division 12. The second option is an effort to align the mental state factor with the actual kind of proof we have in these cases.]

Option 1:

(A) 0 if there is insufficient information to make a finding of the values set forth in (5)(B) through (5)(D) herein;

(B) 2 if negligent or intentional;

(C) 6 if grossly negligent or reckless;

(D) 10 if flagrant.

Option 2: [This one needs more work to be clear in the subcategories, but you can get the idea.]

(A) 0 if an unavoidable accident or if there is insufficient information to make a finding regarding the values set forth in sections (5)(B) through (5)(D) herein;

(B) 2 if Respondent committed the conduct, but had no prior knowledge that such conduct would be a violation;

(C) 4 if Respondent committed the conduct and had constructive knowledge (should have known) that such conduct would be a violation. Constructive knowledge include when Respondent has a Department permit, license or other prior regulatory interaction with the Department.

(D) 6 if Respondent committed the conduct and had actual knowledge that such conduct would be a violation. Actual knowledge includes receipt of a previous ~~NON~~ LOD for the same violation or some other actual knowledge that the Department can prove.

(E) 10 if a Respondent committed the conduct and did so with a blatant disregard for the law.

(6) "C" is the Respondent's cooperativeness in correcting the current violation. The values for "C" and the finding that supports each are as follows:

(A) -2 if Respondent was cooperative by, immediately upon notification or knowledge of the violation, taking reasonable efforts to correct a violation, reasonable affirmative efforts to minimize the effects of the violation, or extraordinary efforts to ensure the violation would not be repeated;

(B) -1 if Respondent was cooperative by, more than 30 days after notification or knowledge of the violation taking reasonable efforts to correct the violation or reasonable affirmative efforts to minimize the effects of the violation, or over time 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 by not taking reasonable efforts to correct the violation or minimize the effects of the violation.

340-012-0150

Determination of Economic Benefit

{Changes: Provides that economic benefit will be calculated using the EPA's BEN model (use of the model is no longer discretionary. Cleans up the language.).

Purpose: To more precisely tailor civil penalty amount to achieve deterrence, consistency and equity.}

(1) The Economic Benefit (EB) is the approximate dollar value of the benefit that the Respondent gained through noncompliance. The economic benefit will be determined using 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. 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 is presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect that Respondent's actual circumstance.

(2) The calculation of the economic benefit will be based on the Department's reasonable estimate of the benefit gained and the costs avoided or delayed by the Respondent as a result of Respondent's violations.

(3) The Department need not calculate the economic benefit when the economic benefit is de minimis or when there is insufficient information on which to make a reasonable estimate under this rule.

(4) The Department may assess the calculated economic benefit whether or not it assesses any other portion of the civil penalty formula in OAR 340-012-0045.

(5) The Department's calculation of economic benefit may not cause the civil penalty for a violation to exceed the maximum civil penalty allowed by rule or statute. However, when a violation has extended over more than one day, the Department may treat the violation as extending over at least as many days of violation as necessary to recover the economic benefit calculation. When the purpose of treating a violation as extending over more than one day is to recover the economic benefit calculation, the Department has the discretion not to impose the other portion of the civil penalty for more than one day.

340-012-0155

Additional Civil Penalties [This section may need to be worked into the matrices section or otherwise clarified to make more sense.]

{Changes: Adds civil penalty amount to be assessed for failure to pay UST fee. Removes obsolete sections.

*Purpose: To implement new statutory requirements. }*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 or permits the discharge of oil to state waters ~~shall~~ will incur a civil penalty commensurate with the amount of damage incurred. The amount of the penalty ~~shall~~ will be determined by the Director with the advice of the Director of the Oregon 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 in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the Director deems appropriate. [See ORS 468B.450]

~~[repealed]~~

(2) Until December 31, 2005, whenever an underground storage tank fee is due and owing under ORS 466.785 or 466.795, the Director may issue a civil penalty up to $100 for each day the fee is due and owing. [See ORS 466.994]

(3) Any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 shall be assessed a civil penalty of $500.

(4) [See ORS 466.992] Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted ~~shall~~ will incur a civil penalty according to the schedule set forth in this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the following wildlife that are property of the state:

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, $400;

(b) Each mountain sheep or mountain goat, $3,500;

(c) Each elk, $750;

(d) Each silver gray squirrel, $10;

(e) Each game bird other than wild turkey, $10;

(f) Each wild turkey, $50;

(g) Each game fish other than salmon or steelhead trout, $5;

(h) Each salmon or steelhead trout, $125;

(i) Each fur-bearing mammal other than bobcat or fisher, $50;

(j) Each bobcat or fisher, $350;

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, $500;

(l) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this section, $25.

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

340-0012-0160

Director Discretion Regarding Penalty Assessment

{Changes: Allows Director to increase the penalty matrix by a level if doing so will achieve specific deterrence.
Purpose: To increase deterrence and equity.}

(1) Regardless of any other penalty amount listed in Division 12, if any person intentionally or recklessly violates any provisions of ORS 164.785, 459.205 – 459.426, 459.705 – 459.790, ORS Chapters 465, 466, 467, 468, 468A or 468B or any rule or standard or order of the commission adopted or issued pursuant to ORS 459.205 – 459.426, 459.705 – 459.790, ORS Chapters 465, 466, 467, 468, 468A, or 468B, that results in or creates the imminent likelihood for an extreme hazard to the public health or that causes extensive damage to the environment, the Director may assess a base penalty as follows:

(A) $50,000 if the violation was caused intentionally;

(B) $75,000 if the violation was caused recklessly;

(C) $100,000 if the violation was caused flagrantly.

(2) The Director has the discretion to increase a base penalty determined under OAR 340-012-0140 to ~~one determined using~~ the next highest penalty matrix based on a determination that doing so will achieve specific deterrence for the Respondent. Factors that may be taken into consideration include the Respondent's ~~past~~ compliance history, the likelihood of future violations, and other similar factors. If a base penalty is increased using this discretion and the Respondent commits future violations of Oregon's environmental laws, the base penalty for the subsequent similar violations will automatically start at the previously increased matrix amount.

(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 any government or a third party activity or investigation;

(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.

340-0012-0162

Inability to Pay the Penalty

{Changes: New Section, but moved from old areas. No substantive changes.}

(1) After a penalty is assessed, the Department 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 evidence in a form required by the Department regarding 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 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. 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 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 [will need to match this part with the mental state factor once decided] or situations in which the Respondent's violations or financial condition poses a serious concern regarding the ability of the Respondent 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

[Will be covered in Division 11]

340-012-0165

Stipulated Penalties

{Changes: No substantive changes.}

Nothing in OAR Chapter 340, Division 12 ~~shall~~ affects the ability of the Commission or Director to include stipulated penalties in a Mutual Agreement and Order, Consent Order, Consent Decree or any other order or agreement issued under ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B.

Stat. Auth.: ORS 454.625, ORS 459.995, ORS 468.020 & ORS 468.996
Stats. Implemented: ORS 183.090 & ORS 183.415
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98

340-012-0170

Compromise or Settlement of Civil Penalty by Department

{Changes: No substantive changes.}

(1) Any time after service of the formal enforcement action, the Department may compromise or settle any unpaid civil penalty at any amount that the Department deems appropriate. Any compromise or settlement executed by the Department Order ~~shall be~~is final.

(2) In determining whether a penalty should be compromised or settled, the Department may take into account the following:

(a) New information obtained through further investigation or provided by Respondent that relates to the penalty determination factors contained in OAR 340-012-0045;

(b) The effect of compromise or settlement on deterrence;

(c) Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

(d) Whether Respondent has had any previous penalties that have been compromised or settled;

(e) Whether Respondent has the ability to pay the civil penalty as determined by OAR 340-012-0160;

(f) Whether the compromise or settlement would be consistent with the Department's goal of protecting the public health and environment;

(g) The relative strength or weakness of the Department's evidence.

Stat. Auth.: ORS 459.995, ORS 466, ORS 467, ORS 468.020 & ORS 468.996
Stats. Implemented: ORS 183.090 & ORS 183.415
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; Renumbered from 340-12-075; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92

State of Oregon
Department of Environmental Quality Memorandum

To: Environmental Quality Commission **Date:** May 7, 2003

From: Stephanie Hallock, Director

Subject: Director's Dialogue

Budget Update
The 2003 legislative session has been dominated by Oregon's budget situation. Shortly after the session began (and the failure of Measure 28 in January), the Legislature balanced the 2001-03 budget through "Special Session 6." In April, the Co-Chairs of the Legislative Ways & Means Committee and the Governor both released revised budget proposals for 2003-05, which set the stage for budget negotiations that will begin in May and continue into July.

Both the Co-Chairs' and the Governor's 2003-05 budget proposals include moderate additional cuts to DEQ's General Fund. Attachment A provides a comparison of the two proposals. The Co-Chairs' budget proposes to roll the Special Session 6 cuts for 2001-03 into 2003-05. These cuts total $3.87 million in General Fund for Environmental Partnerships for Oregon Communities, hazardous waste business assistance, environmental cleanup guidance, air quality business assistance, DEQ support to the Lower Columbia River Estuary Project, debt service for Clean Water State Revolving Fund (SRF) bonds, and "bridge" space for the overcrowded DEQ laboratory. The Co-Chairs' budget also proposes to shift $3.83 million for TMDLs and completion of the Willamette River TMDL from General Fund to Ballot Measure 66 "capital funds," and funding for Oregon Plan biomonitoring onto federal Pacific Coast Salmon Recovery funds. We consider the TMDL fund shift to be a cut, because we have been advised that using Measures 66 capital funds for this type of ongoing program work would be illegal. Finally, the Co-Chairs' budget adds back funding for Community Solutions Team; however, we are not sure whether CST will survive final work session budget negotiations.

The Governor's Budget cuts $5.2 million in General Fund, including $4.75 million in debt service for the Clean Water SRF program, so DEQ will have less money to loan to municipalities for wastewater treatment systems. It rolls forward into 2003-05 two positions that were cut in Special Session 3 for 2001-03 -- open burning complaint investigation and water quality non-point source work. The Governor's revised budget also adds back funding for Community Solutions Teams, but, just as with the Co-Chairs' add-back for CST, this still has to be agreed upon in budget work sessions. Finally, the Governor's revised budget includes some funding shifts for Water Quality and TMDL work from General Fund to Ballot Measure 66, but this shift is to Measure 66 *operating* funds and federal Pacific Coast Salmon Recovery funds -- both legal shifts, unlike the Co-Chairs' proposed shift to Measure 66 *capital* funds.

Overall, the Governor's revised budget for 2003-05 is in many ways similar to the Co-Chairs' budget. The Governor and the Co-Chairs worked hard to agree upon the basic parameters for the budget – the revenue outlook, the need for a reserve stability fund, the need to solve certain specific problems. At the same time, the differing priorities that remain in the two budgets will be the focal point for the remainder of the legislative session.

Legislation Update
While hundreds of bills have been introduced this session, many fewer are moving. This is partially a result of the focus on the budget, and partially a result of the 15-15 Senate, which is able to stop bills that don't have bipartisan support. Almost any bill with a fiscal impact on General Fund has been considered "dead" unless it is a high priority of the Governor or the legislative leadership.

Legislators' high priorities for legislation this session include PERS reform; economic development stimulus; regulatory reform/streamlining; and a transportation package to fund bridge repair and other maintenance. Although a number of bills have been introduced that seek new environmental protection programs, most of these will not move forward. At the same time, there has also not been a lot of effort to undermine environmental protections. Oregon's land use laws are probably the biggest target for change, although again, the Senate will probably stop any proposals for drastic change. One lobbyist noted that a result of this dynamic has been many bills creating task forces (more than 45 so far) to address issues such as land use law reform and agency rules reform.

DEQ is currently tracking almost 250 bills, including 23 relating to air quality issues; 83 relating to water quality issues; 101 relating to land quality issues; 44 agency wide and budget bills; 3 relating to pollution control tax credits; 16 relating to enforcement including judicial review, judgments and hearings panel; and 11 relating to regulatory reform and permit streamlining. Many of these bills do not directly or significantly affect DEQ. Only a couple dozen of them are moving or are likely to move. Attachment B summarizes two key bills for DEQ, as well as bills we support, are concerned about, and are watching with interest. The two key bills, House Bill 5060 and Senate Bill 196, are needed to ratify air and water permit fee increases previously adopted by the 2001 legislature, and to increase hazardous waste fees to keep program delegation, respectively.

All Senate committees, except for Rules and Judiciary, are now closed and can only meet again upon approval from the Senate President. The House committee shutdown deadline is expected to be May 16. The Ways and Means subcommittees are winding up hearing agency budgets, but everyone seems to be waiting for the May revenue forecast and some for results of the Portland school funding measure on May 20 before hard negotiating begins over the Governor's budget and the co chairs budget. Lauri Aunan, DEQ Community and Government Relations Manager, is in the Capitol almost every day, and I am there meeting with key legislators and members of the lobby when needed. With the substantive committees shutting down, the focus soon will be solely on budget.

Building Support for Laboratory Preparedness in D.C.
In April, DEQ Laboratory Administrator Mary Abrams, spent a week in Washington D.C., to raise awareness about the need to fund laboratory preparedness and chemical terrorism response. During her trip, she met with Congresswoman Hooley and Congressman DeFazio (who sits on the House Homeland Security committee), and staff from all of the Oregon delegation offices. With Congressman Blumenauer's office, Mary crafted a letter to the House Homeland Security Appropriations committee requesting $10 million, which would be the first of a three year appropriation, for a total of $40 million. This would include $32 million for building a joint DEQ-Public Health lab facility and $8 million for DEQ instrumentation, staffing and training.

Mary also met with FBI technical staff, Environmental Protection Agency (EPA) policy staff, and lobbying staff for the Association of Public Health Laboratories (APHL), the National Governors' Association (NGA) and the Environmental Council of the States (ECOS). The meetings were

mainly informational, although the APHL and NGA discussions were focused on how to find money to address the national issue of lab capability for terrorist threat response. In addition, Mary moderated a panel at the ECOS annual meeting that included three of EPA's top Homeland Security people. The panel went very well, and ECOS expressed a strong desire to support additional EPA appropriations for homeland security to pass through to state programs.

As follow up to this trip, Mary will continue working with Governor Kulongoski's D.C. lobbyist and congressional staffers to find and secure money to help fund the joint lab facility. She will also stay connected with the APHL national effort and provide support when needed. Mary may take a second trip to D.C. in October to meet again with the Oregon's delegation and other leaders. ECOS paid for all costs associated with Mary's April trip, and would pay for the October trip also.

Efforts continue to gain state support for funding a joint DEQ-Public Health lab as well. Our discussions with the Ways & Means Natural Resources Subcommittee on the need to relocate the DEQ lab went well, and the project is included in House Bill 5004, the capital project bill, which will be heard later during this legislative session.

Update on Columbia River Channel Deepening
As a result of discussions between the Corps of Engineers, Ports, and Washington and Oregon state agencies, the timing for our 401 certification for the deepening of the Columbia River federal navigation channel has been delayed. The Corps gave the states an additional 90 days to coordinate environmental reviews and consider new information recently released in their final Environmental Impact Statement. Our deadline now for a decision on the project is June 23.

The initial timeline for states to evaluate and decide the impacts of the project was very tight, and agencies on both sides of the river had less time than needed to coordinate responses. As a result, the Corps was facing contradictory coastal zone management consistency findings from each state; the main issue relates to whether dredged spoils placed in the lower estuary can be treated as "ecosystem restoration sites" as proposed, or whether they need to be disposed of in the ocean, which may affect fishing grounds.

DEQ staff met recently with the Corps to discuss solid waste permitting issues related to upland dredged sediment disposal sites. It may be possible to exempt dredge material from solid waste permitting, provided we are assured that it is clean fill. We are currently evaluating the data from the Corps' sediment testing to make this decision.

Update on Columbia River TMDLs
The Columbia River is water quality limited (on the Clean Water Act 303(d) list) for dissolved gas, toxics and temperature. DEQ's work on Total Maximum Daily Loads (TMDLs) to address these parameters is summarized below.

- Total Dissolved Gas DEQ completed the TMDL for this parameter, and it was approved by EPA in November 2002.

- Toxics The 303(d) listing for toxics includes arsenic, DDT/DDE, PCBs and PAHs[1] (or polycyclic aromatic hydrocarbons). We have met with EPA and our counterparts from the State of Washington to begin scoping the development of a TMDL for these parameters below Bonneville Dam. EPA has made available $50,000 for contractors to begin the process of identifying sources of these pollutants and beginning the work of determining water column concentrations.

- Temperature DEQ has been working with state counterparts in Washington and Idaho, as well as with EPA and Tribes on a TMDL for temperature. EPA has taken the lead on the computer modeling effort and the States are producing an Implementation Plan. A preliminary draft of the TMDL, released late in 2002, drew conflicting comments from the federal hydropower agencies. Since that time, senior management and staff have been working to resolve issues to prepare the TMDL for public comment this summer.

  In April, EPA issued Regional Temperature Guidance that has been in the works since October 1999. The guidance makes recommendations to states on protecting certain fish species and life stages, preserving cold water refuges, and protecting fish from thermal plumes. We had originally committed to revising Oregon's water quality temperature criteria within one year of EPA's issuance of the guidance (thus, May 2004). In light of the NWEA v. EPA case (decided in March) that invalidates EPA's 1999 approval of Oregon's temperature standard, DEQ may need to revise the criteria in the next seven to nine months. We plan to consider recommendations in EPA's temperature guidance as we move quickly through the criteria revision. See Attachment C for an EPA fact sheet giving more information on the guidance.

Governor's Position on Columbia River Dams

During discussions with EPA on the Columbia River temperature TMDL, the issue of how TMDLs should reflect the existence of mainstem dams has been a critical concern. In April, DEQ issued a memo (Attachment D) to EPA on behalf of the Governor's office clarifying Oregon's position on dams in the context of establishing the temperature TMDL. The memo provides background, outlines the major issues associated with TMDL development, and states Oregon's position, specifically:

1. The State does not seek nor would we support breaching of the dams on the Snake and Columbia Rivers to meet the water quality standards established under the Clean Water Act. However:
2. Federal dam operators (the Corps of Engineers and Bureau of Reclamation) must develop an implementation plan under the TMDL which identifies and implements all technically sound and economically feasible options to operate the Columbia Basin hydropower system and individual dam operations to minimize the thermal impact of dams.

Timing of this memo was critical to support the Governor's meeting with EPA officials in Washington D.C., which sought to keep EPA in the lead on developing the Columbia River temperature TMDL.

[1] Polycyclic Aromatic Hydrocarbons – a group of over 100 different chemicals formed during the incomplete burning of coal, oil and gas, garbage, or other organic substances.

Attachment A

DEQ Cuts – Scenarios under Co-Chair and Governor Proposals

As of April 18, 2003

	2001-03 Adopted	2003-05 GBB	Co-Chairs revised budget April 17, 2003	GBB revised April 18, 2003
Total Budget	$304,195,824	$273,889,568	$270,836,639	$269,524,106
GF/LF	$43,370,346	$34,965,688	$31,912,759*	$28,556,418
FTE	865.17	821.19	816.29*	822.79

*Puts an additional 16 FTE and $3.83M at risk because fund transfer to M66 Capital is likely illegal.

Co-Chairs revised (April 17, 2003):

Cuts $3.83 million General Fund:

- Cuts base statewide Total Maximum Daily Load (TMDL) work and completion of the Willamette TMDL because the proposed shift to Ballot Measure 66 Capital Fund is likely illegal. (16 FTE)

Cuts an additional $3.87 million in General Fund:

- Environmental Partnerships for Oregon Communities: No more assistance to small, rural communities (under 2500) with multiple environmental compliance issues, including wastewater treatment, safe drinking water, solid and hazardous waste management, underground storage tanks, and air quality. ($352k; 2 FTE)
- Hazardous Waste Business Assistance: 50% fewer hazardous waste generators will receive technical assistance. Last year we assisted 360 businesses and trained 500 individuals. ($808k; 4.2 FTE)
- Clean Water State Revolving Fund Loans: Reduced capacity to make loans to communities for wastewater treatment plant upgrades by self-financing $1.9M in debt previously paid by GF.
- Environmental Cleanup: reduced guidance and Cleanup Program information for the general public and approximately 460 contaminated site owners. ($432k; 2 FTE)
- Laboratory "bridge" space: Continues risks of health and safety violations in the laboratory due to overcrowding.
- Air Quality Business Assistance: Reduces assistance to new or expanding businesses on permits, pollution prevention, and interpretation of rules; and to the general public about individual activities that cause air pollution, increasing the burden on business to prevent violations of health-based air quality standards. ($63k; 0.3FTE)
- Lower Columbia River Estuary Project: Reduces contribution to LCREP effort by 1/3.

Adds back funding:

- Community Solutions Team: Adds back $834,555 in General Fund to continue DEQ participation in CST projects. We are currently involved in 175 projects; DEQ is project lead or is providing primary research and technical assistance for 51% of these projects.

Cuts General Fund and backfills with other legal funding:

- Shifts $0.78M Oregon Plan biomonitoring onto federal Pacific Coast Salmon Recovery Funds.

GBB revised (April 18, 2003):

Cuts $5.2 million General Fund:

- Open Burning: One-third of open burning complaints will not be investigated, resulting in increasing public exposure to toxic smoke and odors. (1 FTE)
- Water Quality non-point source policy coordinator: Reduces coordination with federal agencies, resulting in inefficiencies and missed opportunities for streamlining. Erodes our ability to work with agricultural and timber communities to find effective solutions to rural water quality problems. (1 FTE)
- Clean Water State Revolving Fund Loans: Reduced capacity to make loans to communities for wastewater treatment plant upgrades by self-financing $4.75M in debt previously paid by GF.

Adds back funding:

- Community Solutions Team: Adds back $834,555 in General Fund to continue DEQ participation in CST projects. We are currently involved in 175 projects; DEQ is project lead or is providing primary research and technical assistance for 51% of these projects.

Cuts General Fund and backfills with other legal funding:

- Shifts $2M of base TMDL work to Ballot Measure 66 Operating Fund. This is a legal use of M 66 funds.
- Shifts $1.1M to complete the Willamette TMDL and support voluntary monitoring by watershed councils to federal Pacific Coast Salmon Recovery Fund.

Attachment B

Key bills DEQ is tracking
April 2003

Although DEQ is currently tracking almost 250 bills, many of these do not directly or significantly affect DEQ. Below is a summary of those that do, including bills affecting DEQ fees, and those that we support, are concerned about, and are watching with interest.

Key Bills for DEQ

House Bill 5060 – Ratifies air and water permit fee increases previously approved by the 2001 Legislature. Needed to support timely issuance of air and water permits. This bill is in Ways & Means and we are working to ensure it will have legislative support when our Ways & Means Subcommittee does the Work Session on DEQ's budget.

Senate Bill 196 – Hazardous waste fee increases needed to keep delegation of the federal hazardous waste program. This bill was approved by the Senate Agriculture and Natural Resources Committee and includes up to $250,000 per year of civil penalty dollars to support a Hazardous Waste Technical Assistance Fund. DEQ can spend no more than 15% of the fund on personnel costs. This bill is in Ways & Means.

Bills DEQ Supports

Senate Bill 867 establishes a task force to look at electronics product stewardship. It has had a hearing and is being modified to address industry concerns. DEQ will be participating on the task force.

House Bill 2644 extends the fee schedule at the Arlington Hazardous Waste disposal site and lowers fees on large quantities of waste from cleanup sites. The bill has passed one committee and may need some minor modification. There is concern about this bill from the Idaho DEQ because it may be too late in that state's session to match the fee change there.

House Bill 3047 establishes a state policy to promote wastewater reuse and directs DEQ to seek federal funding for a demonstration project.

House Bill 3175 began life as Associated Oregon Industries Willamette River bill. The bill has been amended to extend the sunset date of the Green Permits Program; clarify that the Green Permits Program is discretionary, not mandatory, for DEQ; and allow DEQ to ask for a permit application deposit of up to $25,000 in order to fund Green Permits work, which must be fully funded by the permit applicant and not subsidized by General Funds. The bill has passed the House.

Senate Bill 467 requires agencies to speed approvals for developing industrial lands. As part of this focus, the bill establishes the Community Solutions Team in statute and requires DEQ to staff the effort to make industrial lands "shovel ready." Because of this fiscal impact on DEQ and the fiscal impact to other agencies, this bill passed the Senate Transportation and Economic Development Committee to Ways & Means.

Bills of Concern

House Bill 2652 would transfer the pollution control tax credit program from DEQ to the Oregon Economic and Community Development Department. This bill has had one hearing in the House Revenue Committee.

House Bill 2887, introduced at the request of the Oregon Cattleman's Association, adds the federal Clean Water Act definitions of "point source" and "nonpoint source" to Oregon statute.

House Bill 2899 would roll back Oregon's stringent standards for chemical mining. DEQ and the Department of Geology and Minerals oppose this bill. The bill has not had a hearing.

Senate Bill 419 affects drycleaner fees and how we administer the dry cleaner program, which includes cleanup of contaminated dry cleaner sites, and best management practices to avoid future contamination. DEQ worked with Senator Harper and the dry cleaner industry to develop amendments. DEQ supports the bill as amended.

Senate Bill 751 has had two hearings. The bill proposes a $200 million bond sale to fund investigation and cleanup of Portland Harbor and proposes to fund the interest and principle of the bond sale from the Hazardous Substance Remedial Action Fund (HSRAF), which funds some of DEQ's base programs. The bill proposes shifting the lead for the Superfund site from EPA to the State. There are concerns that this would actually delay cleanup even longer. The bill proposes to change the liability scheme for parties currently liable for cleanup of Portland Harbor, by shifting the burden of proof and liability to the state. This may result in the state taking on a significant share of the liability for cleaning up Portland Harbor. DEQ has expressed its concerns about this bill. The Division of State Lands also has concerns with some proposed amendments.

Other Bills of Interest

House Bill 3420 requires insurers to pay costs to clean up contaminated sites. It is supported by the Port of Portland and some industries, and opposed by the insurance industry.

House Bill 3620 continues the task force studying ballast water. The bill was amended to remove DEQ's fiscal concerns, but was referred to Ways & Means because it includes a task force. In the House, all bills that create task forces are being referred to Ways & Means.

A number of bills were introduced to repeal or reduce fees that support the Toxics Use Reduction Law. A compromise bill, House Bill 2533, was developed, which commits DEQ to using an advisory group to consider the need for and changes to the law and how the fees are assessed. HB 2533 also exempts propane from the list of hazardous substances assessed a fee to pay for our implementation of the TUR law. The bill should become law, but should not affect our TUR funding.

House Bills 2967, 3120,and 3584 address rules reform and regulatory streamlining. They have all passed out of House committees. Amendments to HB 3120 direct the new Office of Regulatory Streamlining in the Department of Consumer and Business Services to work with an advisory committee in the interim. HB 3584 creates a task force to look at streamlining issues. HB 2967 requires a much more detailed analysis of the effects of a proposed rule on small businesses.

Senate Bill 771, Senator Bruce Starr's bill to promote the "community solutions team" approach to permitting and land use decisions for transportation projects, was amended and has passed the Senate. DEQ worked with ODOT on amendments and the bill is acceptable.

Attachment C

EPA

Region 10
1200 Sixth Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington

EPA Issues Final Water Temperature Guidance - April 2003

Water temperature is a critical aspect of the freshwater habitat of Pacific Northwest salmon and trout. These fish, including those listed as threatened or endangered under the Endangered Species Act (ESA), need cold water to survive. Human-caused increases in river water temperatures have been identified as a factor in the decline of ESA-listed fish in the Pacific Northwest. State and Tribal temperature water quality standards can play an important role in helping to maintain and restore water temperatures to protect these salmon and trout and aid in their recovery.

The guidance is intended to assist States and Tribes to adopt temperature water quality standards that EPA can approve consistent with its obligations under the Clean Water Act (CWA) and the ESA. The CWA requires States and authorized Tribes to adopt water quality standards and requires the EPA to approve or disapprove those standards. The ESA requires EPA, in consultation with the federal fisheries agencies, to insure its approval of a State or Tribes's water quality standards does not jeopardize the continued existence of endangered or threatened species.

The guidance represents one approach for water temperature standards that a State or Tribe could adopt that would likely pass the complex approval process. The guidance, however, is optional and States and Tribes can adopt alternative standards as long as EPA determines they meet CWA and ESA requirements.

The guidance is a product of a three year collaborative effort involving the Idaho Department of Environmental Quality, Oregon Department of Environmental Quality, Washington Department of Ecology, NOAA Fisheries (formerly the National Marine Fisheries Service), U.S. Fish and Wildlife Service, Nez Perce Tribe, and the Columbia River Inter-Tribal Fish Commission. EPA issued two public review drafts, the first in October, 2001 and the second in October, 2002, and received valuable comment from the public.

Recommended Temperature Criteria to Protect Salmon and Trout

Applies to the Summer Maximum Temperature

- 12°C (55°F) for Bull Trout Rearing - *generally in the upper portion of river basins*
- 16°C (61°F) for Salmon and Trout "Core" Juvenile Rearing - *generally in the mid to upper part of river basins*
- 18°C (64°) for Salmon and Trout Migration plus Non-Core Juvenile Rearing - *generally in the lower part of river basins*
- 20°C (68°F) plus cold water refugia protection for Salmon and Trout Migration - *generally in the lower part of a few river basins that likely reach this temperature naturally*

Applies Where and When Fish Use a River (generally during the fall-winter-spring period)

- 9°C (48°F) for Bull Trout Spawning
- 13°C (55°F) for Salmon and Trout Spawning, Egg Incubation, and Fry Emergence
- 14°C (57°F) for Steelhead Smoltification

Note: the above criteria are based on the 7 day average of the daily maximum values

Recommendations to Protect Existing Cold Waters

Keeping cold waters cold is important to protect the last remaining high quality fish habitat and help cool downstream river reaches. The guidance, therefore, recommends that State and Tribes adopt mechanisms in their standards that protect waters that are currently colder than the summer maximum numeric criteria.

Recommendations to Protect Fish in the Vicinity of Point-Source Discharges

In some situations, water temperatures in the immediate vicinity of an industrial or municipal discharge may exceed the recommended temperature criteria as long as fish are not harmed from short-term exposure. The guidance recommends that States and Tribes adopt measures to protect fish from temperatures that would be lethal, cause thermal shock, block migration, or harm fish eggs.

What if the Temperature Criteria are Unattainable or Inappropriate?

EPA recognizes that because of the inherent variability of Pacific Northwest rivers and streams there are likely to be situations where the recommended temperature criteria will be unattainable or inappropriate. The guidance offers several approaches a State or Tribe can take to address these situations. For example, where the natural background temperature (i.e., the temperature absent human impacts) is estimated to be higher than the recommended criteria, the natural background temperature can be adopted as criteria. Further, if human impacts cannot be remedied, alternative criteria can be established based on the water temperature that is attainable.

What Are Water Temperature Criteria Used For?

Water temperature criteria serve as goals in order to protect salmon and trout and other uses. Criteria are used for determining what waters do not attain water quality standards (CWA 303(d) list) and require the development of a Total Maximum Daily Load (TMDL), which calculates the temperature reductions needed from contributing sources to meet the criteria. Criteria are also used to set effluent limits for NPDES sources and used by States for non-point control programs.

For More Information

For a copy of the guidance go to EPA's website: www.epa.gov/r10earth/temperature.htm, or call 1-800-424-4372.

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State of Oregon
Department of Environmental Quality Memorandum

Date: April 17, 2003

To: Environmental Quality Commission

From: Stephanie Hallock, Director S Hallock

Subject: Agenda Item J, Rule Amendments to OAR 340 Division 248, Asbestos Requirements
May 9, 2003 EQC Meeting

Department Recommendation

The Department recommends the Commission adopt proposed rule revisions for handling asbestos-containing materials as presented in Attachment A.

Need for Rulemaking

This rulemaking removes some requirements that were adopted on January 25, 2002 that could be interpreted too broadly and could possibly have a greater economic impact upon building owners, contractors or solid waste haulers and facility operators than necessary. The Department agrees with concerns raised by several associations after the January 2002 rulemaking that some of the requirements could be broadly interpreted and cause unforeseen economic impact. On December 13, 2002, the Environmental Quality Commission adopted a temporary rule to remove the asbestos requirements causing implementation problems for some of the members of these associations.

The primary purpose of this proposed rulemaking is to make the temporary rule changes permanent. The changes include revisions to the pre-demolition and pre-renovation asbestos survey requirement; clarifications to definitions that classify asbestos containing material as friable (easily releases fibers) or nonfriable and other definitions; removal of specific nonfriable asbestos handling requirements; and error corrections.

After completing this rulemaking, the Department will start fresh and work with an advisory committee representing all interested stakeholders to resolve implementation and enforcement concerns the Department intended to resolve in the January 2002 rulemaking. The Department will form the advisory committee in the fall of 2003.

Effect of Rule

Asbestos is a hazardous air pollutant and a carcinogen with no known safe level of exposure. Asbestos is a mineral fiber that was commonly used in building materials such as popcorn ceilings, vinyl flooring and furnace insulation. Many homes and buildings were constructed using materials that

contain asbestos. The Department regulates the removal 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 human exposure to asbestos fibers by placing reasonable requirements upon building owners, contractors and solid waste facilities to ensure that exposure does not occur.

On December 13, 2002, the Environmental Quality Commission adopted temporary changes to the asbestos requirements that revised some of the January 2002 changes. This proposed rule will make permanent the changes adopted by the Environmental Quality Commission in December 2002. The proposed rulemaking changes include:

1) Delete or clarify definitions that are perceived as too broad and confusing. The temporary rule deleted the definition of "shattered" and the reference to "potential to release asbestos fibers" in the definition of friable asbestos material[1] and nonfriable asbestos material. This rulemaking also deletes these terms (see Attachment A, OAR 340-248-0010, page 3). These phrases were meant to clarify when nonfriable material is made friable and becomes subject to specific requirements for handling and disposal. 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 and this proposed rulemaking restore the definitions of "friable" and "nonfriable" used before the January 2002 amendments. Later, an 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 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 43). In January 2002, the Department wrote new nonfriable asbestos waste packaging and disposal requirements to

[1] 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).

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 becoming 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 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 burden to industry. In the interim, the temporary rule and this proposed rulemaking 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 24). This change will make the Department's 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) Make regulatory definitions identical to those contained in statute;

correct errors, punctuation, typographical errors, citations and references. Regulatory definitions have been modified to reflect the exact wording contained in statute. The proposed rule replaces all "shalls" with "musts" or "wills," and corrects typographical errors and inaccurate citations. The proposed rule makes a few other clarifying corrections.

Commission Authority

The Commission has authority to take this action under ORS 468A.745(8), ORS 468A.025 and ORS 183.335. These rules implement ORS 468A.700 through 468A.760.

Stakeholder Involvement

These rules are an interim solution to the implementation problems identified after January 25, 2002, so the Department did not use an advisory committee for this rulemaking. Beginning in the fall of 2003, the Air Quality Program plans to initiate final rulemaking and work with an advisory committee representing all interested stakeholders to address implementation and enforcement concerns that the Department intended to resolve with the January 2002 rulemaking. The advisory committee will help the Department resolve the following issues:

1. Clarifying when nonfriable asbestos-containing material has become 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 residential properties with four or fewer dwelling units.

The advisory committee will assist the Department in developing rule changes that resolve these issues regarding asbestos survey requirements, nonfriable asbestos waste disposal requirements, and impacts on small businesses and individuals.

Public Comment

A public comment period extended from January 21, 2003 to February 20, 2003, and included public hearings in Medford, Portland and Pendleton. Results of public input are provided in Attachment B.

Key Issues

Key issues identified during the public comment period were:

- The Oregon Refuse and Recycling Association (ORRA) requested that the Department exempt solid waste haulers from the open accumulation prohibition in the rules. The Department put a similar exemption into the

rules for solid waste facilities that are complying with solid waste permits, but was unable to craft such an exemption for haulers and transporters. The Department consulted with the Department of Justice (DOJ) on the hauler exemption request. DOJ agreed that there is no clear way to provide an exemption for haulers in the rules. The Department does not regulate haulers and has no regulatory tool such as the solid waste permit to ensure that haulers are handling asbestos material properly. Without such a regulatory tool, an exemption for haulers from the open accumulation prohibition will legally allow for public exposure to asbestos fibers from the transport of asbestos-containing waste. In the fall of 2003, the Department will consult with the advisory committee to determine if there are other opportunities to address ORRA's concern.

- Two commenters requested that the Department continue requiring the asbestos survey requirement of residential building owners. They stated that eliminating the survey requirement for residential building owners poses an increased risk to the environment and increased asbestos exposure to owner/occupants and contractors. 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.
- One commenter stated that changing the definition of asbestos-containing material back to statutory language makes the measurement requirements for asbestos-containing material inconsistent with the industry standard method specified later in the rules. While the Department agrees that use of the statutory definition could be confusing, the rules specify how to accurately measure the amount of asbestos in a material in OAR 340-248-205(4) (See page 18, Attachment A). The Department will explore if statutory language changes are needed or if there is a way to further clarify the measurement method in the rules with the advisory committee in the fall of 2003.

Next Steps

If adopted by the Commission, these rule amendments will become effective on June 20, 2003, the date that the temporary rules expire. DEQ Air Quality staff assigned in headquarters, the laboratory and the regional offices will implement these rules. The Office of Compliance and Enforcement has responsibility for processing formal enforcement actions arising from violations of asbestos rules. The Lane Regional Air Pollution Authority implements the asbestos program in Lane County.

Implementation efforts started after the January 2002 rulemaking will be continued. These efforts focus on educating building and home owners by providing information at the time that local building permits are obtained, when building supplies are purchased, or when an owner is looking for a contractor.

Implementation efforts focused on the solid waste industry will continue through a coordinated approach with the Department's Solid Waste Program. The Solid Waste Program has developed landfill and transfer station guidance for handling asbestos waste.

Educational mailings through the Construction Contractors Board have significantly raised awareness among contractors. Advertisements in various yellow pages throughout the state have generated a multitude of phone calls providing opportunities to educate home owners. Staff will continue to work with the Construction Contractors Board to provide rule updates and educational information for distribution in their newsletters and newsletters for the Oregon Refuse and Recycling Association, the Oregon Remodelers Association, and the Oregon Building Industry Association. Web pages specific to the asbestos program were developed and links were provided to those organizations to post on their websites.

Because the proposed rules rescind some of the January 2002 rule language, the implementation efforts underway will be adjusted to include the revisions. The Department will continue the successful outreach efforts started after the January 2002 rulemaking because those efforts are dramatically increasing asbestos awareness throughout the state.

As stated above, the Air Quality Program will form an advisory committee representing all interested stakeholders to address implementation and enforcement concerns that the Department intended to resolve with the January 2002 rulemaking. The Department will form the committee in the fall of 2003.

The advisory committee will assist the Department in developing rule changes that resolve remaining issues.

Attachments

A. Proposed Rule Revisions
B. Summary of Public Comments and Agency Responses
C. Presiding Officer's Reports for each Public Hearing
D. Relationship to Federal Requirements Questions
E. Statement of Need and Fiscal and Economic Impact
F. Land Use Evaluation Statement

Available Upon Request

1. Cover Memorandum from Public Notice
2. Written Comments Received
3. Rule Implementation Plan

Approved:

Section: Audrey M O'Brien AXG

Division: Patricia Vernon (for Andy Ginsburg)

Report Prepared By: Audrey O'Brien

Phone: (503) 229-5572

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 248

ASBESTOS REQUIREMENTS

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.

(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~~ containing 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 340-248-0205~~0 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.

(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~~ crumble~~d~~, pulverize~~d~~ or reduce~~d~~ 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.

(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 218~~14~~.

(30) "Negative pressure enclosure" means any enclosure of an asbestos abatement project area where the air pressure outside the enclosure is greater than the air pressure inside the enclosure and the air inside the enclosure is changed at least four times an hour by exhausting it through a HEPA filter.

(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 division~~chapter~~.

(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 company~~ies~~, municipal corporations, political sub-divisions, the state and any agency of the state or any other entity, public or private, however organized~~ies 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.~~

(378) "Small-scale, short-duration activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:

(a) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(b) Replacement of an asbestos-containing gasket on a valve;

(c) Installation or removal of a small section of wallboard;

(d) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those that 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;

(hg) 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.

(39~~40~~) "Survey" means to conduct a detailed inspection of a building, structure, or facility for the presence of asbestos-containing material. The survey must be conducted by an accredited inspector and include sampling of materials suspected to contain asbestos, analysis of those samples to determine asbestos content, and evaluation of the materials in order to assess their condition.

(40~~1~~) "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

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 340-248-0~~005~~100 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

340-248-0120

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;

(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

(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:

(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.

(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.;

(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;

(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 a~~A~~ccreditation 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.~~;~~

(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 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.

(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.

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 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 successful 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.

[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

340-248-0180

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~~;~~.

(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 Subpart E, Appendix 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 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;.

(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;

(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.

(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:

(A) The airflow permeability in $m^3/min/m^2$ ($ft^3/min/ft^2$) 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 $m^3/min/m^2$ ($ft^3/min/ft^2$).

(c) If a HEPA filter is used to control emissions, the certified efficiency.

(3) S~~For s~~ources covered by this rule and subject to OAR 340-248-0280(1) through 340-248-0280(9) and~~or~~ 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 s~~Sources covered by this rule and subject to OAR 340-248-0280(10),- 340-248-0280(11) or~~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

340-248-0240

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.

(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 340-248-0180, OAR 340-248-0210 through 340-248-0240 and OAR 340-248-0260 through 340-248-0270 if the 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.

(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.

(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 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.;

(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.

(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.

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;

(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.

(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 or~~and~~ 340-248-0290.

(9) Persons performing asbestos abatement outside full negative pressure containment must obtain written approval from the Department before using mechanical equipment to remove asbestos-containing material.

(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.

(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:

(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 $ft.^3/min./ft.^2$ (9 $m^3/min./m^2$) for woven fabrics or 35 $ft.^3/min./ft.^2$ (11 $m^3/min./m^2$) for felted fabrics with the exception that airflow permeability of 40 $ft.^3/min./ft.^2$ (12 $m^3/min./m^2$) for woven and 45 $ft.^3/min./ft.^2$ (14 $m^3/min./m^2$) 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 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 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

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 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.

(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.

(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 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.

(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.

(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:

DANGER

ASBESTOS-CONTAINING MATERIAL

(3) Nonfriable asbestos-containing roofing materials that are fully encapsulated in a petroleum-based binder and meet the conditions in OAR 340-248-0250(2)(c) are exempt from 340-248-0290(2).

(4) The interim storage of nonfriable asbestos-containing waste material must protect the waste from tampering by unauthorized persons. The interim storage of nonfriable asbestos-containing waste material is the sole responsibility of the contractor or the owner or operator performing the nonfriable asbestos abatement project.

(5) All nonfriable asbestos-containing waste material must be deposited as soon as possible by the asbestos waste generator at:

(a) A waste disposal site authorized by the Department and operated in accordance with this rule; or

(b) A Department approved site that converts asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of OAR 340-248-0230, Asbestos to Nonasbestos Conversion Operations.

(6) Persons disposing of nonfriable asbestos-containing waste material must notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator before bringing the waste to the disposal site.

(7) For each nonfriable waste shipment, the waste generator must provide the generator information contained in OAR 340-248-0280(7).

(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.

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

Summary of Public Comment and Agency Response

Amend OAR 340 Division 248, Asbestos Requirements
Prepared by: Dave Wall, (503) 229-5364 Date: February 27, 2003

Comment period

The public comment period opened on January 21, 2003 and closed on February 20, 2003. DEQ held public hearings on February 18, 2003 beginning at 3:00 p.m. in Portland and Medford, and on February 19, 2003 beginning at 1:30 p.m. in Pendleton. Four people attended the hearing in Portland but no one provided oral testimony. No one attended the hearing in Medford. Two people attended the hearing in Pendleton and one person provided oral testimony and also provided written testimony. Three other people submitted written comments.

Organization of comments and responses

Summaries of individual comments and the Department's responses are provided below. The person who submitted each comment is identified in the table following the comments and Department responses.

Summary of Comments and Agency Responses	
Comment 1	OAR 340-248-0250(5) exempts "asbestos-containing waste material that is handled and disposed of in compliance with a permit issued pursuant to ORS 459" from the "open accumulation" provision of the rules. However, the rule does not address an exemption for solid waste collectors involved in transport of ACWM. Many solid waste collectors have expressed concern about how OAR 340-248-0205 (1), the "open accumulation" section of the proposed rule, will apply to legitimate haulers. While most of the problem of open accumulation will be at the generator's site, it could also involve a collection container owned and serviced by the local solid waste hauler, so: How does DEQ purport to apply the "open accumulation" section to a hauler? Secondly, what will constitute an enforcement action and who will be the target of the enforcement action?
Department Response	The Department added the exemption from the open accumulation prohibition for permitted facilities because the department can use a specific regulatory tool, the solid waste permit, to ensure that solid waste facilities comply with asbestos requirements. Solid waste permits also require that the facilities follow specific guidance in the form of special waste management plans if an accidental asbestos exposure occurs. If a solid waste facility is operating in compliance with a solid waste permit and special

	waste management plan, that facility will not openly accumulate asbestos waste. Waste transporters are not subject to permitting or any other binding requirement by the Department that ensures they comply with the asbestos regulations prohibiting open accumulation. Without the ability to use a binding requirement such as a permit to ensure compliance, the Department cannot provide a similar type of exemption from the open accumulation prohibition for solid waste haulers. Although the Department has not provided an exemption for solid waste haulers, the Department does not intend to focus its enforcement resources on waste transporters that are following prudent practices when it comes to the discovery of asbestos waste or accidental asbestos fiber release. When the transporter finds unwanted or improperly packaged asbestos within their drop boxes and contacts the Department for help, the Department focuses resources on helping to clean up the asbestos material and prevent asbestos exposure. Department procedures are to first help prevent asbestos exposure and then to look for the person or persons responsible for the open accumulation. Once the responsible person is identified, then the Department evaluates if the open accumulation could have been prevented or was an unforeseen accident (e.g. a hauler getting hit by another vehicle). If the hauler could not have prevented a violation from occurring, the Department is not likely to pursue formal enforcement and will focus enforcement efforts on the person or persons responsible for generating this unwanted waste. During the fall of 2003, the Department will form an advisory committee to address remaining issues regarding survey requirements, asbestos waste disposal and other issues.
Comment 2	The rules need to be strengthened to include federal EPA operation and management and project design requirements for all commercial and industrial facilities as suggested below. These requirements would not apply to private homeowners. • These facilities need to follow EPA's *Managing Asbestos in place-Building Owner's Guide to Operations and Maintenance programs for Asbestos-Containing Materials, July 1990.* • ODEQ should develop project design language consistent with EPA and provide technical guidance to the public for safe asbestos materials handling before a project is started, not after.
Department Response	If building owners have a survey done and if trained and licensed contractors perform abatement projects correctly, the Department sees no need to add an additional requirement for asbestos management plans. The Department intends to convene an advisory committee this fall to

	address problems related to the January 2002 rulemaking. If needed, the Department working together with the advisory committee, will determine if additional guidance or rule language is needed to ensure consistency with federal requirements regarding asbestos management or project design requirements.
Comment 3	All asbestos handling contractors need to be required to have "full ODEQ certification" beyond the training. They must be licensed and approved before handling either friable or nonfriable asbestos by DEQ. Similar to a liquor license, concealed weapons permit, etc. After all, asbestos is at least as dangerous as these other licensed venues.
Department Response	The Department licenses all friable asbestos abatement contractors and certifies all workers that perform friable asbestos abatement. The Department does not license or certify contractors and workers that perform nonfriable asbestos abatement. The Department does not have statutory authority to require such training and licensing. Training for removal of nonfriable asbestos-containing materials is required under Oregon OSHA rules.
Comment 4	All people that handle, have, pick-up (solid waste handlers), own buildings with multiple clients, etc. should have a standard operating procedure (SOP) on how to handle any and all asbestos. This would be included in their O&M plan.
Department Response	The Department agrees that building owners and anyone who handles asbestos should employ good work practices and procedures that could be part of an operation and maintenance (O & M) plan. This would help to ensure that asbestos-containing materials are handled correctly to protect workers and the public. The Department's asbestos rules require that asbestos removal contractors obtain licenses. These rules also require workers and supervisors that handle friable asbestos materials to be appropriately certified. OSHA and EPA rules require O & M programs and the Department sees no need to add its own requirements.
Comment 5	All asbestos handlers and building owners are subject to "cradle to grave" handling by RCRA, the General Duty Clause of the Clean Air Act, the General Duty Clause in OSHA regulations and to specific regulations. No one in the asbestos abatement industry is exempt from preventing asbestos exposure. The EPA Model Accreditation Program (MAP) additionally requires the use of a project designer. The Department should add project designer requirements to its rules.

Department Response	The Department agrees that proper project design ensures success for many abatement projects. Department rules establish licensing requirements for asbestos removal contractors and require workers and supervisors that handle asbestos materials to be appropriately certified. If asbestos removal is performed properly, because a building owner performs a survey and removes asbestos containing materials in accordance with the Department's asbestos rules, then the Department considers that the intent of the federal project design requirements has been met. OSHA and EPA rules already require some form of Project Design to be used for abatement projects. DEQ considers the existing federal programs to be sufficient.
Comment 6	While the proposed rule changes cover several items, the one that I believe poses the greatest risk to both the environment and owner/occupants is the elimination of the rule change from the last revision relating to the survey requirements. While the survey rule has been in place, we have seen a substantial increase in awareness on the part of owners and contractors in single family residences of the need to perform surveys for asbestos prior to renovation. While some may believe that the survey requirement for single family to 4-plex structures is an unreasonable cost burden, we have not found this to be the case. In many instances, remodel contractors and small demolition firms have expressed that they appreciate the fact that DEQ had leveled the playing field for them by way of a requirement being in place that materials are tested prior to renovation and demolition work. This has reduced substantially the number of times we have been called in the middle of construction work to deal with a surprise asbestos problem, affecting not only costs, but also construction schedules. I urge the Department to re-consider the decision and leave intact the rule requiring asbestos surveys for all remodel and renovation work. I believe it is one of the best rule changes that DEQ has made.
Department Response	The Department added the asbestos survey requirement to the asbestos rules in January 2002 and required that all building owners conduct the survey except for residential homes constructed after 1987. After the January 2002 rulemaking, the Department discovered that all sides of the issue had not been adequately considered because several interested parties were inadvertently excluded from providing comment for the rules promulgated in the January 2002 rule making. Because of these issues and other concerns about the ability to educate all residential building owners of the survey requirement, the Department decided to temporarily roll back the survey requirement to the federal level and then address the issue in future rulemaking. The Department agrees that all building owners including residential owners should conduct a survey

	before renovation or demolition to prevent exposing themselves or the public to asbestos fibers. The Department intends to explore options that will ensure that building owners survey, ranging from an educational campaign to a regulatory requirement. The Department will convene an advisory committee in the fall of 2003 to address this issue and several other questions that have been of concern to the industry.
Comment 7	The definition of asbestos-containing material was changed with the January 2002 rulemaking to clearly identify that polarized light microscopy is the asbestos measurement method to be used to determine the content of asbestos. The temporary rules and these rules change the definition back to the statutorily defined term that says that asbestos-containing material means any material containing more than one-percent asbestos by weight. The Department then adds the polarized light microscopy (PLM) measurement requirement in OAR 340-248-0205(4). The standard of the industry for determining asbestos is the PLM method, which is not a determination by weight, but is an estimation of the surface area. The measurement by weight is what is specified under NESHAPs. There are other standard laboratory methods that are only occasionally used to determine asbestos content by weight. While there is considerable discussion in the industry if various laboratory methods are equivalent, the standard of the industry is PLM. The temporary and proposed rules, as written, are contradictory defining asbestos-containing material by weight, but requiring the use (without Department approval) of PLM. The rule should make these two prime means of measurement equal in terms of the availability of use.
Department Response	The Department agrees that the return to the statutorily defined definition of "asbestos-containing material" with clarification in another section of the rules can lead to confusion. With the rulemaking that the Department intends to start in the fall of 2003, staff will work with the Oregon Department of Justice to determine if changes can be made to the Administrative Rule definition or if we need to address a change through new statutory language.
Comment 8	The rules adopted in January 2002 required building owners to survey for asbestos before beginning demolition or renovation projects. The survey requirement also applied to owners of single family residences with four or fewer dwelling units built before 1987. I was disappointed to see the survey requirement for single family homes built before 1987 dropped. I realize that the proposed threshold is the threshold for NESHAPs, but this seems an appropriate area for the Department to expand its rule making. The vast majority of homeowners as well as small contractors I have dealt with either have little or no idea what products they may impact during the remodeling that may be asbestos-

	containing or think that asbestos was banned a long time ago and there is no possibility of having to deal with it. I'm confident that dropping the requirement will increase asbestos exposure to both families and contractors.
Department Response	Please see response to Comment 6 above.

List of Commenters and Reference Numbers

Comment Number	Name	Organization	Date of comments
1	Susan McHenry	Pendleton Sanitary Service, representing the Oregon Refuse & Recycling Association.	February 19, 2003
2, 3, 4, and 5	Darrel Sunday	Sunday & Associates, Inc.	February 20, 2003
6	John Mayer	Lake Oswego Insulation Company, Inc.	February 20, 2003
7 and 8	Ed Edinger	Workplace Resources, Inc.	February 20, 2003

State of Oregon
Department of Environmental Quality **Memorandum**

Date: February 20, 2003

To: Environmental Quality Commission

From: Steven M. Croucher

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Permanent adoption of temporary asbestos rules.
Hearing Date and Time: February 18, 2003 at 1500 hours.
Hearing Location: DEQ Office, 201 W. Main Street Suite 2-D, Medford, Oregon.

The Department convened the rulemaking hearing on the proposal referenced above at 1500 hours and closed it at 1600 hours.

Nobody attended the hearing. No one submitted comments.

State of Oregon
Department of Environmental Quality **Memorandum**

Date: February 20, 2003

To: Environmental Quality Commission

From: Kevin V. McCrann

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: February 18, 2003 at 1500 hours
Hearing Location: DEQ Northwest Region, 2020 SW 4th, Portland, Oregon, Room A/B
Title of Proposal: Amend OAR 340-248, Asbestos Requirements

The rulemaking hearing on the above titled proposal was convened at 1500 hours. The hearing was closed at 1700 hours. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing would be recorded. Before beginning the formal hearing, I briefly explained the specific rulemaking proposal and the procedures to be followed during the hearing.

Five people attended. The Department staff answered several questions during the question and answer session. No one provided formal testimony.

State of Oregon
Department of Environmental Quality **Memorandum**

Date: February 20, 2003

To: Environmental Quality Commission

From: Tom Hack, ODEQ, ER-Pendleton

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Amendment, Clarification, and Housekeeping of Asbestos Rules.
Hearing Date and Time: February 19, 2003 @ 1330 p.m.
Hearing Location: State Office Building, 1st Floor Conference Room
700 SE Emigrant Ave.
Pendleton, OR 97801

The Department convened the rulemaking hearing on the proposal referenced above at 1330 and closed it at 1430. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Two people attended the hearing. One person testified. No written comments were received.

Before taking comments, Mr. Dave Wall briefly explained the rulemaking proposal and procedures for the hearing.

The following is a summary of the only comment received at the hearing. The Department will include these comments in the Summary of Public Comment and Agency Response for this rulemaking.

Ms. Susan M^{c}Henry
Pendleton Sanitary Service
5500 NW Rieth Road
Pendleton, OR 97801

Ms. M^{c}Henry's primary concern is with the transportation of asbestos material by waste haulers. She expressed a concern about being cited by DEQ and/or being required to pay cleanup costs in the event of incidental breakage during transportation. The rules are still not entirely clear on liability for incidental breakage.

Relationship to Federal Requirements

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from federal requirements. The questions are required by OAR 340-011-0029.

Summary of proposed rule changes:

The proposed rule changes will make permanent a temporary rulemaking that the Environmental Quality Commission adopted on December 13, 2002. While developing amendments to the asbestos rules that were adopted in January 2002, the Department inadvertently neglected to involve all interested associations. The Department proposed the temporary rule to provide immediate relief from asbestos requirements causing implementation problems for some of the members of these associations.

This proposed rulemaking makes the temporary rule changes permanent. The changes include revisions to the pre-demolition asbestos survey requirements; clarifications to definitions that classify asbestos containing material as friable (easily releases fibers) or nonfriable and other definitions; removal of nonfriable asbestos handling requirements; and error corrections.

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

The federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos regulate asbestos abatement and disposal. Federal rules require an asbestos survey before any demolition or renovation for any commercial or industrial building and for residential buildings with more than four dwelling units. The federal NESHAP for asbestos also regulates disposal of friable asbestos containing waste material, addresses nonfriable material that becomes friable, and defines asbestos containing material.

Federal Occupational Safety and Health Administration (OSHA) rules also apply to this situation. OSHA requires that a contractor with any employees survey for hazardous materials including asbestos in any situation where employees may be exposed to asbestos in a working situation.

This rulemaking makes the survey requirement the same as the NESHAP. It does not address other portions of the asbestos rules that currently differ from federal requirements.

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

Asbestos survey and disposal requirements are performance based, but also include specific work practices.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

No, the federal NESHAP does not regulate all instances where the public may be exposed to asbestos. Oregon's statute authorizes DEQ to regulate all instances where the public may be exposed to asbestos. The NESHAP does not regulate asbestos projects in residential units with four or fewer dwelling units. However, Oregon's statute addresses all but owner-occupied units where abatement is performed inside the dwelling, and even requires that owner-occupants doing the asbestos removal work themselves ensure proper disposal of asbestos waste. An earlier rulemaking required owners of all residential properties constructed before 1987 to survey for asbestos before demolition or renovation. This rulemaking will make the asbestos survey requirement the same as in the NESHAP.

The proposed rule changes revoke the nonfriable labeling, packaging and disposal requirements adopted in January 2002, yet the rule still requires that nonfriable asbestos containing waste materials must be disposed of without releasing fibers. The federal NESHAP is silent regarding disposal of nonfriable asbestos containing waste material.

The Department will form an advisory committee during the Fall of 2003 to reconsider how to help residential homeowners avoid asbestos exposure when conducting renovation or demolition projects, and how to ensure that nonfriable asbestos is not made friable during removal and disposal.

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 changes for nonfriable asbestos containing waste disposal and the clarification of when nonfriable asbestos material must be treated as friable material still

vary from the NESHAP and OSHA requirements, but do improve the ability of the regulated community to comply with less economic impact than the previous rulemaking. The proposed rule changes eliminate language that had been intended to provide clarification between state and federal rules. These requirements caused concern for operators of some solid waste facilities because of the broad interpretation of the previous requirements that could possibly be applied to their facilities. Facility owners were concerned about the economic impacts that they would incur complying with the nonfriable disposal requirements.

The Department will form an advisory committee during the Fall of 2003 to reconsider how Oregon's rules can help the regulated community comply with both state and federal requirements in a way that minimizes costs yet achieves the goal of preventing asbestos exposure during renovation or demolition.

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

No.

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

N/A

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

Yes. The proposed rule repeals detailed nonfriable asbestos waste handling procedures that were perceived as more stringent than federal requirements. The proposed rule also makes the asbestos survey requirement the same as the NESHAP survey requirement.

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

Others may face increased costs whenever exposed to improperly removed asbestos materials regardless of whether these rule changes or more stringent rule changes are adopted.

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

No.

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

Yes. For the asbestos survey requirement, 84 people have been newly trained to perform inspections and 255 accredited inspectors have gone through the refresher class renewing their accreditation. Training providers have held approximately 10 training classes since January 2002 for people that want to become certified inspectors under the Asbestos Hazard Emergency Response Act (AHERA).

For nonfriable disposal requirements, practices exist to ensure that visible fibers are not released during disposal. Also, work practices exist and are used by many solid waste disposal facilities to ensure that nonfriable materials are not made friable and to prevent potential for public exposure.

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

No.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT
This form accompanies a Notice of Proposed Rulemaking

Title of Proposed Rulemaking:	Amend OAR 340 Division 248, Asbestos Requirements
Need for the Rule(s)	The proposed rule changes will make permanent a temporary rulemaking that the Environmental Quality Commission adopted on December 13, 2002. While developing amendments to the asbestos rules that were adopted in January 2002, the Department inadvertently neglected to involve all interested associations. The Department proposed the temporary rule to provide immediate relief from asbestos requirements causing implementation problems for some of the members of these associations. This proposal makes the temporary rule changes permanent. The changes include revisions to the pre-demolition and pre-renovation asbestos survey requirements; clarifications to definitions that classify asbestos containing material as friable (easily releases fibers) or nonfriable and other definitions; removal of specific nonfriable asbestos handling requirements; and error corrections.
Documents Relied Upon for Rulemaking	National Emission Standards for Hazardous Air Pollutants for Asbestos, 40 CFR Part 61 ORS 468A.700 through 468A.760
Fiscal and Economic Impact	
Overview	The asbestos regulations affect residential, commercial and industrial building owners, contractors, and solid waste haulers and disposal facilities (transfer stations, material recovery facilities and landfills) as follows: 1. Survey Requirements. Before adoption of the temporary rules, most building owners planning renovation or demolition activities were required to have a survey conducted to identify the presence of asbestos. This rulemaking exempts residential buildings with four or fewer four units from the survey requirement. Building owners will be required to have an asbestos survey for residential buildings with more than four dwelling units and all other types of buildings. Survey costs may range from $20 to $500, depending upon the number of materials suspected to contain asbestos, how material is sampled, who collects the material, the type of laboratory analysis used, and the extent of the survey. Proper surveying can save the building owner time and money by helping the owner avoid enforcement action and penalties and costly

	clean up of asbestos material removed improperly. Surveys can also help prevent exposure to asbestos and future health costs associated with treating asbestos-related diseases. Anyone who owns residential properties with four or fewer dwelling units who is undertaking renovation or demolition activities may save money by being exempted from the survey requirement. However, if a building owner does not survey for and remove asbestos before conducting renovation or demolition, that owner may face unanticipated costs. If asbestos material is removed improperly, the owner may have to conduct an asbestos abatement project to clean up the asbestos material and may face civil penalties for open accumulation or improper abatement. 2. Disposal Requirements for Nonfriable Asbestos-Containing Materials. Before adoption of the temporary rules, all asbestos-containing waste material was subject to detailed packaging and labeling requirements. The proposed rules affect solid waste haulers, disposal facilities, contractors, and anyone generating asbestos-containing waste. This is because the proposed rules make permanent the temporary rules that eliminated the detailed packaging, labeling and disposal requirements for nonfriable asbestos-containing waste material. The new rules will require only that 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. The rules do not specify what measures must be taken to prevent the release of such material. The proposed rule changes will be less stringent and may save the cost of packaging that would otherwise be incurred by contractors, solid waste haulers, individuals, and any business generating such nonfriable waste. However, if these individuals and entities inadvertently render nonfriable asbestos-containing waste material friable, resulting in open accumulation, these entities may face added costs of expensive cleanup and civil penalties. The proposed rules do not change friable asbestos-containing waste disposal requirements. Such material must still be packaged in a prescribed manner and labeled, handled, transported, and disposed of at the landfill to ensure friable material is not released.
General public	The general public is affected when asbestos is not identified and then is handled improperly. Improper handling of asbestos-containing material may result in exposure to asbestos. A member of the public may experience increased costs if exposed to asbestos fibers in the form of increased health care costs. The proposed rules repeal nonfriable disposal requirements adopted in January 2002. Many of those requirements had not yet been implemented by the solid waste industry, so there should not be significant change in disposal costs that are passed on to the public. Members of the public may experience

	a cost savings if a solid waste facility chooses not to continue any nonfriable packaging, labeling, and disposal requirements implemented since January 2002.
Small Business	Building owners, landlords, contractors, and building remodelers that are small businesses will be affected by the proposed rule changes. Owners of residential properties with four or fewer dwelling units will save the cost of surveying because surveying is no longer required. However, these owners may incur increased costs over the long run if they do not survey and asbestos is later found during their renovation or demolition projects. Small businesses involved with renovation or demolition will be affected to the extent identified in the overview section above for surveying and disposing of asbestos-containing waste material. Small businesses that are solid waste haulers or solid waste facilities will be affected as identified in the overview section. Currently Department fees, abatement project costs, and penalty calculations do not differ between small and large businesses.
Large Business	The costs or savings from the proposed rules do not differ between small and large businesses. Large businesses involved with renovation or demolition as well as large businesses that provide solid waste disposal services will be affected as identified in the overview section above.
Local Government	Local governments that own buildings or operate solid waste facilities (landfills and transfer stations) will be affected as identified in the overview section above.
State Agencies	Oregon OSHA and ODOT also regulate asbestos and work cooperatively with DEQ to implement asbestos requirements. These agencies will not be affected economically by the proposed rule changes. The Oregon Department of Human Services Health Division also helps DEQ by providing information about asbestos health concerns to the public or anyone who is concerned about potential asbestos exposure who wants to find out what to do to minimize exposure or address an exposure situation. DEQ is referring more calls to this agency. Also, as a result of DEQ's educational and outreach efforts for this rule and the previous rule changes, these agencies may experience increased workload as more people call them for advice about asbestos dangers or for information about their asbestos requirements.
DEQ	The proposed rule changes will be implemented by existing staff with no increase in FTE in the asbestos program. The Department is undertaking an educational outreach effort to try and reduce the number of improperly conducted asbestos removal projects. As awareness increases, the Department may receive more complaints or reports about projects where asbestos may be involved. This may increase expenses as a result. Revenues may also increase slightly as awareness increases and more building owners pay project notification fees for asbestos abatement projects. However, overall, revenues are expected to remain relatively constant for the

	next few years and then taper off as the number of renovations or demolitions within older buildings likely to contain asbestos decreases.
Other agencies	Federal OSHA and EPA regulate asbestos. The proposed rules do not affect these federal agencies economically.
Assumptions	
Housing Costs	The Department has determined that this proposed rulemaking will not affect 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.
Administrative Rule Advisory Committee	No advisory committee process was used. The proposed rules repeal some of the rules adopted in January 2002. During the second permanent rulemaking, the Air Quality Program will form an advisory committee to revisit issues that the Department identified during the January 2002 rulemaking. Air Quality staff shared the draft rule language with the Oregon Refuse and Recycling Association governmental affairs committee in early January 2003 to discuss the proposed rules and take input. Staff will also meet with any other stakeholders who express interest in doing so during the public comment period. Workshops may be scheduled around the state if the Department identifies interest from stakeholders. Also, public hearings will be held in Pendleton, Medford and Portland. Public notice will be distributed to Air Quality and Solid Waste mailing lists. The website will be updated and provide public notice.

Audrey M O'Brien — Prepared by

Audrey O'Brien — Printed name

January 15, 2003 — Date

Approved by DEQ Budget Office

James Roys — Printed name

1/15/03 — Date

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed revisions to the Asbestos Requirements in OAR 340 Division 248

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rule changes will make permanent a temporary rulemaking that the Environmental Quality Commission adopted on December 13, 2002. While developing amendments to the asbestos rules that were adopted in January 2002, the Department inadvertently neglected to involve all interested associations. The Department proposed the temporary rule to provide immediate relief from asbestos requirements causing implementation problems for some of the members of these associations.

This proposed rulemaking makes the temporary rule changes permanent. The changes include revisions to the pre-demolition asbestos survey requirements; clarifications to definitions that classify asbestos containing material as friable (easily releases fibers) or nonfriable and other definitions; removal of nonfriable asbestos handling requirements; and error corrections.

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

Yes X **No** __

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

The Department determined that the asbestos program is not a program that significantly affects land use. However, there is an indirect connection to land use through the solid waste permit, which has been identified as a land use activity. A solid waste permit may address requirements regarding the treatment and disposal of asbestos, and local land use approval is required before a permit is issued. In the Department's view, asbestos related concerns addressed through a solid waste permit rests within the purview of the Solid Waste Program rather than the Air Quality Asbestos Program.

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

Yes X No____ (if no, explain):

As stated above, local government land use approval is provided before a solid waste permit is issued.

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

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or

2. Reasonably expected to have significant effects on
   a. resources, objectives or areas identified in the statewide planning goals, or
   b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:
- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

N/A

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

N/A

Audrey M O'Brien
Division

Intergovernmental Coord.

1-14-03
Date

State of Oregon
Department of Environmental Quality Memorandum

Date: April 17, 2003

To: Environmental Quality Commission

From: Stephanie Hallock, Director S. Hallock

Subject: Agenda Item K, Rule Adoption: Clean Water State Revolving Fund (CWSRF) May 9, 2003 EQC Meeting

Department Recommendation

The Department recommends the Commission revise the Clean Water State Revolving Fund (CWSRF) and State Agency Coordination Program rules (OAR 340-054 and OAR 340-018, respectively), and repeal the Construction Grants Program and Surety Bonds Requirement rules (OAR 340-053 and OAR 340-015, respectively) as presented in Attachment A.2.

Need for Rulemaking

Revise the Clean Water State Revolving Fund (CWSRF) Rules - OAR 340-054

The CWSRF program provides loans to public agencies for water pollution control projects. The proposed revisions enable the Department and communities to use the CWSRF more effectively to address a range of water pollution problems. These changes are driven by a growing recognition and need to better address Oregon's nonpoint sources of water pollution. Additionally, these revisions reflect the Department's interest in encouraging proactive efforts by communities to address their water pollution challenges before they fall into noncompliance. Finally, the rules include new eligibility incentives to encourage the reuse of wastewater.

Through these changes, the rules expand the Department's loan program beyond a historic focus on wastewater treatment facilities and focuses on the water quality benefit of each proposed project. In addition, greater flexibility in the financial terms of the loans makes the program more affordable and attractive to public agencies. Finally, making CWSRF loans more attractive for riparian habitat enhancement also supports the Oregon Plan for Salmon and Watersheds. (Attachment A.2a)

Revise the State Agency Coordination Program – OAR 340-018

Division 018, which governs state agency land use coordination, is revised to delete obsolete references to Division 053. Division 053 is the construction grants program and will be repealed by this rulemaking. The revisions also update the definition of "Total Maximum Daily Load (TMDL)" to conform

to the definition in the TMDL rules the Commission adopted in December 2002. (Attachment A.2b)

Repeal the Surety Bond Requirements – OAR 340-015
The proposed repeal of Division 015 eliminates obsolete rules. Division 015 requires surety bonds or equivalent financial security during the construction, operation and maintenance of certain wastewater treatment facilities. The Department has not required surety bonds for these facilities for several years, and in 1997, the legislature repealed the statutory authority for surety bonds. (Attachment A.2c)

Repeal the Construction Grants program – OAR 340-053
The proposed repeal of Division 053 also eliminates obsolete rules. Division 053 establishes procedures for developing a priority list of projects eligible for funding under the former construction grants program. The construction grants program, a predecessor to the current CWSRF program, is no longer funded by the U.S. Environmental Protection Agency (EPA) or implemented by the Department. (Attachment A.2d)

Effect of Rule

The proposed revisions to the CWSRF rules will:

- Make additional types of projects eligible for funding, including community loans for nonpoint source projects and emergency and urgent repairs of wastewater treatment facilities.
- Revise the criteria used in ranking proposed projects to give priority to projects that provide the greatest water quality benefits including projects that address nonpoint sources of pollution;
- Increase flexibility in the terms and interest rates for loans;
- Reduce the administrative fee for loans;
- Reduce the financial requirements for reserve accounts; and
- Simplify and increase the flexibility of the loan application process.

Commission Authority

The Commission has authority to take this action under ORS 468.420 and ORS. 468.440. These rules implement ORS 468.423-468.440

Stakeholder Involvement

A ten member Advisory Committee made up of stakeholders such as the Oregon League of Cities, Oregon Farm Bureau, Oregon Water Resources Congress and EPA met eight times in 2002 to help shape the CWSRF rule revisions proposed for public comment. The committee supported the proposed rule changes. A list of Advisory Committee members is included in Attachment C. The Department did not address proposed changes to Divisions 053, 015 or 018 with an advisory committee.

Public Comment A public comment period extended from February 1 to February 28, 2003, and included public hearings in Portland, Salem, Eugene and Bend. No members of the public attended the hearings. Two public agencies, EPA and a local conservation district, provided comments. The comments focused on the financial terms of the loans and were generally supportive of the proposed rules. A summary of their comments and the Department's responses is provided in Attachment B.

Key Issues

1. How to ensure financially attractive loans to borrowers while maintaining the long-term health of the fund?

The rules establish interest rates, payback periods and fees for CWSRF loans. The Advisory Committee recommended adding more flexibility in financial terms and reducing costs to borrowers to the extent possible without jeopardizing the viability of the fund for future needs. To make the loans as financially attractive to borrowers as possible, the proposed rules reduce loan fees, limit the reserve requirements for loan recipients and allow a choice of interest rates/payback combinations for borrowers.

The reduction in interest rates will diminish the rate of growth of the revolving fund, yet the fund will continue to enjoy a stable, long-term source of funding. The Department will continue to monitor the fund's growth, recognizing that should the annual capitalization grants EPA provides to increase state funds end, the interest rates may need to be reevaluated. Those capitalization grants are currently expected to continue through 2011.

2. Whether to change the program's method of prioritizing environmentally beneficial projects for funding?

Currently, the Department ranks projects submitted for funding based on their value toward improving water quality. Theoretically, the most beneficial projects (ranked highest) become priorities for funding.

In reality, numerous variables beyond the Department's control, such as the applicants' budgets, planning, design or contracting timeframes, influence how quickly projects proceed through the CWSRF process to loan agreements. Lower ranked projects are sometimes funded ahead of higher ranked projects because they are ready to proceed sooner.

To address this issue, the Department considered ranking projects later in the application process, but decided it is beneficial to continue to rank projects

early in the loan application process. Knowing early-on where their projects rank helps applicants decide whether to pursue the additional requirements of the loan process. The Department will continue to fund projects that are ready to proceed in order of their ranking.

3. How does the program fund the most beneficial water quality projects, while continuing to help communities comply with water quality regulations?

Municipalities have historically relied on CWSRF loans to help them comply with water quality regulations. This rulemaking revises the project ranking criteria to give priority to projects providing the greatest water quality benefits, many of which may not be compliance driven (e.g., many nonpoint source projects, proactive planning, and water reuse projects). While these changes may reduce the proportion of points allotted to compliance-driven projects, the Department expects these projects to still score competitively in the ranking process. Overall, the revised criteria will enable the Department and municipalities to use the CWSRF to improve water quality more effectively.

Next Steps

The proposed CWSRF rule revisions (Division 054) specify an effective date of June 1, 2003. Proposed changes to Divisions 053, 015, and 018 will become effective upon filing with the Secretary of State.

The Department will begin training staff and conducting outreach and education to public agencies as soon as the rules are adopted, and will begin using the new procedures and criteria for all new loan applications and loan agreements on June 1, 2003. The Department's Rule Implementation Plan is available upon request.

Attachments

A.1 Summary of Division 054 Rule Revisions
A.2 Proposed Rule Revisions
- A.2a Division 054
- A.2b Division 018
- A.2c Division 015
- A.2d Division 053

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

Approved:

Section: _____
Manager, Program Policy and Project Assistance

Division: _____
Water Quality Division Administrator

Report Prepared By: Larry McAllister
Phone: 503 229-6412

Attachment A.1

Summary of Division 054 Rule Revisions

1. Additional Loans
The proposed rules establish three new types of loans within the program. **Emergency Loans** and **Urgent Repair Loans** address unforeseen community needs in wastewater treatment. A **Local Community Loan** allows pass-through loans from local communities and other public agencies to recipients that control nonpoint sources of water pollution.

In addition to the three new types of loans, a new **Sponsorship Option** provides for a reduced interest rate for traditional wastewater projects that also include a nonpoint source, water quality restoration project.

2. Application
The proposed rules modify the CWSRF application process to allow applicants to submit proposed projects at any time, rather than just during January-February. They also streamline a two-step, preliminary and final, application into a single application.

3. Loan Terms
Additional loan terms provide borrowers with additional choices in interest rates and payback periods (see table below). Several of the program's loans can range from 5 to 20 years in length with a corresponding range in the interest rates. Additionally, a traditional wastewater system improvement project that includes a nonpoint source restoration project may qualify for a discounted interest rate.

5. Project Ranking Criteria
The criteria used to rank proposed projects have been entirely revamped. The emphasis of the criteria has shifted from compliance needs to the water quality or health benefits of each project. This shift also supports more equitable ranking of both point and nonpoint source projects.

6. Fees
Historically, the CWSRF loan has included a one-time origination fee of 1.5% of the total amount borrowed, and a 0.5% annual fee on the outstanding loan balance. As an example, an $800,000 loan for 20 years would have a one-time origination fee of $12,000, and an average annual fee of about $2,300. These fees were established as a source of funding for the program's administrative costs and can only be used for CWSRF purposes. The proposed rules eliminate the origination fee entirely, and exclude planning loans from the annual fee. These changes in fees will make the loans more attractive to borrowers. Since of the growth of the fund now provides adequate administrative support, our analysis indicates that administrative costs can be covered by the annual fee alone.

7. Project Priority List
Revised procedures allow the Department to periodically update the list of eligible projects. Historically, this list has only been updated annually. Revised procedures also allow the Department to routinely review inactive projects and remove them from the priority list when appropriate.

Major Areas of Change in Division 054 Rules:

Current Rules	Proposed Rules
Types of Loans	
Planning **Construction**	**Planning** **Construction** (including point, nonpoint, estuary, wastewater reuse and proactive projects) **Emergency** **Urgent Repair** **Local Community** (including nonpoint source and estuary projects)
Terms and Interest rates	
Planning 5 yrs - 50% of Base Rate* **Construction** 20 yrs - 66% of Base Rate	**Planning** 5 yrs - 25% BR **Construction** 5-20 yrs - 25-65% BR **Emergency** 5-20 yrs - 25-65% BR **Urgent Repair** 10 yrs at BR **Local Revolving Loan** 10 yrs- 50% BR **Sponsorship Option** 5-20 yrs - equal or greater than 1%

*The Base Rate (BR) is the average state and local government bond rates for the preceding quarter. In the current rules, a base rate of 4.8% would provide a planning loan rate of 2.4% (50%)

Current Rules	Proposed Rules
Fees	
1.5% origination fee 0.5% annual fee	Eliminated No longer required of planning loans; still applicable for construction, emergency, urgent repair and local community loans
Reserve Requirement	
100% of average annual debt service	50% of average annual debt service
Ranking Criteria	
Focus on water body sensitivity, and compliance	Increased focus on benefits of nonpoint source, estuary, wastewater reuse and proactive projects
Application	
Preliminary and Final Accepted in January each year	One application Accepted year round
Project Priority List	
Established annually	Established annually and revised as needed

Attachment A.2
Proposed Rule Revisions

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 54

CLEAN WATER STATE REVOLVING FUND PROGRAM

340-054-0005
Purpose

~~(1) These rules are intended to implement ORS 468.423 - 468.440 under which financial assistance is made available to Oregon public agencies to plan, design and construct water pollution control facilities through the Water Pollution Control Revolving Fund, also known as the State Revolving Fund (SRF).~~

(1) These rules establish procedures the Department will follow to make funding through the Water Pollution Control Revolving Fund, called the Clean Water State Revolving Fund (CWSRF), available to public agencies to plan, design and construct sewage facilities, nonpoint source control and estuary management projects.

(2) These rules are ~~established in order to provide~~intended to do the following:

(a) Provide loans to projects ~~which~~ that enhance or protect water quality~~.~~;

(b) ~~(a) To provide~~Ensure that loans are made to public agencies capable of repaying ~~the loan;~~ such loans;

(c) ~~(b) To establish~~ Establish an interest rate below market rate so that the loans ~~will be~~ are affordable;
(d) ~~(c) To provide~~Provide loans to ~~all sizes of~~ communities ~~which need~~of all sizes needing to finance projects; and
(e) ~~(d) To provide loans for~~ Specify the types of projects ~~described in these rules~~ for which ~~address water pollution control problems.~~ loans may be made.

Stat. Auth.: ORS 468
Stats. Implemented: ORS 468.425
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 3-1995, f. & cert. ef. 1-23-95

340-054-0010
Definitions

~~As used in~~
The following definitions apply to this ~~Division~~division unless ~~otherwise~~a different meaning is required by context:
(1) "Allocation Cycle" means the funding cycle as determined by the Department.
~~(2) "Alternative Technology" means any proven wastewater collection, treatment, or disposal process or technique which provides for~~ (2) "Applicant" means an eligible Clean Water State Revolving Fund (CWSRF) applicant.

(3) "Available CWSRF" means the ~~reclaiming and reuse of water, productive recycling of wastewater constituents, other elimination of the discharge of pollutants, reduction of capital costs or the recovery of energy.~~

~~(3) "Applicant" means an eligible State Revolving Fund (SRF) applicant.~~

~~(4) "Available SRF" means the~~ amount in the Clean Water State Revolving Fund ~~(SRF)~~ minus ~~moneys~~ monies for ~~SRF~~ the Clean Water State Revolving Fund administration and prior obligations.
(~~5~~4) "Borrower" means ~~an eligible~~ a CWSRF loan recipient.
(~~6~~5) "Change Order" means a written order and supporting information from the Borrower to the Borrower's contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.
~~(7) "Clean Water Act" means the federal Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4 and any subsequent amendments. Also~~(6) "Checklist of Exhibits and Requirements" means the most recent version of the list of all the exhibits and required documents that must be submitted in conjunction with the CWSRF application and then be reviewed and approved by the Department before a loan agreement is executed.
(7) "Clean Water Act" means the federal Clean Water Act, 33 USC §1251- §1387, ~~referred to as "the Act".~~

(8) "“Clean Water State Revolving Fund” or CWSRF means the Water Pollution Control Revolving Fund established under ORS 468.427.
(9) "Collector Sewer" means that portion of the public sewerage system ~~which~~that is installed primarily to receive wastewater directly from individual residences and other individual public or private structures.
(~~9~~10) "Combined Sewer" means a sewer that is designed as both a sanitary and a storm water sewer.

~~(10) "Construction" means the erection, installation, expansion or improvement of a water pollution control facility.~~

(11) "“Comprehensive Conservation Management Plan” (CCMP) means a plan developed for a designated National Estuary, pursuant to 33 USC § 1330 of the Clean Water Act.
(12) "Construction" means the erection, installation, expansion or improvement of sewage facilities, nonpoint source control and estuary management projects.
(13) "Default" means nonpayment by the Borrower of the principal or interest amount of ~~an~~ a CWSRF loan on the payment's due date, failure to comply with the terms or conditions of the CWSRF loan ~~covenants~~, a formal bankruptcy filing or other written admission of inability to pay CWSRF obligations.
(~~12~~14) "Department" means the Oregon Department of Environmental Quality.
(~~13~~15) "Director" means the Director of the Oregon Department of Environmental Quality.
(~~14~~16) "Documented Health Hazard" means an area-wide failure of on-site sewage disposal systems or other sewage disposal practices resulting in discharge of inadequately treated wastes to the environment as demonstrated by sanitary surveys or other data collection methods and confirmed by the Oregon Office of Public Health ~~Division as posing a risk to public health~~Services, within the Department of Human Services pursuant to ORS 222.850 to 222.915, or ORS 431.705 to 431.760~~.~~, by the Department pursuant to OAR 340-071-0130(3), by either agency pursuant to OAR 660-011-0060, or by county health officials pursuant to applicable local ordinances.
(~~15~~17) "Documented Water Quality Problem" means a violation of ~~water pollution resulting in violations of water quality~~ statutes, rules or permit conditions or an exceedance of water quality standards documented ~~demonstrated~~ by data and confirmed by the Department ~~as causing a water quality problem~~.

~~(16) "EPA" means the U.S. Environmental Protection Agency.~~

~~(17) "Estuary Management" means the development and implementation of a plan for the conservation and management of an estuary of national significance as described in §320 of the Clean Water Act.~~

~~(18) "Excessive Infiltration/Inflow" means the quantities of infiltration/inflow which can be cost effectively eliminated from a sewer system as determined in a cost effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.~~

~~(19) "Facility Plan" means a systematic evaluation of environmental factors, engineering alternatives and financial considerations affecting a proposed project area.~~(18) "Emergency Conditions" means conditions caused by fire, flood, storm, earthquake, vandalism, sabotage or other events that could not have been reasonably foreseen or prevented that require immediate repairs to a sewage facility to prevent significant environmental degradation or a threat to public health.
(19) "EPA" means the U.S. Environmental Protection Agency.
(20) "Estuary Management" means the implementation of actions identified in a Comprehensive Conservation Management Plan.
(21) "Federal Capitalization Grant" means federal dollars allocated to the State of Oregon for a federal fiscal year from funds appropriated by U. S. Congress for the State Revolving Fund under Title VI of the Clean Water Act.
(~~21~~22) "Ground Water Management Area" means an area in which contaminants in the groundwater have exceeded the levels established under ORS 468B.165 and the affected area is subject to a declaration under ORS 468B.180.

~~(22) "Infiltration" means the intrusion of groundwater into a sewer system.~~

~~(23) "Inflow" means a direct flow of water other than wastewater and groundwater into a sewer system.~~(23) "Implementing Partner" means any individual or organization that has entered into a contract with a public agency to implement a water resource activity within the sponsorship option of a construction loan.
(24) "Infiltration" means the intrusion of groundwater into a collector sewer or interceptor sewer.
(25) "Inflow" means a direct flow of water other than wastewater or groundwater into a collector sewer or interceptor sewer.
(26) "Initiation of Operation" means the date ~~on which the~~that a facility funded by a CWSRF loan is operationally complete and ready for the purposes for which it was planned, designed and built.

~~(25) "Innovative Technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement in environmental impacts or economics of construction or operations over conventional technology.~~

(~~26~~27) "Intended Use Plan (IUP)" means a document ~~which must be~~ submitted at least annually by the Department to the EPA identifying proposed uses of the CWSRF.
(~~27~~28) "Interceptor Sewer" means a sewer ~~which is~~ primarily intended to receive wastewater from a collector ~~sewer and/~~sewers or ~~an~~other interceptor sewers.

~~(28) "Maintenance" means regularly scheduled work performed to repair, replace or upgrade equipment in the facility; or prevent or correct the failure or malfunction of the water pollution control facility so that the functional integrity and efficiency of the facility, equipment and structures are preserved.~~

~~(29) "~~(29) "Local Community Loan" means a loan to a public agency that will then be used by the public agency to establish a local financial program to address estuary management efforts or nonpoint source control activities.
(30) "Maintenance" means regularly scheduled work that is performed to repair, replace or upgrade equipment in a facility, or to prevent or correct a failure or a malfunction of a sewage facility, nonpoint source control or estuary management project.
(31) "Major Sewer Replacement and Rehabilitation" means the repair ~~and/~~or replacement of interceptor or collector sewers.
(~~30~~32) "Nonpoint Source Control" means the implementation of a nonpoint source pollution management ~~program as described~~activity under section 319 of the Clean Water Act ~~as authorized by~~ and 40 CFR § 35.3115(b~~).~~) an included in the most recent edition of the Oregon Nonpoint Source Control Program Plan.
(~~31~~33) "Nonpoint Source" means diffuse or unconfined sources of pollution where wastes can either enter into or be conveyed by the movement of water to public waters, including individual on-site sewage disposal systems and any other source of pollution of waters of the state not subject to regulation under ORS 468B.050.
(34) "On-site system" has the meaning given in OAR 340-071-0100(90).
(35) "Operation" means the control ~~of~~of sewage collection system pumping stations and treatment unit processes ~~and equipment, including~~ within a sewage facility. Operation also means the control of equipment and processes of nonpoint source control and estuary management projects. Furthermore, operation means the financial and personnel management, records, laboratory control, process control, safety, and emergency ~~operation~~ planning for these same facilities and projects.
(~~32~~36) "Operation and Maintenance Manual" means a procedural and guidance document for operating and maintaining a ~~water pollution control~~ sewage treatment facility~~.~~ or sewage collection system as required by OAR chapter 340, division 052.
(37) "Persistent Bioaccumulative Toxics" means mercury, PCBs, dioxins, furans, benzoa(a) pyrene, aldrin, dieldrin, chlordane, DDT, DDE, DDD, hexachlorobenzene, mirex or toxaphene.
(38) "Planning" means monitoring, data collection and measurement, evaluation, analysis, security evaluations, report preparation, environmental review, public education and review process and any other activity leading to a written plan for the provision of sewage facilities, nonpoint source control and estuary management projects intended to remediate an existing or anticipated water pollution problem, but excluding the preparation of detailed bid documents for construction.
(39) "Point Source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.
(40)"Proactive Proposals" means a proposed project that does not address ongoing violations of effluent limits in permits, water quality standards in OAR Chapter 340, Division 41, or unpermitted discharges.

(~~33~~41) "Project" means the activities or tasks identified in the application or the loan agreement for which the Borrower may expend or obligate funds.
(~~34~~42) "Replacement" means expenditures for obtaining and installing equipment, accessories or appurtenances ~~which are~~ necessary for the ongoing operation during the design or useful life, ~~whichever is~~ if longer, of ~~the water pollution control~~a sewage facility, nonpoint source control or estuary management project to maintain the facility or project for the purpose for which it was designed and constructed. Replacement does not mean the replacement of the facility or project at the end of its useful life.
(~~35~~43) "Reserve Capacity" means that portion of the ~~water pollution control facility~~ sewage collection system or sewage treatment facility that was incorporated into the design to handle future increases in sewage flows and loadings. Reserve capacity must have been identified at the time of design ~~as being~~and must be based on demand generated from future development that is consistent with acknowledged local comprehensive ~~land use~~ plans ~~acknowledged by the Department of Land Conservation and Development.~~ and land use regulations.
(44) "Security Measures" means the evaluation, planning, design, purchase and installation of equipment and facilities intended to prevent unauthorized physical and electronic intrusion into, or willful damage of, sewage facilities, nonpoint source control or estuary management projects.
(~~36~~45) "Sewage Collection System" means publicly owned pipelines, conduits, pumping stations, force mains and any other related structures, devices or equipment used to convey wastewater to a sewage treatment facility.
(46) "Sewage Facility" means a sewage collection system or sewage treatment facility.
(~~37~~47) "Sewage Treatment Facility" means any publicly owned device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.
(~~38~~47) ~~"Significant Industrial Dischargers" means water pollution control facility users as defined in 40 CFR § 403.3(t).~~
(~~39~~48) "Small Community" means a public agency ~~with~~serving a population of 5,000 or less.

~~(40) "SRF" means the wastewater State Revolving Fund and includes funds from federal capitalization grants, state matching funds, SRF loan repayments, interest earnings and any additional funds provided by the state, also referred to under ORS 468.427 as the "water pollution control revolving fund".~~

(49) "Special Status Water Body" means the following water bodies of the state: federally designated Wild and Scenic Rivers, State Scenic Waterways, federally designated Sole Source Aquifers, the federally designated Lower Columbia River and Tillamook Bay estuaries, the Clackamas, North Santiam and McKenzie River sub basins of the Three Basin Rule (OAR 340-041-0470) and locally designated "significant" water bodies or wetlands as related to the Department of Land Conservation and Development Goal 5.
(50) "Sponsoring Community" means a public agency with the authority to finance and implement both a sewage facility project and water resource activity through the sponsorship option of a construction loan.

(51) "Sponsorship Option" means the Department's financing mechanism that allows a public agency's sewage collection system or sewage treatment facility project and a qualifying water resource activity to be financed through a single CWSRF loan. The Department, as an incentive to the public agency (referred to in OAR 340-054-0024(3) as a sponsoring community), discounts the interest rate on the resulting loan. The intention of this type of financing is to provide restoration or protection to a local water resource in conjunction with a traditional project without significantly increasing utility rates.
(52) "Storm water" means water derived from rainfall, snowmelt or other storm events that flows across the ground's surface rather than infiltrating the ground.
(~~41~~53) "Surface Water" means streams, lakes, reservoirs, estuaries and the topographical features ~~which~~that define their volume.
(54) "Urgent Repair" means the immediate stabilization of equipment and facilities pertaining to a sewage collection system or sewage treatment facility that have failed unexpectedly or are in imminent threat of failure as the result of age or wear, and the failure poses an immediate and significant threat to environmental quality or public health.
(55) "Value Engineering" means a specialized cost control technique specifically applicable to the design of sewage treatment facilities that identifies cost savings that can be made without sacrificing the reliability or efficiency of the project.
(~~42~~56) "Wastewater" means waters carrying wastes from individual, public or private structures combined with ~~non-excessive~~ infiltration and inflow.
~~(43) "Waters of the State" means the same as Waters of the State as defined in OAR 340-041-0006~~
(57) "Wastewater Reuse" means a project that reuses treated effluent from a sewage treatment system, commercial, or industrial process and , as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur.
~~(44) "Water Pollution Control Facility" means a sewage disposal, treatment and/or collection system.~~
(~~45~~58) "Water Pollution Control Revolving Fund" ~~—See "~~means the "CWSRF".
~~(46) "Wellhead Protection Area" means a state-designated surface and subsurface area surrounding a well or wellfield that supplies a public water system through which contaminants are likely to pass and eventually reach the well or wellfield.~~
~~(47) "Value Engineering" means a specialized cost control technique which uses a systematic approach to identify cost savings which may be made without sacrificing the reliability or efficiency of the project.~~
(59) "Water Quality Standards" means the standards established in OAR Chapter 340, Division 41 for surface waters and the minimum protection requirements established in OAR Chapter 340, Division 40 for groundwater.
(60) "Water Resource Activity" means a nonpoint source control activity funded through the sponsorship option in OAR 340-054-0024(3). These activities include the protecting or restoring of riparian habitat to prevent loss of biological diversity or ecological health.

establishing conservation easements, acquiring riparian lands or wetlands and other activities.
(61) "Waters of the State" means the same as defined in ORS 468B.005(8).
(62) "Wellhead Protection Area" has the meaning provided in OAR-340-040-0150(13).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the ~~agency.~~]Department.]

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.423
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95

340-054-0015
Project Eligibility
(1) A public agency may apply for ~~an~~ a CWSRF loan for up to 100% of the cost of the following types of projects and project related costs:
~~(a) Facility plans,~~(a) Planning for sewage facilities, nonpoint source control or estuary management projects including supplements or updates;
(b) Secondary sewage treatment facilities;
(c) Advanced ~~waste~~sewage treatment facilities, if required to comply with Department water quality statutes and rules;
(d) Reserve capacity for a sewage treatment or disposal facility ~~which will serve~~that serves a population not to exceed a 20-year population projection, and for a sewage collection system, or any portion thereof, not to exceed a 50-year population projection;
(e) ~~Sludge~~Facilities related to biosolids disposal and management;
(f) Interceptors, force mains and pumping stations;
~~(g) Infiltration and inflow correction;~~(g) Identification and correction of infiltration and inflow;
(h) Major sewer replacement and rehabilitation~~, if a part of a Department approved infiltration/inflow correction project;~~ necessary to maintain the structural integrity and function of the sewer;
(i) Combined sewer overflow correction, if required to protect sensitive estuarine waters or to comply with Department water quality statutes, rules or permits, provided the project is the most cost effective alternative;
(j) ~~Collector~~New collector sewers~~, if~~ required to alleviate documented water quality problems or to serve an area with a documented health hazard;
(k) Storm water control~~, if project is a cost effective solution for~~ facilities intended to reduce infiltration/ or inflow ~~correction~~ to a sanitary sewer ~~lines;~~ system.
(l) Storm water management measures identified in Oregon's Nonpoint Source Control Program Plan that address environmental quality directly related to water quality.

~~(l) Estuary management, if needed to protect sensitive estuarine waters provided the project is publicly owned;~~
~~(m) Nonpoint source control, if required to comply with Department water quality statutes and rules provided the project is publicly owned.~~
(m) Estuary management efforts that address environmental quality directly related to water quality.
(n) Nonpoint source control activities that address environmental quality directly related to water quality.
(o) Funding of local community loans through public agencies to address nonpoint source control activities or estuary management efforts.
(p) Wastewater reuse projects

~~(2) Limitations on the applications and use of SRF loan proceeds:~~
~~(a) Funding for projects may be limited by Section 201(g)(1) of the Clean Water Act;~~
~~(b) Loans shall not be made to cover the matching share of an EPA grant;~~
~~(c) Projects funded in whole or in part from the SRF must be consistent with plans developed under Sections 208, 303(e), 319 and 320 of the Clean Water Act;~~

~~(6) Short Term, Construction Financing Exception. Notwithstanding other provisions of this rule, short term, construction period financing may be provided to qualified projects if all of the following conditions can be met:~~
~~(a) Liquidity of the Fund is sufficient to provide the financing without adversely affecting the amount and timing of disbursements needed by funded projects;~~
~~(b) The Borrower has a legally enforceable obligation for long term financing of the project satisfactory to the Department.~~
~~[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency Division.]~~
~~Stat. Auth.: ORS 468.423 - ORS 468.440~~
~~Stats. Implemented: ORS 468.433 & ORS 468.437~~

(2) Conditions on the use of CWSRF loan proceeds.
(a) Projects funded in whole or in part from by the CWSRF loan program must be consistent with plans developed under sections 208, 303(e), 319 and 320 of the Clean Water Act.
(b) Loans may be used only for projects on the project priority list, described in OAR 340-054-0025(4).
(c) CWSRF loans will not be used for refinancing long-term loans.
(d) ~~Loans shall~~The CWSRF loans may be ~~available only for projects on a Project Priority List, described in OAR 340-054-0025;~~

~~(e) SRF loans will not be available for refinancing long-term loans. However, SRF loans will be available~~used to refinance interim loans or self-generated funds used to pay Department approved project costs ~~subject to~~ if the public agency satisfies the following conditions:

~~(A) Prior to project commencement,~~(i) provides the ~~public agency must provide the DEQ~~ Department with a written notice of the intent to apply for long-term financing ~~through the SRF loan program and;~~
(ii) is willing to proceed with the project using interim loans or self-generated funds~~. A completed Preliminary Application is sufficient written notice to meet the first part of this requirement;~~ ; or
~~(B) The Applicant must agree to~~ (iii) agrees to proceed at its own risk without regard to whether CWSRF financing ~~will~~ is ultimately ~~be~~ available to provide the long-term financing~~;~~ .
(~~C~~c) The Applicant ~~agrees~~must agree to comply with project review and approval requirements established in OAR ~~Chapter~~chapter 340, ~~Division 52; DEQ~~ division 052; Department permit requirements as established in OAR ~~Chapter~~chapter 340, ~~Division~~ division 045; and requirements of Title VI of the Clean Water Act~~.~~, as applicable.

(3) Short-term, Construction Financing Exception. Not withstanding other provisions of this rule, short-term, construction period financing may be provided to qualified projects if all of the following conditions are met:
(a) Liquidity of the CWSRF Fund is sufficient to provide the financing without adversely affecting the amount and timing of disbursements needed by prior obligations;
(b) The Borrower has a legally enforceable obligation for long-term financing of the project satisfactory to the Department; and
(c) The loan agreement for interim financing will stipulate that the Department is not obligated to provide long-term financing for this project.

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.423 - ORS 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90;
DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95

340-054-0020
Uses of the Fund

The CWSRF may ~~only~~ be used only for the following purposes:
(1) To make loans, fund reserves for CWSRF loans, purchase bonds or acquire other debt obligations.
(2) To pay CWSRF program administration costs ~~not to exceed an amount equal~~ to the ~~total of 4% all of the federal capitalization grant or as otherwise~~extent allowed by federal law~~)~~.
(3) To earn interest on fund accounts.
(4) To establish reserves for bonds issued by the ~~State~~state for use by the fund.
(5) To pay principal and interest of bond obligations sold to benefit the fund.

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.429 & ORS 468.431
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90;
DEQ 3-1995, f. & cert. ef. 1-23-95

340-054-0021
Expedited Loans.

The Department will administer two categories of expedited loans: emergency loans and urgent repair loans.
(1) General Requirements and Provisions.
(a) Applications will be accepted by the Department at any time.
(b) All applicants for expedited loans must submit:
(A) A completed application on a form provided by the Department;
(B) Evidence that the Applicant has authority to undertake the project;
(C) Audited financial statements for the previous three years and the Applicant's current budget (unless waived by the Department in its discretion);
(D) A Land Use Compatibility Statement (LUCS) in accordance with OAR 340-018-0030(5); and
(E) Any other information requested by the Department.
(c) The requirements of OAR 340-054-0065 are applicable to expedited loans except as specifically modified in this rule.
(d) Facilities subject to design review under OAR chapter 340, division 052 are not exempted from such review by this rule.

(2) Emergency Loans.
The Department will administer loans for the remediation of emergency conditions. This loan is intended for the immediate stabilization of damages resulting from unforeseen emergency conditions.
(a) In addition to the requirements in section (1) of this rule, applications for emergency loans must include:
(A) A letter from a professional engineer or other appropriately qualified individual summarizing the nature of the emergency, the proposed remediation and estimated project cost; and
(B) A letter from the Water Quality Manager of the appropriate Department regional office corroborating the emergency condition and concurring with the appropriateness of the proposed project and the estimated cost.
(b) Emergency loans have the following terms and conditions:
(A) Maximum loan amounts must be in accordance with OAR 340-054-0025(6)(c)(A);

(B) The interest rate and corresponding loan terms must be in accordance with OAR 340-054-0065(5)(f);
(C) Construction contracts funded through this loan must be awarded to a contractor(s) within 12 months of the loan agreement execution unless the Department expressly exempts the loan from this requirement;
(D) Loan repayment (as defined in the loan agreement) must begin on any outstanding principal and interest in accordance with OAR 340-054-0065(9); and
(E) The annual loan fee will be imposed in accordance with OAR 340-054-0065(7).
(c) The Department may consider requests for emergency loans in excess of the maximum loan amount defined in OAR 340-054-0025(6)(c)(A) for funding, or refer them to a CWSRF construction loan for additional funding.

(3) Urgent Repair Loans.
The Department will administer loans for the urgent repair of sewage collection systems or sewage treatment facilities.
(a) In addition to the requirements in section (1) of this rule, applications for urgent repair loans must include:
(A) A letter from a professional engineer or other appropriately qualified individual documenting the need for the urgent repair, the proposed repair and estimated project cost; and
(B) A letter from the Water Quality Manager of the appropriate Department regional office corroborating the urgent need for repair and concurring in the appropriateness of the proposed project and the estimated cost.
(b) Urgent repair loans have the following terms and conditions:
(A) Maximum loan amount must be in accordance with OAR 340-054-0025(6)(c)(A);
(B) The maximum loan term must be in accordance with OAR 340-054-0065(10)(c);
(C) Construction contracts funded by this loan must be awarded to a contractor(s) within 12 months of the execution of the loan agreement;
(D) Loan repayment (as defined in the loan agreement) must begin on any outstanding principal and interest in accordance with OAR 340-054-0065(9);
(E) The annual loan fee will be imposed in accordance with OAR 340-054-0065(7); and
(F) The interest rate must be the base rate as established in OAR 340-054-0065(5)(d).

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.429 & ORS 468.439

340-054-0022
Local Community Loans

The Department will administer local community loans with public agencies for the financing of estuary management efforts and nonpoint source control activities.

Applications may be submitted in response to the Department's annual solicitation or at anytime during the program year.

(1) General Requirements and Provisions.
Applicants applying for CWSRF financing for local community loans must submit:
(a) A fully executed and complete application on a form provided by the Department;
(b) A project narrative, as defined by the Department, describing how the project will implement an estuary management effort or a nonpoint source control activity;
(c) A completed Checklist of Exhibits and Requirements and associated documents;
(d) Audited financial statements for the previous three years and the Applicant's current budget (unless waived by the Department, in its discretion);
(e) A Land Use Compatibility Statement (LUCS) in accordance with OAR 340-018-0030(5);
(f) Evidence that the Applicant has the authority to undertake the project;
(g) A projected program cash flow based on the anticipated number of local loans, their repayment schedule, the amount and timing of Department disbursements and the amount and timing of repayments to the Department; and
(h) Any other information requested by the Department.

(2) Terms and Conditions.
Local community loans have the following terms and conditions:
(a) The maximum loan amount must be in accordance with OAR 340-054-0025(6);
(b) The maximum loan term must be in accordance with OAR 340-054-0065(10)(b);
(c) The interest rate must be as indicated in OAR 340-054-0065(5)(c);
(d) Loan repayment (as defined in the loan agreement) must begin on any outstanding principal and interest in accordance with OAR 340-054-0065(9); and
(e) The annual loan fee must be imposed on any unpaid balance in accordance with OAR 340-054-0065(7).

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.429 & ORS 468.439

340-054-0023
Planning Loans

The Department will administer loans for planning. The Department will administer loans for activities that result in a written plan to upgrade a facility to address an existing or anticipated water pollution problem

(1) General Requirements and Provisions.
All applicants for planning loans must submit:

(2) Design Loans and Construction Loans.
The Department will administer loans for activities that result in the design or construction of sewage facilities, nonpoint source control or estuary management projects. When approved by the Department, security measures intended to prevent intrusion or damage to such facilities or projects, or interruption of a facility or project's processes are eligible design or construction costs.
Design loans and construction loans have the following terms and conditions:
(a) The maximum loan amount must be in accordance with OAR 340-054-0025(6);
(b) If not implementing a sponsorship option, the interest rate and corresponding loan terms for design or construction loans must be in accordance with OAR 340-054-0065(5)(f), or OAR 340-054-0065(5)(g).
(c) The loan repayment period (as defined in the loan agreement) must begin on the outstanding principal and interest balance in accordance with OAR 340-054-0065(9); and
(d) The annual loan fee must be imposed on any unpaid balance in accordance with OAR 340-054-0065(7).

(3) Sponsorship Option for protection or restoration of water resources.
(a) A public agency (sponsoring community) may apply to the Department for a CWSRF loan to finance a sewage collection system or sewage treatment facility project combined with a water resource activity. Within this sponsorship option, the CWSRF program may fund both projects under a single CWSRF loan if the Department determines that the water resource activity meets program eligibility, funds are available, and the ranking of the sewage project allows its funding.
(b) The interest rate for the consolidated financing will be reduced whenever possible to a rate resulting in the semi-annual payment for the joint project being equal to the expected semi-annual payment with a traditional CWSRF loan for the sewage collection system or sewage treatment facility project only.
(c) A public agency that participates in this sponsorship option may either implement the water resource activity itself or may enter into a sponsorship agreement with an implementing partner who will implement the water resource activity. The sponsoring community remains responsible, however, for both the successful completion of the water resource activity and for the repayment of the CWSRF loan. The implementing partner will not be responsible for any repayment to the CWSRF program.
(d) All applicants for the sponsorship option must submit:
(A) A completed sponsorship application and project description using a form provided by the Department;
(B) Evidence that the sponsoring community and implementing partner (if an implementing partner is involved) have authority to undertake the water resource activity;
(C) An executed copy of the sponsorship agreement entered into with the implementing partner, if applicable; and
(D) Any other information requested by the Department.

(2) Design Loans and Construction Loans.
The Department will administer loans for activities that result in the design or construction of sewage facilities, nonpoint source control or estuary management projects. When approved by the Department, security measures intended to prevent intrusion or damage to such facilities or projects, or interruption of a facility or project's processes are eligible design or construction costs.
Design loans and construction loans have the following terms and conditions:
(a) The maximum loan amount must be in accordance with OAR 340-054-0025(6);
(b) If not implementing a sponsorship option, the interest rate and corresponding loan terms for design or construction loans must be in accordance with OAR 340-054-0065(5)(f), or OAR 340-054-0065(5)(g).
(c) The loan repayment period (as defined in the loan agreement) must begin on the outstanding principal and interest balance in accordance with OAR 340-054-0065(9); and
(d) The annual loan fee must be imposed on any unpaid balance in accordance with OAR 340-054-0065(7).

(3) Sponsorship Option for protection or restoration of water resources.
(a) A public agency (sponsoring community) may apply to the Department for a CWSRF loan to finance a sewage collection system or sewage treatment facility project combined with a water resource activity. Within this sponsorship option, the CWSRF program may fund both projects under a single CWSRF loan if the Department determines that the water resource activity meets program eligibility, funds are available, and the ranking of the sewage project allows its funding.
(b) The interest rate for the consolidated financing will be reduced whenever possible to a rate resulting in the total repayment amount for the joint project being equal to the expected total repayment amount with a traditional CWSRF loan for the sewage collection system or sewage treatment facility project only.
(c) A public agency that participates in this sponsorship option may either implement the water resource activity itself or may enter into a sponsorship agreement with an implementing partner who will implement the water resource activity. The sponsoring community remains responsible, however, for both the successful completion of the water resource activity and for the repayment of the CWSRF loan. The implementing partner will not be responsible for any repayment to the CWSRF program.
(d) All applicants for the sponsorship option must submit:
(A) A completed sponsorship application and project description using a form provided by the Department;
(B) Evidence that the sponsoring community and implementing partner (if an implementing partner is involved) have authority to undertake the water resource activity;
(C) An executed copy of the sponsorship agreement entered into with the implementing partner, if applicable; and
(D) Any other information requested by the Department.

(e) Financial terms of the sponsorship option will be as follows:
The interest rate for the sponsorship option must be in accordance with OAR 340-054-0065(5)(g); and
(B) The requirements of OAR 340-054-0065 will be applicable to the sponsorship option except as specifically modified in this rule.
(f) The Department will determine the total amount of CWSRF funds to be allocated at the reduced interest rate through the sponsorship option in each program year.

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.429 & ORS 468.439

340-054-0025
~~Preliminary~~ Application Process; Project Priority List; Intended Use Plan; Allocation of Funds

~~The Department shall develop a Project Priority List (PPL) by numerically ranking all eligible preliminary applications submitted by eligible applicants. The Project Priority List will be included in the annual publication of the Intended Use Plan (IUP) and only projects on this list shall be eligible for SRF financing. The Department shall develop the IUP through the following processes:~~

The Department will periodically, but not less than annually, develop and submit an Intended Use Plan (IUP) to EPA as described in section 606 of the CWA and 40 CFR § 35.3150. The IUP will describe the proposed uses of the CWSRF and will include a project priority list numerically ranking all eligible applications received. The Department will develop the IUP using the following processes in this rule.

(1) Notice:
The Department will notify interested parties at least annually of the opportunity to submit applications. Interested parties include, but are not limited to, watershed councils, counties, soil and water conservation districts, special districts and all of the incorporated cities listed in the current edition of the Oregon Blue Book.
~~(1) Preliminary Application:~~
~~(a) The Department shall notify interested parties of the opportunity to submit a preliminary application. Interested parties include but are not limited to counties, special districts, and all of the Incorporated Cities and Towns listed in the current edition of the Oregon Blue Book;~~
~~(b) In order for a project to be considered for inclusion on the Project Priority List:~~
~~(A) The Department must receive a completed preliminary application which addresses a water quality problem on or before the deadline;~~
~~(B) The project must be eligible under OAR 340-054-0015(1);~~

~~(C) The SRF loan amount must be for at least $20,000.~~

~~(2) Draft Intended Use Plan Public Notice and Review:~~
~~(a) The Department shall publish a public notice and distribute excerpts of the draft IUP to all Applicants;~~
~~(b) The Department shall make the entire draft Intended Use Plan available to any group or member of the public who requests a copy;~~
~~(c) The Department shall allow at least 30 days after issuing the draft IUP for review and public comments to be submitted:~~
~~(A) During the comment period, any Applicant may request the Department to reevaluate a project's rank on the proposed Project Priority List or to make other changes to the Intended Use Plan;~~
~~(B) The Department shall consider all requests submitted during the comment period before establishing the Final Intended Use Plan;~~
~~(C) The Department shall distribute the Final IUP to all Applicants with projects on the Final Project Priority List.~~

(2) Applications:
For a project to be considered for the project priority list, an Applicant must submit a completed application; the application must address an imminent, actual or threatened water quality problem; and the project must be eligible for funding under OAR 340-054-0015.

(3) Timing:
In addition to applications received in response to the solicitation for applications indicated in OAR 340-054-0025(1), the Department will accept applications at any time.

~~(3) Project Priority List Ranking: The Project Priority List shall be compiled by ranking water pollution control projects based on the sum of the most significant documented Water Quality Description within each of the four Point Criteria listed in **Table 1**. In order to earn the points indicated in Criteria #1, Receiving Water Body Sensitivity, or Criteria #2, Enforcement Activities and Water Quality Violations, the project must directly impact the waters identified or the enforcement situation described.~~

(4) Project Priority List Ranking:
(a)The Department will develop a project priority list by ranking all eligible proposed projects using the criteria in **Table 1** of this rule. Projects will be numerically ranked based on the sum of the points awarded each proposed project. A maximum of one hundred (100) points is available for a proposed project.
(b) The Department will update the project priority list and the IUP every four months or upon receipt by the Department of five eligible applications, whichever timeframe is

shorter. If no eligible applications are received during a four month period, the project priority list will not be updated.

TABLE 1

CWSRF Project Ranking Criteria

Category 1: Proposed Project's anticipated benefit for water quality or public health

1A—(0 or 8 points)—Project addresses water quality or public health issue within a "special status" water body
1B—(0-6 points)—Project addresses noncompliance with surface water standards, a public health issue or effluent limits related to surface waters
1C—(0-6 points)—Project addresses noncompliance with groundwater standards or a public health issue related to groundwater
1D—(0-12 points)—Project ensures that a source already in compliance maintains that compliance.
1E—(0-8 points)—Project improves or sustains aquatic habitat supporting state or federally threatened or endangered species
1F—(0-12 points)—Project incorporates wastewater reuse or a water quality-related conservation process
1G—(0-7 points)—Project improves water quality by mitigating any of the following pollutants: temperature, dissolved oxygen, contaminated sediments, toxics on the EPA Priority Pollutants List, bacteria or nutrients
1H—(0-5 points)—Project supports the implementation of a Total Maximum Daily Load (TMDL) allocation or action plan for a Ground Water Management Area
1I—(0-6 points)—Project addresses a water quality or public health issue involving "Persistent Bioaccumulative Toxics" (PBT's)

Category 2: Potential water quality or public health consequences of not funding the proposed project

2A—(0-5 points)—If the proposed project is not implemented, water quality standards are likely to be exceeded or existing exceedances are likely to worsen
2B—(0-5 points)—If the proposed project is not implemented, the resulting impact is likely to cause a public health problem
2C—(0-5 points)—A unique opportunity to implement the proposed project currently exists due to timing, finances or other limitations that would not allow this project to be implemented in the future

Category 3: Other considerations

3A—(0-3 points)—Project has significant educational or outreach component
3B—(0-3 points)—Project demonstrates innovative technology which is transferable
3C—(0-3 points)—Project is a partnership with other group(s), incorporating self-help, financial or in-kind support
3D—(0-5 points)—Project incorporates monitoring, reporting or adaptive management
3E—(0 or 1 point)—Project addresses or includes risk management, safety or security measures
3F—(0-minus 5 points)—Applicant's past performance with previous Department loans or grants such as, but not limited to, failure to satisfy match requirements of a grant, failure to complete the project or failure to submit any other required deliverable in a timely manner.

(5) Draft Intended Use Plan, Public Notice and Review:
(a) The Department will update the IUP whenever changes are made to the PPL.
(b) With each update the Department will notify all applicants whose projects are included within the draft IUP of their ranking on the PPL.
(c) The Department will provide notice and an opportunity for the public to comment on proposed changes to the IUP, and will make the draft IUP available to the public.
(d) Except for revisions to the IUP resulting from applications for expedited loans, the Department will provide at least 30 days for public comments on the draft IUP. The Department will provide at least 5 days for comment on changes to the IUP resulting from new applications for expedited loans.
(e) During the comment period, any Applicant may request the Department to reevaluate a project's rank on the proposed project priority list or to make other changes to the IUP.
(f) The Department will consider all comments submitted during the comment period before finalizing the IUP.

~~(4) Project Priority List Development:~~

~~(a) In any allocation cycle, no Borrower on the Project Priority List may be allocated (including both loan increases and new project loans) more than the greater of $2.5 million or 15% of the total available funds. However, if SRF funds are still available after allocating this limit to each eligible applicant, additional funds may be allocated above this limit;~~
~~(b) Allocations shall be made in the following sequence:~~
~~(A) Loan Increases. Increases to previously funded projects shall be allocated available funds, including additional funds for construction if the design of the project was partially or fully financed with SRF funds. At the discretion of DEQ, the increase may take the form of an additional loan at the current interest rate rather than as an increase to the existing loan;~~

~~(B) Small Community Reserve. Allocations from the Small Community Reserve shall not exceed 15% of the available funds. Design and/or construction projects shall be selected from the Project Priority List in rank order for this reserve.~~
~~(i) Each project allocation from this reserve shall be for not more than the greater of $750,000 or 25% of the reserve until all small community requests have been allocated funds. If Small Community Reserves remain, these will be allocated to unfunded portions of the small community loan requests;~~
~~(ii) If preliminary applications from small communities total less than 15% of available funds, the balance of the 15% reserve may be allocated to other Applicants.~~
~~(C) Facility Planning Reserve. Allocations from the Facility Planning Reserve shall not exceed 10% of the available funds. Projects shall be selected from the Project Priority List in rank order for this reserve:~~
~~(i) Each individual allocation from the Facility Planning Reserve shall be for not more than $400,000 until all requests from this reserve have been allocated funds. If reserve funds still remain, these will be allocated to the unfunded portions of the facility planning loan requests in rank order;~~
~~(ii) If preliminary applications for facility planning total less than 10% of available funds, the balance of the 10% reserve may be allocated to other Applicants.~~
~~(D) General Fund. The remaining projects, including facility planning and small community projects not already allocated funds from the reserves or allocated less than the total loan requested, shall be awarded loans in rank order to the extent of available funds.~~
~~(c) At the end of the allocation cycle, all projects which have been allocated funds but for which loan agreements have not been completed shall be maintained on the Supplementary sublist;~~

(6) Allocation of Funds:
(a) During any Department program year (July 1 through June 30), no Borrower on the project priority list (including either loan increases or new project loans) may be allocated more than the greater of $2.5 million or 15% of the total available funds as reported in the initial IUP for that program year. If CWSRF moneys are available after allocating this limit to each eligible Applicant, additional funds may be allocated above this limit.
(b) The Department will establish the following funding categories within the CWSRF: Expedited Loan Reserve, Small Community Reserve, Planning Reserve, and general fund. The Department will first allocate annual funds to the three reserves in accordance with the criteria in sections 6(c)(A), 6(c)(B) and 6(c)(C). Funds not allocated to one of the reserves will be allocated to the CWSRF general fund.
(c) The Department will assign projects on the priority list to an appropriate reserve or to the CWSRF general fund. Requests for increases to existing loans will be awarded first. Increases will be awarded from the appropriate reserve or the general fund. Following any allocations for increases, the Department will award loans to projects within each reserve and the general fund for new projects as described in sections 6(c)(A), 6(c)(B), 6(c)(C) and 6(c)(D)

(A) Expedited Loans Reserve. A reserve of $2 million will be established to fund expedited loans. The Director may increase the cap on this reserve. Individual urgent repair loans are limited to $150,000. The maximum amount available for a single emergency loan is $1.85 million. Emergency loans and urgent repair loans will be awarded in rank order. Unused funds still remaining in the expedited loan reserve on May 31 of the program year can be reallocated to the CWSRF general fund.
(B) Small Community Reserve. A maximum of 15% of the total CWSRF monies will be available in each program year for allocation to small community loans. Local community, design and construction projects eligible within this reserve will be awarded loans in rank order.
(i) Each project allocation from this reserve will be for not more than the greater of $750,000 or 25% of the reserve, until all eligible small community requests have been allocated funds. ~~Remaining~~ If reserve funds still remain on March 1st of the program year, these remaining **funds may be allocated to** any **unfunded portions of** ~~the~~ a **small community loan** ~~requests,~~ request in the order the loan agreements were executed;
(ii) After reallocating as directed in OAR 340-054-0025(6)(c)(B)(i) above, any funds still remaining in the small community reserve can be moved to the CWSRF general fund.
(C) Planning Loan Reserve. A maximum of $3 million of the total CWSRF will be available in each program year for allocation to planning loans. Projects will be selected from the project priority list in rank order for this reserve.
(i) Each individual allocation from the planning loan reserve will initially not exceed $150,000. If reserve funds still remain on March 1st of the program year, these remaining funds may be reallocated to any unfunded portions of planning loan requests in the order the loan agreements were executed;
(ii) After allocating as directed in OAR 340-054-0025(6)(c)(C)(i) above, any funds still remaining in the planning reserve can be moved to the CWSRF general fund.
(D) General Fund. All new design or construction project loans not funded from a reserve will be allocated from the general fund. Any remaining emergency or urgent repair, small community or planning projects not already allocated funds from their respective reserves, or allocated less than the total loan amount requested, may be awarded funding in rank order subject to available funds and the maximum loan amount for the program year.
(E) Loan Increases. Upon request, the Department may increase the funding for previously financed projects up to the maximum loan amount defined for each borrower in section 6(a) of this rule. These loan increases may be offered by either providing an additional loan at the current interest rate or increasing the amount of the existing loan. Awards for loan increases will be awarded in rank order.

~~(d) The Planning sublist shall include projects for which SRF funds are not currently available. The ordering of projects within the Planning sublist shall be in rank order of priority.~~

~~(5) Project Priority List Modification:~~

~~(a) The Department may remove a project from the Project Priority List (PPL) if it is determined that the project does not meet eligibility requirements, the Department determines that the project is not ready to proceed according to the schedule in the preliminary application, the final application is not received by the date on which it is due, or the Applicant requests removal;~~
~~(b) When the Department plans to remove a project from the PPL, it shall give written notice to the Applicant and allow 30 days after the notice for the Applicant to demonstrate to the Department's satisfaction the ability to complete a loan agreement in a reasonable period of time and the ability to proceed with the project on a revised schedule acceptable to the Department;~~
~~(c) When a project is removed from the Project Priority List, the Department will reallocate the funds set aside for the project in the following priority:~~
~~(A) To loan increases to other projects with approved loans;~~
~~(B) To additional funds to projects which have received insufficient allocations of loan funds but for which loan agreements have not yet been signed;~~
~~(C) To projects from the Planning sublist in rank order or to new projects in the following allocation cycle.~~
~~(d) The Department may add projects to the Project Priority List only if there is an inadequate number of projects ready to receive funding. To add projects to the Project Priority List, the Department shall follow the process outlined in section (1) of this rule.~~
~~(e) The Department may reallocate funds without regard to Small Community reserves, Facility Planning reserves or the 15% limit on the allocation of loans.~~

(7) Project Priority List Modification:
(a) The following conditions apply to projects on the project priority list.
(A) Ranked projects may remain on the project priority list for up to 36 months while pursuing funding. After 36 months, the Department will notify the Applicant in writing that the project is being removed from the list.
(B) Applicants whose projects are removed from the project priority list because they have exceeded the 36 month limit may resubmit their projects to the program for ranking and incorporation into the next update of the IUP.
(C) The Department may provide one six-month extension to applicants requesting to remain on the list beyond the 36 month limit. Applicants requesting an extension must submit a progress report indicating the status of their effort in pursuing CWSRF financing and an updated time frame indicating when they expect to have completed all requirements necessary to be awarded funding.
(D) The Department may remove a project from the project priority list upon written notice to the applicant at any time the Department determines that the project does not meet eligibility requirements, the Borrower no longer requires CWSRF financing or the Applicant requests removal.

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.433 & ORS 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95

340-054-0035

Final Stage of Application Process for ~~SRF Financing~~ Design Loans or Construction Loans

The Department will administer loans for design and construction of both point source and nonpoint source projects.

(1) ~~All Applicants for SRF financing must submit:~~

~~(a) A fully executed and complete final~~ In addition to the loan application ~~on forms provided by the Department.~~

~~(b) Evidence that the Applicant has the authority to undertake the~~ and items specified in OAR 340-054-0024(1), applicants applying for a CWSRF loan for a design or construction project~~.~~

~~(c) The~~ must submit the following ~~financial management documentation:~~

~~(A) Financial capability assessment on forms provided by the Department for the proposed project which demonstrates the Applicant's ability~~documents to ~~repay the loan and to provide for operation and maintenance costs, and replacement~~ be considered for ~~the wastewater treatment facility for which the applicant is responsible.~~ loan approval:
~~(B) Three years' audited financial statements and the current budget for the Applicant or for the consolidated sewer system.~~
~~(C) The budget of the total project including proposed capital costs, site work costs, engineering costs, administrative costs and any other costs which will be supported by the proposed loan; a breakdown of the line item budget by each funding source (including SRF loan).~~
~~(d) Any other information requested by the Department.~~

~~(2) Additionally, Applicants for SRF loans for design or construction of a project must submit:~~

~~(a) A facilities plan prepared in accordance with the Facilities Planning section of the Department's SRF Procedures Manual.~~

~~(b) An~~(a) A planning document that the Department determines adequately documents the efficacy and appropriateness of the proposed project to remediate the identified water pollution control problem. For sewage collection systems or ~~sewer~~sewage treatment facilities, the planning document must meet the requirements of the Department's CWSRF Procedures Manual and other planning guidance in effect at the time of submittal.

~~(f) A Land Use Compatibility Statement from the responsible government demonstrating compliance with the Department of Land Conservation and Development (DLCD) acknowledged comprehensive land use plan and statewide land use planning goals.~~

(b) In accordance with OAR 340-018-0050, a Land Use Compatibility Statement (LUCS) from the appropriate planning jurisdiction demonstrating compliance with the Department of Land Conservation and Development's (DLCD) acknowledged comprehensive land use plan and statewide land use planning goals.

~~(g) Department approved plans and specifications for the project, if the loan is for construction only.~~
~~(h) A SRF Procedures Manual for all projects with estimated costs in excess of $10 million.~~
~~(i) An environmental review prepared in accordance with the requirements of the~~
~~(j) Any other information requested by the Department.~~
~~(k) Exception for minor projects in unusual circumstances. The Department may waive the requirement for preparation of a facilities plan as set out in section (2) of this rule, as well as other requirements not mandated by Oregon Revised Statutes, interagency agreement or the federal Water Quality Act of 1987 when it can be demonstrated to the Department's satisfaction that compliance is not cost effective and the waiver will not be detrimental to the interests of the Applicant or the state. Requests for such an exemption shall only be considered from projects that may be eligible for a Categorical Exclusion as described in the SRF Procedures Manual.~~

(c) An environmental review prepared in accordance with the requirements of the EPA approved alternative State Environmental Review Process (SERP~~described~~) described in the CWSRF Procedures Manual, May 1, 2003. At its discretion, the Department may execute a loan agreement prior to receipt of an environmental review; however no loan disbursements may be processed without and approved environmental review.
(d) Any other information requested by the Department.

(2) In addition to the requirements of section (1) of this rule, applicants for a CWSRF loan for the design or construction of sewage collection systems or sewage treatment projects ~~shall~~ must submit the following documents to be considered for loan approval:

(a) A Department approved~~n adopted~~ sewer use ordinance adopted by all municipalities and service districts serviced by this project that~~which~~ meets the ~~Department's approval and the~~ provisions of this section~~:~~

~~(A) Sewer~~The sewer use ordinances must ~~adopted by all municipalities and service districts serviced by this project must be included with the application.~~

~~(B) projectBThe sewer use ordinance shall must~~ prohibit any new connections from inflow sources into the ~~water pollution control facility without the approval of the Department.~~

~~(C)~~ sewage collection system; and ~~The ordinance shall must~~ require that no wastewater introduced into the ~~treatment works~~ sewage collection system contain toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety ~~and~~ or adversely affecting the project or precluding the selection of the most cost-effective alternative for the project.

~~(c) Pretreatment documentation. If the Department determines that the need for a pretreatment program exists~~

~~(d) A demonstration of the adoption of a user charge system which meets the Department's approval and the requirements of the User Charge System section of the SRF Procedures Manual.~~

(b) A demonstration that the Applicant has adopted a user charge system that meets the requirements of the User Charge System section of the CWSRF Procedures Manual, May 1,2003.

~~(e) If the project will serve two or more municipalities, the Applicant shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works.~~

(c) For projects serving two or more municipalities, the Applicant must submit the executed inter-municipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed sewage collection system or sewage treatment facility.

(d) In accordance with OAR Chapter 340, division 052, Applicants for construction-only loans must submit Department approved plans and specifications for the project as applicable.

(e) For projects with estimated costs in excess of $10 million, the Applicant must submit a value engineering study prepared in accordance with the requirements of the CWSRF Procedures Manual.

~~develop and adopt a program approved by the Department before Initiation of Operation of the project. The documentation must include:~~

~~(A) A survey of nonresidential users which identifies significant industrial discharges.~~

~~(B) Proof that there is a legally binding commitment or permit between the Applicant and any significant industrial discharger being served by the Applicant's proposed project, and evidence that the necessary pretreatment facilities have been or are being constructed and operated in manner consistent with the Applicant's requirements. The legally binding commitment or permit must ensure that pretreatment discharge limits will be achieved on or before the date of completion of the proposed project or that a Department approved compliance schedule or enforcement order is established.~~

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.433 & ORS 468.437
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; Administrative correction 10-29-98

340-054-0055
Loan Approval and Review Criteria

(1) Loan Approval. ~~SRF loan approval takes place after Departmental approval of all final SRF loan documents. The loan agreement shall be signed by a legally authorized representative of the Applicant and the Director.~~ A loan is approved when the Department signs a loan agreement.

(2) Loan Review Criteria. ~~In order to get~~ To obtain loan approval, the following criteria must be met:
(a) The proposed project must be eligible for funds under this Division.

(b) The Applicant must submit a completed ~~final~~ loan application including all applicable information ~~and~~ , approvals ~~required under~~ and associated requirements of OAR 340-054-0021; OAR 340-054-0022; OAR 340-054-0023; OAR 340-054-0024 and OAR 340-054-0035.

~~(b) There must be available SRF funds to finance the loan.~~

(c) ~~The project must be eligible for funds under this chapter.~~

~~(d)~~ The Applicant must demonstrate to the Department's satisfaction its ability to repay a loan and, where applicable, its ability to ensure ongoing operation and maintenance of the proposed ~~water pollution control~~ sewage facility~~.~~, nonpoint source control or estuary management project. In addition, for revenue-secured loans described under OAR 340-054-0065(2), the Department may require the following criteria to be met:
(A) The existing ~~water pollution~~sewage facility, nonpoint source control ~~facilities are~~ or estuary management project is free ~~from~~of any operational and maintenance problems ~~which~~ that could materially impede the proposed ~~system's~~systems function or affect the Applicant's ability to repay the loan from user fees~~.~~;
(B) The Borrower's revenue stream is not at risk from undue dependence upon a limited portion of the ~~system's~~system's customer base ~~and~~or a pattern of ~~delinquency on the part of~~ delinquent payment from that portion of the system's customer base~~.~~; and
(C) The Borrower must have the ability to ~~bring effective sanctions to bear on~~collect from non-paying customers.
(d) CWSRF funds must be available to finance the loan.
(e) ~~In addition, as necessary to~~To meet the requirements of ~~ORS 468~~ORS 468.425, the Department may establish other loan criteria and require other documentation as

appropriate, including, but not limited to, an opinion of legal counsel that the loan agreement is enforceable under the Borrower's legal structure.

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.433 & ORS 468.437
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93

340-054-0060
Loan Agreement and Conditions

Each loan agreement ~~shall contain~~ will include conditions ~~that are~~ applicable to the type of project being financed. ~~Some~~, which include, but are not ~~all, of the conditions follow:~~ limited to, the following:

(1) Accounting. The Borrower ~~shall~~ must maintain all CWSRF project accounts as separate accounts and ~~shall~~ must use accounting, audit and fiscal procedures ~~which~~ that conform to Generally Accepted Governmental Accounting ~~Principals~~ Standards and the requirements of the ~~Government~~Governmental Accounting Standards Board.

(2) Records. ~~Project~~ The Borrower must retain project files and records ~~must be retained by the Borrower~~ for at least ~~3~~three years after performance certification or project completion as determined by the Department. Financial files and records must be retained until the loan is repaid in full.

(3) Wage Rates. The Applicant ~~shall~~must ensure compliance with ~~the~~ applicable federal or state wage rates, if any, for construction projects ~~as determined by the Department.~~.

(4) Operation and Maintenance Manual. ~~If~~ For the ~~SRF loan is for~~ construction of a sewage collection system or a sewage treatment facility subject to OAR chapter 340, division 052, the Borrower ~~shall~~must submit a draft and final facility operation and maintenance manual at the ~~times~~ time and in a format specified by the Department.

(5) Plans and Specifications. For the construction of a sewage collection system or a sewage treatment facility subject to OAR chapter 340, division 052, the Borrower must ~~submit and receive Departmental~~obtain the Department's approval of project plans and specifications ~~prior to~~before commencement of construction~~, in conformance with OAR Chapter 340, Division 52.~~.

(6) Inspections and Progress Reports.
(a) During the construc-tion phase of ~~the project~~a sewage collection system or a sewage treatment facility subject to OAR chapter 340, division 052, the Borrower ~~shall~~must

provide on-going inspections to ensure the project complies with approved plans and specifications. These inspections ~~shall~~must be conducted by qualified inspectors under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. The Department or its representative~~s~~ may enter property owned or controlled by the Borrower to conduct interim inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with other provisions of the loan agreement.
(b) For projects not subject to Department review under OAR chapter 340, division 052, the Department may seek the review and analysis of construction plans from relevant agencies or offices to ensure those plans support the successful implementation and completion of the project. During implementation of the project, the Borrower must allow inspections by appropriately qualified persons to ensure that the project as constructed conforms to project plans and other provisions of the loan agreement.

(7) Loan Amendments. Changes in ~~the~~ project work that are consistent with the objectives of the project and ~~that are~~ within the scope and funding level of the loan do not require the execution of a formal loan amendment. ~~However, a~~ A loan amendment ~~shall~~will be required ~~when~~in the ~~Borrower~~following situations:
(a) ~~Receives~~The Borrower receives an increase in the original approved loan amount at any time during the project. The Department may approve loan increases if funds are available, and the Borrower demonstrates both the legal authority to borrow and the financial capability to repay the increased loan amount.
~~(b) Requests~~ (b) The Borrower requests a decrease in the original loan amount at any time during the project or completes the project and does not request disbursement of all ~~the~~ loan proceeds.

(8) Change Orders. ~~Upon execution, the~~The Borrower must submit Change Orders to the Department for engineering and financial review. The Department ~~shall~~will approve or reject the Change Orders based on the loan eligibility of the project modifications and on its engineering ~~aspects~~value in accordance with OAR 340-~~054-0035~~.052-0015.

(9) Project Performance Certification~~.~~ for a sewage collection system or sewage treatment facility. The Borrower ~~shall~~must submit to the Department a Project Performance Certification ~~which~~ that meets the requirements of the CWSRF Procedures Manual within the time frame specified by the Department.

(10) Eligible Construction Costs. ~~Payments~~ Loan disbursements for construction costs ~~shall~~will be limited to work that complies with plans, specifications, ~~Change Orders and Addenda~~change orders and addenda approved by the Department.

(11) Adjustments. The Department may, at any time, review and audit requests for payment and make adjustments for eligibility, math errors, items not built or bought, unacceptable construction and other discrepancies.

(12) Contract and Bid Documents. The Borrower ~~shall~~must submit a copy of the awarded contract and bid documents to the Department, including a tabulation of all bids received.
(13) Audit. ~~Federal enabling legislation and rules require an~~ Borrowers may satisfy audit ~~of each SRF loan. Borrowers may satisfy this requirement~~requirements in one of the following two ways:
(a) ~~The~~An External Audit. Within one year after Performance Certification, the Borrower ~~shall~~must submit an audit of the project expenditures consistent with Generally Accepted Accounting Principles ~~of project expenditures within one year after Performance Certification. This audit shall be paid for by the Borrower and shall be~~ conducted by a certified auditor. The Borrower will pay for this audit.
(b) Internal documentation. The Borrower ~~shall~~must submit to the Department:
~~(A)~~ A ~~full and)~~ A complete ~~internally prepared~~ accounting of project costs incurred by the Borrower ~~which shall include~~ including documentation to support each cost element~~.~~; and
(B) One copy of the Borrower's annual audited financial report ~~to the Department~~ each year until the loan is repaid. Audit compliance with OMB A-~~128~~133 is required if federal funds are disbursed as loan proceeds.

(14) Operation and Maintenance. The Borrower ~~shall~~must provide the necessary resources for adequate operation, maintenance and replacement of ~~the~~a sewage facility, nonpoint source control or estuary management project and ~~shall~~ retain sufficient operating personnel to operate the facility.

(15) Default Remedies. Upon default by a Borrower, the Department ~~shall have the following rights to~~may:
(a) Pursue any remedy available at law or in equity.
(b) Appoint a receiver at the expense of the Borrower to operate the facility ~~which~~that produces the pledged revenues.
(c) Set and collect utility rates and charges.
(d) Withhold any amounts otherwise due to the Borrower from the State of Oregon and direct that such funds be applied to the debt service and fees due on the CWSRF loan. If the Department finds that the loan to the Borrower is otherwise adequately secured, the Department may waive this right to withhold state ~~shared~~ revenue~~.~~ due to the Borrower.

(16) Release. The Borrower shall release and discharge the Department, its officers, agents and employees from all liabilities, obligations and claims arising out of the project work or under the loan, subject only to exceptions previously ~~contractually arrived at and specified~~agreed upon in ~~writing~~a written contract between the Department and the Borrower.

(17) Effect of Approval or Certification of Documents. Review and approval of facilities plans, design drawings and specifications, or any other documents by or for the Department does not relieve the Borrower of ~~its~~ responsibility to properly plan, design, build and effectively operate and maintain ~~the treatment works~~ a sewage facility, nonpoint

source control or estuary management project as required by law, regulations, permits and good management practices. The Department is not responsible for any project costs or any losses or damages resulting from defects in the plans, design drawings and specifications, or other sub-agreement documents. The Department is not responsible for verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(18) Reservation of Rights:
(a) Nothing in this rule prohibits a Borrower from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing project work; and
(b) Nothing in the rule affects the Department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a Borrower that fails to carry out its obligations under ~~this chapter.~~OAR Chapter 340.

(19) Other Provisions. CWSRF loan agreements ~~shall~~will contain such other provisions as the Department may reasonably require to meet the goals of the Clean Water Act and ORS 468.423 to 468.440.

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.433 & ORS 468.437
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; Administrative Correction

340-054-0065
Loan Terms and Interest Rates

As required by ORS 468.440, the following loan terms and interest rates are established:

(1) Types of Loans. ~~An~~ A CWSRF loan must be one of the following types of loans:
(a) A loan secured by a general obligation bond or other full faith and credit obligation of the Borrower, which is supported by the Borrower's unlimited ad valorem taxing power.
(b) A loan secured by a bond or other obligation of the Borrower ~~which~~that is not subject to appropriation and ~~which~~ has been rated Investment Grade by Moody's Investor Services, Standard and Poor's Corporation or another national rating service acceptable to the Department.
(c) A Revenue Secured Loan ~~which~~that complies with section (2) of this rule.
(d) An Alternative Loan ~~which~~that complies with section (3) of this rule.
(e) A Discretionary Loan ~~which~~that complies with section (4) of this rule.

(2) Revenue Secured Loans. These loans ~~shall:~~must:

(a) Be represented by a properly executed loan agreement, bonds or other unconditional obligations to pay from specified revenues ~~which~~that are pledged to the Borrower; the obligation to pay may not be subject to the appropriation of funds.
(b) ~~Contain~~Include a rate ~~covenant which~~provision that requires the Borrower to impose and collect revenues ~~which are~~ sufficient to pay:
(A) All expenses of operation, maintenance and replacement of ~~the wastewater~~a sewage facility ~~system.~~, nonpoint source control or estuary management projects.
(B) All debt service.
(C) All other financial obligations (such as contributions to reserve accounts) imposed in connection with prior lien obligations.
(D) An amount equal to the coverage requirements of the loan. This requirement is the product of the coverage factor times the debt service due in that year on the CWSRF loan. The coverage factor used ~~shall~~ must correspond to the coverage factor and reserve percentage set selected by the Borrower from subsection (d) of this section.
(E) Amounts required to provide coverage on prior lien obligations or new lien obligations the Borrower may incur ~~and which~~that the Department ~~may determine~~ determines are inadequately secured or otherwise may adversely affect the ability of the Borrower to repay the CWSRF loan.
(c) Contain a reserve ~~covenant~~provision requiring the Borrower to maintain a pledged reserve ~~which~~ that is dedicated to the payment of the CWSRF loan and ~~which~~ meets the following requirements:
(A) ~~Loan reserves~~ The loan reserve must be maintained in an amount ~~which~~ that is at least equal to the product of the reserve percentage shown in subsection (d) of this section times one half the average annual debt service during the repayment period based on the repayment schedule ~~in the loan agreement~~ or ~~as~~ revised. repayment schedule in the loan agreement. The reserve percentage selected from subsection (d) of this section ~~shall~~must correspond to the coverage factor selected for the CWSRF loan.
(B) Loan reserves may be funded with cash of the Borrower, a letter of credit, repayment guaranty or other third party commitment to advance funds ~~which~~ that is satisfactory to the Department. If the Department determines that funding of the reserve as described above imposes an undue hardship on the Borrower, the Department may allow reserves to be funded with CWSRF loan proceeds.
(d) Comply with the one of the following ~~set~~sets of coverage factors and reserve percentages:

Coverage Factor ~~*~~	Reserve Percentage ~~**~~
~~(~~Option 1: 1.05:1	100%
Option 2: 1.15:1	75%
Option 3: 1.25:1	50%
Option 4: 1.35:1	25%

*Net Income to ~~of Average Annual~~
Debt Service~~)~~

**Percentage of ½ the Average Annual Debt Service

~~Option 1: 1.05:1 and 100%~~
~~Option 2: 1.15:1 and 75%~~
~~Option 3: 1.25:1 and 50%~~
~~Option 4: 1.35:1 and 25%~~

(e) ~~Contain~~Include a ~~covenant to~~ requirement for periodic rate review ~~rates periodically and to adjust~~ and adjustment of rates, if necessary, ~~so that~~ to ensure estimated revenues in subsequent years ~~will be~~are sufficient ~~to comply with this rate covenant.~~.
(f) ~~Contain~~Include a ~~covenant~~requirement that if revenues fail to achieve the ~~level~~ required ~~by the~~ rate ~~covenant~~level, the Borrower ~~shall~~must promptly adjust rates and charges to assure future compliance with the rate ~~covenant. However,~~ requirements. The Department may determine that failure to adjust rates ~~shall~~does not constitute a default if the Borrower transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system ~~which~~ that produces the revenues.
(g) ~~Contain~~Include a ~~covenant~~requirement that if the reserve account is depleted for any reason, the Borrower ~~shall~~must take prompt action to restore the reserve to the required minimum amount.
(h) ~~Contain~~Include a ~~covenant~~requirement restricting additional debt appropriate to the financial condition of the Borrower.
(i) ~~Contain a covenant that~~Prohibit the Borrower ~~shall not sell, transfer~~from selling, transferring or ~~encumber~~encumbering any financial or fixed asset of the utility system ~~which~~that produces the pledged revenues if the Borrower is in violation of any CWSRF loan ~~covenant~~requirements, or if such sale, transfer or encumbrance may cause a violation of any CWSRF loan ~~covenant.~~ requirements.

(3) Alternative Loans. The Department may authorize Alternative Loans ~~may be authorized~~ for reasonable alternative methods of financing if the Borrower demonstrates to the satisfaction of the Department that:
(a) It may be unduly burdensome or costly to the Borrower to borrow money from the CWSRF through general obligation bonds, revenue bonds or a revenue-secured loan, as described in subsection (1)(a), (b) or (c) of this rule.
(b) The Alternative Loan has a credit quality ~~which~~that is substantially equal to, or better than, the credit quality of a Revenue Secured Loan to that Borrower. In determining whether an Alternative Loan meets the requirement, the Department may consult with a financial advisor and may charge the Applicant the reasonable costs of such consultation.

(4) Discretionary Loan. ~~A.~~ The Department will make a Discretionary Loan ~~shall be made~~ only to a ~~Small Community which, in the judgment of the Department,~~small community that the Department determines cannot practicably comply with the requirements of subsection (1)(a), (b), (c) or (d) of this rule. Discretionary Loans ~~shall~~must comply with section (5) of this rule and otherwise be on terms approved by the Department. No new Discretionary Loans may be made at any time that the total principal amount of Discretionary Loans outstanding exceeds 5% of the total assets of the Fund.

(5) Interest Rates:
(a) Base ~~Rate.~~rate. The ~~interest rate for direct loans shall be based upon the average state and local government bond interest~~ base rate ~~for the last reporting date of the preceding quarter. This will be the "Base Rate"~~ used in computing the interest rates on all direct loans for ~~the~~ a quarter. ~~This Base Rate~~ will be based on the average of the ~~"State~~weekly state and local government bond interest rates for the preceding quarter. This base rate will be the "state and local bonds" entry reported in "Federal Statistical Release, H.15." This entry is quoted by the Federal Reserve from the "Bond Buyer Index" for general obligation bonds (20 years to maturity, mixed quality).
(b) ~~Facility~~ Planning Loans. The interest rate for ~~Facility Planning Loans shall~~planning loans will be equal to ~~one half~~50~~25~~% of the ~~Base Rate~~base rate.
(c) Local Community Loans. The interest rate for local community loans will be equal to 50% of the base rate.
(d) Urgent Repair Loans. The interest rate for urgent repair loans will be equal to the base rate.
(e) Discretionary Loans. The interest rate for ~~Discretionary Loans~~discretionary loans funded under section (4) of this rule ~~shall~~will be ~~a fixed rate~~ equal to ~~one half~~50% of the ~~Base Rate~~base rate.
(f) Proactive Design and Construction Loans (including qualifying wastewater reuse projects). Loans for proactive design or construction projects will be made at one of the following interest rates:
(A) 45% of the base rate (with a maximum repayment period of 10 years)
(B) 55% of the base rate (with a maximum repayment period of 20 years)
(~~d~~g) All Other Direct Loans. Except as provided in ~~section~~ OAR 340-54-0065(12) ~~of this rule~~, all other CWSRF Loans ~~shall~~ will be made at ~~a fixed interest rate equal to the greater~~ one of~~:~~ the following interest rates:
(A) ~~Two thirds~~25% of the ~~Base Rate; or~~ base rate (with a maximum repayment period of 5 years)

~~(B) The Base Rate minus 200 basis points.~~

~~(e~~(B) 55% of the base rate (with a maximum repayment period of 10 years)
(C) 60% of the base rate (with a maximum repayment period of 15 years)
(D) 65% of the base rate (with a maximum repayment period of 20 years)
(~~f~~gh) Sponsorship option. When the sponsorship option is implemented in conjunction with a construction loan, the resulting reduced interest rate is defined as a rate calculated

to approximate the semi-annual payment for a loan obtained to construct the sewage collection system or sewage treatment facility by itself, or a one percent interest rate, whichever is higher.
(hi) Bond proceeds ~~which~~that are matching funds for ~~Federal~~ federal capitalization grants may be used to fund direct loans at the interest rates listed in this section. This subsection will not be affected by any change in the source of repayment for matching bonds.

(6) Interest Accrual and ~~Compounding~~Payment Periods. Interest accrual begins at the time of each loan disbursement from the CWSRF to the Borrower. ~~Interest begins compounding on the first payment due date and thereafter compounds on each payment due date.~~ All outstanding accrued interest will be included with each loan repayment.

(7) Annual Fee~~Loan Fees.~~ The Borrower ~~shall~~ must pay the necessary and reasonable costs of administering the ~~Fund~~ fund through the ~~following two fees:~~

~~(a) Loan Processing Fee. A one time fee of 1.5% of the loan amount shall be charged on each loan.~~

~~(b) Loan Servicing~~ loan's Annual Fee. An annual fee of 0.05% of the unpaid balance ~~shall~~will be charged on each loan, except planning loans, during the repayment period. This fee is due and payable in addition to the ~~scheduled~~payments identified in the loan agreement's payment~~.~~ schedule.

(8) Review of interest rates and fees. The interest rates on CWSRF loans described in ~~section~~ OAR 340-054-0065(5) of this rule ~~shall~~will be effective for all loan agreements ~~signed~~ executed on or after ~~December 31, 1994. Thereafter, interest rates and fees may be adjusted by the EQC, if necessary, to assure compliance with ORS 468.440.~~ June 1, 2003.

(9) Commencement of Loan Repayment. Principal and interest repayments on loans ~~must~~ will begin within one year of the date of Initiation of Operations~~.~~ or project completion, as determined by the Department.

(10) Loan Term. All loans must be fully repaid within 20 years of the date of Initiation of Operations~~.~~ or project completion, in accordance with a schedule determined by the Department. Generally, the loan repayment term ~~shall~~will be no longer than the useful life of the assets financed and will be ~~determined by what the Borrower can afford. All facility~~based on the Borrower's ability to pay.
(a) The loan term for planning loans will ~~have a repayment period of~~not exceed five years.
(b) The loan term for local community loans will not exceed ten years.
(c) The loan term for urgent repair loans will not exceed ten years.
(d) The loan term for discretionary loans will not exceed twenty years.
(e) Loan terms for emergency loans, design loans or ~~less.~~construction loans are described in OAR 340-054-0065(5)(~~f~~g).

(f) Loan terms for proactive design loans or construction loans are described in OAR 340-054-0065(5)(f).
Prepayments will be allowed at any time without penalty on all CWSRF loans except as provided for in ~~paragraph~~ OAR 340-054-0065(12)~~(b)(E)~~ of this rule.

(11) Minor Variations in Loan Terms. The Department may ~~permit~~allow minor variations in the financial terms of loans described in this section ~~in order~~ to facilitate administration and repayment of loans.

(12) Leveraged Loans. The Department may:
(a) ~~May increase~~Increase the size of the fund by selling state bonds to be repaid and secured by CWSRF loan repayments, reserves and reserve interest earnings ~~if recommended by a steering committee representative of SRF Borrowers meeting at least annually.~~.
(b) Fund loans with bond proceeds as a part of a leveraged loan program ~~when done in compliance~~ with the following ~~con-straints:~~ terms and conditions:
(A) Selling bonds to leverage the CWSRF program will increase the Department's ability to provide loan assistance to help public agencies comply with the Department's mandates.

(B) Interest rates on leveraged loans ~~shall~~will be less than the interest rate paid by the state on bonds sold to fund the leveraged loans. Rates ~~shall~~will be fixed at ~~no more than~~65% of the ~~greater of:~~

~~(i) Two thirds of the bond interest~~base rate~~, or~~

~~(ii) The bond interest rate minus 200 basis points.~~.
(C) Loan fees for leveraged loans will not exceed ~~what would be~~ the amount charged for direct loans of the same size and repayment period.
(D) Costs of bond issuance and related transaction costs ~~shall~~will be paid out of bond proceeds to the extent permitted by law.
(E) Notwithstanding other provisions of this rule, the Department may make changes to the terms and conditions of leveraged CWSRF loans to make them ~~desirable to market bonds. However, to~~marketable. To the maximum extent practicable, the terms and conditions will be the same as for direct loans ~~made on a direct basis.~~.
~~(F) Specific details regarding the Department's leveraged SRF loan program will be provided in the Leveraged Loan Section of the SRF Procedures Manual.~~

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.433 & ORS 468.437
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95

~~340-054-0080~~
~~SRF Procedures Manual~~

~~The State Revolving Fund (SRF) Procedures Manual shall be developed as a supplement to the SRF Loan Program. All documents in the SRF Procedures Manual shall:~~
~~(1) Be guidance documents except those given authority by state or federal requirements.~~
~~(2) Be no more stringent than federal or state requirements without a compelling reason to be more stringent.~~
~~(3) Go through a formal review process to:~~
~~(a) Involve a document review committee which shall include representation from eligible SRF Applicants.~~
~~(b) Provide an appropriate review period as determined by the Department.~~
~~(4) Be developed with consideration for the importance of coordinating SRF Procedures with those of other funding and regulatory agencies.~~

~~Stat. Auth.: ORS 468.427, ORS 468.440, ORS 468.433~~
~~Stats. Implemented: ORS 468.433~~
~~Hist.: DEQ 3-1995, f. & cert. ef. 1-23-95~~

Wastewater Hardship Grant Program

340-054-0085

~~Purpose~~

~~These rules~~Wastewater Hardship Grant Program OAR 340-054-0087 through OAR 340-054-0097 implement the Wastewater Hardship Grant Program under ORS 468.423~~-~~ through 468.440, the Water Pollution Control Revolving Fund. Grants are only available when EPA allocates hardship grant funds to the Department.

When such funds are made available, wastewater hardship grants may be awarded to public agencies in combination with Clean Water State Revolving Fund loans for ~~wastewater~~ sewage treatment ~~system~~facility improvements in low income, high

unemployment, rural communities. Technical assistance is also an option of the program for eligible communities.

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.425
Hist.: DEQ 19-1997, f. & cert. ef. 9-22-97

340-054-0087
Definitions

As used in 340-054-0085 through 340-054-0097, the following definitions apply:

(1) ~~"CW SRF" means the Clean Water State Revolving Fund, a loan program for water pollution abatement projects administered by the Department under ORS 468.423 through 468.440 (the "Water Pollution Control Revolving Fund") and OAR 340-054-0005 through 340-054-0080.~~

~~(2) "~~Community" is a group of more than one household.
~~(3) "Department" means the Oregon Department of Environmental Quality.~~(2) "EPOC" means the Environmental Partnerships for Oregon Communities Program of the Department.
(3) "Rural" means a community that is not, in whole or in part, within the limits of a city with a population of more than 3,000.

(4) ~~"Director" means the Director of the Department of Environmental Quality or the Director's designee.~~

~~(5) "EPOC" means the Environmental Partnerships for Oregon Communities Program of the Department.~~

~~(6) "Rural" means a community which is not, in whole or in part, within the city limits of a city with a population of more than 3,000.~~

~~(7) "~~Self-help approach" means implementation of the program ~~developed by the Small Towns Environment Program at The Rensselaerville Institute, or a similar program that uses~~using a community's own ~~resources --~~human, material and financial ~~--~~resources to reduce the cost of the project.

Stat. Auth.: ORS 468-423 - ORS 468.440
Stats. Implemented: ORS 468.423
Hist.: DEQ 19-1997, f. & cert. ef. 9-22-97

340-054-0090
Applicant Eligibility

(1) ~~Applicants~~An applicant for ~~the~~ Wastewater Hardship ~~Grant Program~~Grants must ~~meet all of~~be a public agency that meets the following criteria:
(a) ~~Be~~Is eligible for a ~~Clean Water State Revolving Fund~~CWSRF loan.~~;~~
(b) ~~Apply for a Clean Water State Revolving Fund loan and be~~ Has a project on the program's project priority list ~~of eligible projects~~ in the current ~~Intended Use Plan for the Clean Water State Revolving Fund loan program.~~IUP;
(c) ~~Be~~Is a rural community with a population of 3,000 or less.~~;~~
(d) ~~Have~~Has a per capita income of the residents served by the project equal to or less than 80% of the national per capita income of the United States during the same period, based on the last census report or a more recent survey acceptable to the Department.~~;~~
(e) ~~Have~~Has an unemployment rate of one or more percentage points above the annual unemployment rate for the United States, based on the last census report or a more recent survey acceptable to the Department.~~;~~ and
(f) ~~Be~~Is without a centralized ~~wastewater~~sewer collection or treatment system, or need improvements to on-site ~~wastewater treatment~~ systems.

~~(2) Projects being considered for funding must either improve public health or reduce an environmental risk.~~

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.437
Hist.: DEQ 19-1997, f. & cert. ef. 9-22-97

340-054-0093
Uses of ~~the Fund~~ Grant Funds

(1) ~~The fund may be used for grants~~Grant funds may be awarded to ~~eligible~~ public agencies ~~for~~that meet the eligibility requirements in OAR 340-054-0090 for the following projects that either improve public health or reduce an environmental risk.
(a) Grant funds may be used for the planning, design and construction of publicly owned treatment works and alternative wastewater systems. Grant-funded project costs must be eligible costs of wastewater system projects under the ~~Clean Water State Revolving Fund~~CWSRF program.
~~(2) The fund~~(b) Grant funds may be used for training, technical assistance and education programs relating to the operation and maintenance of wastewater systems. ~~Technical assistance may only be provided to communities that meet all of the~~

~~eligibility requirements.~~ The primary purpose of technical seminars and other training must be to train eligible communities.

Stat. Auth.: ORS 468-423 - ORS 468.440
Stats. Implemented: ORS 468.429
Hist.: DEQ 19-1997, f. & cert. ef. 9-22-97

340-054-0095
Selection of Grantees

~~(1) The Director shall award grants to public agencies from among eligible applicants based on a staff report assessing the following factors.~~

(1) The Department will consider the following factors when awarding hardship grants.

(a) Total amount of grant funds available~~.~~;

(b) Number of eligible applicants and the cost of proposed projects~~.~~;

(c) Current economic status of the applicant community~~.~~;

(d) Availability of other funding for the project, and affordability of the project without Wastewater Hardship Grant funds~~.~~;

(e) Ability of the community to financially support the long-term operation, maintenance, and replacement costs of the project when completed~~.~~;

(f) Use of the ~~Self~~self-help approach to leverage the project ~~investment through local contributions and volunteer efforts.~~ ;

(g) Community support for and involvement in the project~~.~~;

(h) Technical assistance received from the Department through the Environmental Partnerships for Oregon Communities (EPOC) Program or through a comparable program that helps communities assess and prioritize multiple environmental mandates~~.~~;

(i) Relative ranking of the project on the ~~Clean Water State Revolving Fund~~ CWSRF Intended Use ~~Plan Priority List.~~Plan's project priority list;

(j) Water quality ~~impacts~~benefits of the project, including receiving ~~water~~water body health, applicable watershed plans, applicable Total Maximum Daily Load allocations, salmon recovery efforts in the area, threatened and endangered species habitat in the area, groundwater management areas, and other environmental concerns~~.~~; and

(k) Public health ~~impacts~~benefits of the project.

~~(2) The relative weight given each of the factors in paragraph (1) above and the final selection of the communities to receive Wastewater Hardship Grant funds shall be at the discretion of the Director.~~

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.437
Hist.: DEQ 19-1997, f. & cert. ef. 9-22-97

340-054-0097
Coordination with Clean Water State Revolving Fund Loans

(1) A ~~Clean Water State Revolving Fund~~CWSRF loan for at least 15% of the total grant and loan amount must be executed and loan funds disbursed in coordination with the grant moneys.

~~(2) The requirement under OAR 340-054-0025(1)(b)(C) for a Clean Water State Revolving Fund loan amount to be a minimum of $20,000 may be waived.~~

~~(3) The requirement under OAR 340-054-0025(4)(b) for Clean Water State Revolving Fund loan allocations to be made in rank order of the Intended Use Plan Priority List will be waived for each project selected for a Wastewater Hardship grant in an amount up to the amount of the grant award.~~(2) The Department may award Wastewater Hardship grants without following the ranking on the PPL described in OAR 340-054-0025(4).

(3) The Department will determine the grant and loan funding split for a project based upon the grant funds available and the amount of grant assistance necessary to make the CWSRF loan affordable.

(4) The ~~grant and~~CWSRF loan ~~funding split shall be determined by the Director based upon the grant funds available and the amount of grant assistance that would make the Clean Water State Revolving Fund loan affordable.~~

~~(5) Clean Water State Revolving Fund loan fees shall~~annual service fee will be assessed on only the loan portion of the grant and loan package. No ~~fees shall~~service fee will be assessed on the grant.

~~(6) Moneys~~(5) The Department will maintain moneys for the Wastewater Hardship Grant program ~~shall be maintained~~ in accounts separate from the Clean Water State Revolving Fund.

Stat. Auth.: ORS 468.423 - ORS 468.440
Stats. Implemented: ORS 468.433
Hist.: DEQ 19-1997, f. & cert. ef. 9-22-97

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 18

STATE AGENCY COORDINATION PROGRAM

340-018-0020

Definitions

As used in these rules:

(1) "Acknowledged Comprehensive Plan" means a city or county comprehensive land use plan that has been approved by the Land Conservation and Development Commission.

(2) "Affected Local Government" means a city or county government that has land use planning jurisdiction.

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

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

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

(6) "DLCD" means the Department of Land Conservation and Development.

(7) "Land Use Action" means a Department rule, program or activity which has been determined to affect land use as defined by OAR 660-030-0005.

(8) "Land Use Dispute" means a difference of opinion between the Department and local government as to the compatibility of a Department land use action with the provisions of an acknowledged comprehensive plan.

(9) "Local Government" means an incorporated city or county.

(10) "LUBA" means the Land Use Board of Appeals.

(11) "LUCS" means a land use compatibility statement.

(12) "NPDES" means a wastewater discharge permit issued in accordance with requirements and procedures of the National Pollutant Discharge Elimination System.

(13) "SAC Program Document" means the Department's State Agency Coordination Program document developed pursuant to ORS 197.180.

(14) "Statewide Goals" means Oregon's Statewide Planning Goals adopted by the Land Conservation and Development Commission pursuant to ORS 197.222.

(15) "TMDL" means Total Maximum Daily Load, ~~the sum of a wasteload allocation for point and nonpoint sources~~ as defined in OAR 340-042-0030(15).

(16) "WPCF" means a state Water Pollution Control Facilities Permit.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 197.180
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

340-018-0030

Applicability

The provisions of this rule, OAR 340-018-0000 through 340-018-0200 apply to Department programs and actions subsequently determined to have significant effects on land use pursuant to ORS 197.180 and OAR 660-030-0075. Department land use actions are identified below:

(1) Air Quality Division:

(a) Approval of Noise Impact Boundaries for Motor Racing Facilities;

(b) Approval of Airport Noise Abatement Program and Noise Impact Boundaries;

(c) Approval of Notice of Construction;

(d) Issuance of Air Contaminant Discharge Permit;

(e) Issuance of Indirect Source Construction Permit;

(f) Approval of Parking and Traffic Circulation Plan.

(g) Employee Commute Options

(2) Environmental Cleanup Division: Issuance of Environmental Hazard Notice.

(3) Hazardous and Solid Waste Division:

(a) Issuance of Solid Waste Disposal Permit;

(b) Issuance of Waste Tire Storage Permit; and

(c) Issuance of Hazardous Waste and PCB Storage, Treatment and Disposal Permit.

(4) Management Services Division: Approval of Pollution Control Bond Fund Application.

(5) Water Quality Division:

(a) Approval of Wastewater System and Facility Plans;

~~(b) Construction Grant program Application;~~

(eb) Approval of State Revolving Loan Application;

(dc) Issuance of On-site Sewer Permit;

(ed) Issuance of NPDES and WPCF Permits;

(fe) Development of Water Quality Wetland Protection Criteria;

(gf) Requirement of an Implementation Plan to Meet Restrictions for Waste Load Allocations on Water Quality Limited Waterways (TMDLS);

(hg) Certification of Water Quality Standards for Federal Permits, Licenses;

(ih) Development of Action Plan for Declared Ground Water Management Area;

(ji) Development of Nonpoint Source Management Plan;

(kj) Development of Estuary Plans;

(lk) Development of Oil Spill Regulations.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 197.180
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90; DEQ 14-1996, f. & cert. ef. 8-14-96; DEQ 5-1997(Temp), f. & cert. ef. 3-3-97

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 15

SURETY BONDS OR OTHER APPROVED EQUIVALENT SECURITY FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF SEWAGE COLLECTION, TREATMENT OR DISPOSAL FACILITIES

340-015-0005

Statement of Purpose

These rules, adopted pursuant to ORS 454.425, prescribe the requirements and procedures for the filing, maintenance, and termination of surety bonds or other approved equivalent security for the construction, operation, maintenance of sewage collection, treatment, or disposal facilities.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 454.425
Hist.: DEQ 82, f. 1-30-75, ef. 2-25-75

340-015-0010

Definitions

As used in these rules, unless the context requires otherwise:

(1) "Alternative Sewage Disposal System" has the same meaning as in ORS 454.605(2).

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

(3) "Construct" or "Construction" includes installation, repair, and major modification or addition.

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

~~(5) "NPDES Waste Discharge Permit" means a waste discharge permit issued in accordance with requirements and procedures of the National Pollutant Discharge Elimination System required by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) and of OAR 340-045-0005 through 340-045-0065.~~

~~(6) "Person" means any person as defined in ORS 174.100 but does not include, unless the context specifies otherwise, any public officer acting in his official capacity or any political subdivision, as defined in ORS 237.410.~~

~~(7) "Subsurface Sewage Disposal System" has the same meaning as in ORS 454.605(14).~~

~~Stat. Auth.: ORS 468.020~~
~~Stats. Implemented: ORS 454.425~~
~~Hist.: DEQ 82, f. 1-30-75, ef. 2-25-75; DEQ 99(Temp), f. & ef. 10-1-75; DEQ 102, f. & ef. 12-18-75~~

~~340-015-0015~~

~~Surety Bond Required~~

~~(1) Every person proposing to construct facilities for the collection, treatment, or disposal of sewage shall file with the Department a surety bond, or other approved equivalent security, of a sum determined under OAR 340-015-0025 of these rules.~~

~~(2) The following shall be exempt from the provision of section (1) of this rule:~~

~~(a) Any subsurface, alternative, or other sewage disposal system or systems designed or used to treat or dispose of a sewage flow of not more than 5,000 gallons (18.925 cubic meters) per day;~~

~~(b) Any subsurface, alternative, or other sewage disposal system or systems, regardless of size, used to serve any food handling establishment, mobile home or recreation park, tourist and travelers facilities, or other development operated by a public entity or under a valid license or certificate of sanitation issued by the State Health Division or Department of Commerce;~~

~~(c) Any sewage collection, treatment, or disposal facility owned and operated by a state or federal agency, city, county, county service district, sanitary authority, sanitary district, or other public body, including, but not limited to, a school district or port district;~~

~~(d) Any sewage collection, treatment, or disposal facilities of an industrial plant or commercial development having a valid NPDES Waste Discharge Permit or Water Pollution Control Facilities Permit issued by the Department pursuant to ORS 468.740~~

~~provided such facilities serve only employees or customers but no permanent residences.~~

~~Stat. Auth.: ORS 468.020~~
~~Stats. Implemented: ORS 454.425~~
~~Hist.: DEQ 82, f. 1-30-75, ef. 2-25-75; DEQ 99(Temp) f. & ef. 10-1-75; DEQ 102, f. & ef. 12-18-75~~

~~340-015-0020~~

~~Type of Security~~

~~The type of security to be furnished pursuant to ORS 454.425 may be:~~

~~(1) Perpetual surety bond executed in favor of the State of Oregon on a form approved by the Attorney General and provided by the Department, such bond to be issued by a Surety Company licensed by the Insurance Commissioner of Oregon;~~

~~(2) Insured savings account assigned to the Department with interest earned by such account made payable to the assignor; or~~

~~(3) When it is not possible to acquire a perpetual surety bond or insured savings account for the total amount of security as required by OAR 340-015-0025, a combination of insured savings account and a non-perpetual surety bond may be approved if the following conditions are met:~~

~~(a) Evidence must be provided that a perpetual surety bond cannot be acquired. This evidence shall consist of denial letters from at least two surety companies.~~

~~(b) A minimum insured savings account for at least 20 percent of the total required security must be provided. The remainder of the required security may be covered by a renewable, non-perpetual bond, on a form provided by the Department.~~

~~(c) The surety bond shall not be cancelable during construction of the facility and one full year of operation.~~

~~(d) Each year thereafter the insured savings account shall be increased by at least 20 percent of the total required security until such time as the savings account is equal to the total required security. The renewable bond may be decreased equivalent to the savings account increase until it is no longer required.~~

~~(e) At all times the combination of the savings account and the surety bond must be equal to the total amount of security required by OAR 340-015-0025, unless specifically approved otherwise by the Commission.~~

~~(4) Other security in such form and amount as specifically approved by the Commission.~~

~~Stat. Auth.: ORS 468.020~~
~~Stats. Implemented: ORS 454.425~~
~~Hist.: DEQ 82, f. 1-30-75, ef. 2-25-75; DEQ 4-1984, f. & ef. 3-7-84~~

~~340-015-0025~~

~~Amount of Bond or Other Security~~

~~The amount of the surety bond or other approved equivalent security filed with the Department shall be equal to $1.00 per gallon per day of installed sewage treatment or disposal capacity with the minimum sum not to be less than $2,000, or shall be of some other sum specifically approved by the Commission, except that in no case shall the maximum sum exceed $25,000.~~

~~Stat. Auth.: ORS 468.020~~
~~Stats. Implemented: ORS 454.425~~
~~Hist.: DEQ 82, f. 1-30-75, ef. 2-25-75~~

~~340-015-0030~~

~~Transfer of Facilities~~

~~The ownership of the sewage disposal facilities shall not be transferred without the prior written approval of the Department and the surety bond or other approved equivalent security filed pursuant to ORS 454.425 shall remain in full force and effect notwithstanding any subsequent ownership transfer without such prior written approval.~~

~~Stat. Auth.: ORS 468.020~~
~~Stats. Implemented: ORS 454.425~~
~~Hist.: DEQ 82, f. 1-30-75, ef. 2-25-75~~

~~340-015-0035~~

~~Maintenance and Termination of Security~~

~~The surety bond or other approved equivalent security filed pursuant to ORS 454.425 shall remain in force and effect until such time as a state or federal agency, city, county, county service district, sanitary authority, sanitary district, or other public~~

~~body acquires ownership or assumes full liability and responsibility for operation and maintenance of the sewage disposal facilities with the prior written approval of the Department pursuant to OAR 340-015-0030.~~

~~Stat. Auth.: ORS 468.020~~
~~Stats. Implemented: ORS 454.425~~
~~Hist.: DEQ 82, f. 1-30-75, ef. 2-25-75~~

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 53

MUNICIPAL WASTE WATER TREATMENT WORKS

CONSTRUCTION GRANTS PROGRAM

Development and Management of the Statewide Sewerage Works Construction Grants Priority List

340-053-0005

Purpose

The purpose of these rules is to prescribe procedures and priority criteria to be used by the Department for development and management of a statewide priority list of sewerage works construction projects potentially eligible for financial assistance from U.S. Environmental Protection Agency's Municipal Waste Water Treatment Works Construction Grants Program, Section 201, Public Law 95-217.

Stat. Auth.: ORS 468
Stats. Implemented: ORS 468.035(1)(h)
Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80

340-053-0010

Definitions

As used in these regulations unless otherwise required by context:

(1) "Department" means Department of Environmental Quality. Department actions shall be taken by the Director as defined herein.

(2) "Commission" means Environmental Quality Commission.

~~(3) "Director" means Director of the Department of Environmental Quality or his authorized representatives.~~

~~(4) "Municipality" means any county, city, special service district, or other governmental entity having authority to dispose of sewage, industrial waste, or other wastes, any Indian tribe or authorized Indian Tribal Organization or any combination of two or more of the foregoing.~~

~~(5) "EPA" means U.S. Environmental Protection Agency.~~

~~(6) "Treatment Works" means any facility for the purpose of treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.~~

~~(7) "Grant" means financial assistance from the U.S. Environmental Protection Agency Municipal Waste Water Treatment Works Construction Grants Programs as authorized by Section 201, Public Law 95-217 and subsequent amendments.~~

~~(8) "Advance" means an advance of funds for a Step 1 or Step 2 project. The advance is equal to the estimated allowance which is expected to be included in a future Step 3 grant award. An advance is made from funds granted to Oregon by EPA; it is not a direct grant by EPA to a municipality.~~

~~(9) "Project" means a potentially fundable entry on the priority list consisting of Step 3 or Step 2 plus three treatment works or components or segments of treatment works as further described in OAR 340-053-0015(5).~~

~~(10) "Treatment Works Component" means a portion of an operable treatment works described in an approved facility plan including but not limited to:~~

~~(a) Sewage treatment plant;~~

~~(b) Interceptors;~~

~~(c) Sludge disposal or management;~~

~~(d) Rehabilitation;~~

~~(e) Other identified facilities;~~

~~(f) A treatment works component may but need not result in an operable treatment works.~~

~~(11) "Treatment Works Segment" means a portion of a treatment works component which can be identified in a contract or discrete subitem of a contract and may but need not result in operable treatment works.~~

~~(12) "Priority List" means all projects in the state potentially eligible for grants listed in rank order.~~

~~(13) "Fundable Portion of the List" means those projects on the priority list which are planned for a grant during the current funding year. The fundable portion of the list shall not exceed the total funds expected to be available during the current funding year less applicable reserves.~~

~~(14) "Facilities Planning" means necessary plans and studies which directly relate to the construction of treatment works. Facilities planning will demonstrate the need for the proposed facilities and that they are cost-effective and environmentally acceptable.~~

~~(15) "Step 1 Project" means any project for development of a facilities plan for treatment works.~~

~~(16) "Step 2 Project" means any project for engineering design of all or a portion of treatment works.~~

~~(17) "Step 3 Project" means any project for construction or rehabilitation of all or a portion of treatment works.~~

~~(18) "Eligible Project Costs" means those costs which could be eligible for a grant according to EPA regulations and certified by the Department and awarded by EPA. These costs may include an estimated allowance for a Step 1 and/or Step 2 project.~~

~~(19) "Innovative Technology" means treatment works utilizing conventional or alternative technology not fully proven under conditions contemplated but offering cost or energy savings or other advantages as recognized by federal regulations.~~

~~(20) "Alternative Technology" means treatment work or components or segments thereof which reclaim or reuse water, recycle waste water constituents, eliminate discharge of pollutants, or recover energy.~~

~~(21) "Alternative System for Small Communities" means treatment works for municipalities or portions of municipalities having a population of less than 3,500 and utilizing alternative technology as described above.~~

~~(22) "Funding Year" means a federal fiscal year commencing October 1st and ending September 30th.~~

~~(23) "Current Funding Year" means the funding year for which the priority list is adopted.~~

~~(24) "State Certification" means assurance by the Depart ment that the project is acceptable to the state and that funds are available from the state's allocation to make a grant award.~~

~~(25) "Small Community" means, for the purposes of an advance of allowance for Step 1 or Step 2, a municipality having less than 25,000 population.~~

~~Stat. Auth.: ORS 468~~
~~Stats. Implemented: ORS 468.035(1)(h)~~
~~Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 15-1982, f. & ef. 7-27-82~~

~~340-053-0015~~

~~Priority List Development~~

~~The Department will develop a final statewide priority list of projects potentially eligible for a grant:~~

~~(1) The final statewide priority list shall include:~~

~~(a) Those projects from the approved FY-89 construction grants priority list; and~~

~~(b) Those projects where a community has requested, before June 30, 1989, placement on the final construction grants priority list and the project is determined to be eligible for funding by the Department.~~

~~(2) The statewide priority list will be developed utilizing the following procedures:~~

~~(a) The Department will determine and maintain sufficient information concerning potential projects to develop the statewide priority list;~~

~~(b) The Department will develop a proposed final priority list utilizing criteria and procedures set forth in this section;~~

~~(c) The Department shall distribute the proposed priority list to all interested parties for review. A public hearing will be held concerning the proposed priority list. Public notice and a draft priority list will be provided to all interested parties at least 30 days prior to the hearing. Interested parties include, but are not limited to, the following:~~

~~(A) Municipalities having projects on the priority list;~~

~~(B) Engineering consultants involved in projects on the priority list;~~

~~(C) Interested state and federal agencies;~~

~~(D) Any other persons who have requested to be on the mailing list.~~

~~(d) The Department shall allow until July 17, 1989 for review and public comments to be submitted. During the comment period any interested party can request the Department to:~~

~~(A) Include a problem not identified on the proposed list; or~~

~~(B) Reevaluate a problem on the proposed priority list.~~

~~(e) The Department shall consider all requests submitted during the comment period and at the public hearing before establishing the official statewide final construction grants priority list;~~

~~(f) The Department shall distribute the official final construction grants priority list to all interested parties;~~

~~(g) If an affected party does not agree with the Department's determination on the final priority list, then the interested party may within 15 days of mailing the final list file an appeal to present their case to the Director. The appeal will be informal and will not be subject to contested case hearing procedures.~~

~~(3)(a) The priority list will consist of a listing of all projects in the state potentially eligible for grants listed in ranking order based on criteria set forth in Table 1 of this rule. Table 1 of this rule describes five categories used for scoring purposes as follows:~~

~~(A) Project Class;~~

~~(B) Regulatory Emphasis;~~

~~(C) Stream Segment Rank;~~

~~(D) Population Emphasis; and~~

~~(E) Type of Treatment Component or Components.~~

~~(b) The score used in ranking a project consists of the project class identified by letter code plus the sum of the points from the remaining four catego ies. Projects are ranked by the letter code of the project class with "A" being highest and within the project class by total points from highest to lowest.~~

~~(4) The priority list entry for each project will include the following:~~

~~(a) Priority rank consisting of the project's sequential rank on the priority list. The project having the highest priority is ranked number one (1);~~

~~(b) EPA project identification number;~~

~~(c) Name and type of municipality;~~

~~(d) Description of project component;~~

~~(e) Project step;~~

~~(f) Grant application number;~~

~~(g) Ready to proceed date consisting of the expected date when the project application will be complete and ready for certification by the Department. For the current funding year the ready to proceed date will be based upon planning and design schedules submitted by potential applicants. For later funding years, the ready to proceed date may be based upon information available to the Department;~~

~~(h) Target certification date consisting of the earliest estimated date on which the project could be certified based on readiness to proceed and on the Department's estimate of federal grant funds expected to be available. The target certification date for the current funding year will be assigned based on a ready to proceed date. In the event actual funds made available differ from the Department's estimate when the list was adopted the Department may modify this date without public hearing to reflect actual funds available and revised future funding estimates;~~

~~(i) Estimated grant amount based on that portion of project cost which is potentially eligible for a grant as set forth in OAR 340-053-0020;~~

~~(j) The priority point score used in ranking the projects.~~

~~(5) The Department will determine the scope of work to be included in each project prior to its placement on the priority list. Such scope of work may include the following:~~

~~(a) Design (Step 2) and construction of complete treatment works, (Step 2 plus 3);~~

~~(b) Construction of one or more complete waste treatment systems; or~~

~~(c) Construction of one or more treatment works segments of a treatment works component.~~

~~(6)(a) When determining the treatment works components or segments to be included in a single project, the Department will consider:~~

~~(A) The specific treatment works components or segments that will be ready to proceed;~~

~~(B) The operational dependency of other components or segments on the components or segment being considered; and~~

~~(C) The cost of the components or segments relative to allowable project grant. In no case will the project included on the priority list, as defined by OAR 340-053-0010(9) exceed ten million dollars.~~

~~(b) The Department shall have final discretion relative to scope of work or treatment works components or segments which constitute a project.~~

~~(7) Components or segment not included in a project for a particular funding year will be assigned a target certification date in a subsequent funding year. Within constraints of available and anticipated funds, projects will be scheduled so as to establish a rate of progress for construction while assuming a timely and equitable obligation of funds statewide.~~

~~(8) A project may consist of an amendment to a previously funded project which would change the scope of work significantly and thus constitute a new project.~~

~~(9) The Director may delete a project from the priority list if:~~

~~(a) It has received full funding;~~

~~(b) It is no longer entitled to funding under the approved system; and~~

~~(c) EPA has determined that the project is not needed to comply with the enforceable requirements of the Clean Water Act or the project is otherwise ineligible.~~

~~(10) If the priority assessment of a project within a regional 208 area wide water treatment management planning area conflicts with the priority list, the priority list has precedence. The Director will, upon request from a 208 planning agency, meet to discuss the project.~~

~~[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]~~

~~[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]~~

~~Stat. Auth.: ORS 468~~
~~Stats. Implemented: ORS 468.035(1)(h)~~
~~Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 28-1981(Temp), f. & ef. 10-19-81; DEQ 15-1982, f. & ef. 7-27-82; DEQ 14-1983, f. & ef. 8-26-83; DEQ 10-1989, f. & cert. ef. 6-9-89~~

~~340-053-0020~~

~~Eligible Costs and Limitations~~

~~For each project included on the priority list, the Department will estimate the costs potentially eligible for a grant and the estimated federal share.~~

~~(1) Where state certification requirements differ from EPA eligibility requirements, the more restrictive shall apply.~~

~~(2) Except as provided for in section (3) of this rule, eligible costs shall generally include Steps 1, 2 and 3 costs related to an eligible treatment works, treatment works components or treatment works segments as defined in federal regulations.~~

~~(3) The following will not be eligible for state certification:~~

~~(a) The cost of collection systems except for those which serve an area where a mandatory health hazard annexation is required pursuant to ORS 222.850 to 222.915 or where elimination of waste disposal wells is required by OAR 340-044-0019 to 340-044-0044. In either case, a Step 1 grant for the project must have been certified prior to September 30, 1979;~~

~~(b) Step 2 or 3 costs associated with advanced treatment components;~~

~~(c) The cost of treatment components not considered by the Department to be cost effective and environmentally sound.~~

~~(4) The estimated grant amount shall be based on a percentage of the estimated eligible cost. The percentage is 75 percent of the estimated eligible cost until FY 1985, when it is reduced to 55 percent of the estimated eligible cost for new projects. The Commission may reduce the percentage to 50 percent as allowed by federal law or regulation. The Department shall also examine other alternatives for reducing the extent of grant participation in individual projects for possible tation beginning in FY 1982. The intent is to spread available funds to address more of the high priority needs in the state.~~

~~(5) Projects placed on the priority list or rerated a Letter Class A, B or C after the approval of the FY 89 priority list, by the Commission on September 9, 1988, shall not have total eligible project costs of more than $1,500,000 at grant award. The Department will consider inter-related but segmented components a single project for purposes of determining whether total eligible project costs are more than $1,500,000.~~

~~Stat. Auth.: ORS 468~~
~~Stats. Implemented: ORS 468.035(1)(h)~~
~~Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 15-1982, f. & ef. 7-27-82; DEQ 10-1989, f. & cert. ef. 6-9-89~~

~~340-053-0025~~

~~Establishment of Special Reserves~~

~~From the total funds allocated to the state the following reserves will be established for each funding year:~~

~~(1) Reserve for grant increases of five percent.~~

~~(2) Reserve for Steps 1 and 2 grant advances of up to ten percent. This reserve shall not exceed the amount estimated to provide advances for eligible small communities projected to apply for a Step 3 or Step 2 plus 3 grant.~~

~~(3) Reserve for alternative components of projects for small communities utilizing alternative systems of not less than four percent nor more than 7 1/2 percent.~~

~~(4) Reserve for additional funding of projects involving innovative or alternative technology of not less than four percent nor more than 7 1/2 percent.~~

~~(5) Reserve for water quality management planning of not more than one percent of the state's allotment nor less than $100,000.~~

~~(6) Reserve for state management assistance of up to four percent of the total funds authorized for the state's allotment.~~

~~(7) Reserve for capitalization of state revolving fund in accordance with the following:~~

~~(a) FY 87 - up to 50 percent;~~

~~(b) FY 88 - up to 75 percent;~~

~~(c) FY 89 90 - not less than 50 percent and up to 100 percent;~~

~~(d) FY 91 94 - 100 percent.~~

~~(8) Reserve for nonpoint source management planning of not more than one percent of the state's allotment nor less than $100,000.~~

~~(9) The balance of the state's allocation will be the general allotment.~~

~~(10) The Director may at his discretion utilize funds recovered from prior year allotments for the purpose of:~~

~~(a) Grant increases;~~

~~(b) Conventional and alternative components of small community projects utilizing alternative systems;~~

~~(c) Additional innovative or alternative technology; or~~

~~(d) The general allotment.~~

~~Stat. Auth.: ORS 468.020~~
~~Stats. Implemented: ORS 468.035(1)(h)~~
~~Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 15-1982, f . & ef. 7-27-82 ; DEQ 14-1983, f. & ef. 8-26-83 ; DEQ 3-1987, f. & ef. 2-20-87 ; DEQ 16-1987, f. & ef. 8-12-87 ; DEQ 10-1989, f. & cert. Ef. 6-9-89 ; DEQ 19-1990, f. & cert. Ef. 6-7-90~~

~~340-053-0027~~

~~Use of Discretionary Authority~~

~~The Director may at the Director's discretion utilize up to 20 percent of the annual allotment for replacement or major rehabilitation of existing sewer systems provided:~~

~~(1) The project is on the fundable portion of the state's priority list.~~

~~(2) The project meets the enforceable requirements of the Clean Water Act.~~

~~(3) The project's facilities plan must show major sewer replacement or rehabilitation will reduce Infiltration and Inflow (I/I) and minimize or eliminate surface or underground water pollution. In addition, the project must be more cost effective than other alternatives for solving the identified water quality problems.~~

~~Stat. Auth.: ORS 468~~
~~Stats. Implemented: ORS 468.035(1)(h)~~
~~Hist.: DEQ 20-1984, f. & ef. 11-8-84; DEQ 16-1987, f. & ef. 8-12-87; DEQ 24-1988, f. & cert. ef. 9-15-88; DEQ 10-1989, f. & cert. ef. 6-9-89~~

~~340-053-0030~~

~~Priority List Management~~

~~The Department will select projects to be funded from the priority list as follows:~~

~~(1) After EPA acceptance of the priority list, allocation of funds to the state and determination of the funds available in each of the reserves, final determination of the fundable portion of the priority list will be made. The fundable portion of the list will include the following:~~

~~(a) Those projects with demonstrated water quality problems as denoted by Letter Class A, B or C on the final construction grants priority list; and~~

~~(b) Sufficient projects selected according to priority rank to utilize that portion of the funds available for grants from the state's general allotment.~~

~~(2) Projects included on the priority list but not included within the fundable portion of the list will constitute the planning portion of the list. Projects on the planning portion will only be offered grant funding, in rank order, in the event there were insufficient State Revolving Fund (SRF) projects to allocate the state's federal allotment and as allowed by federal law.~~

~~Stat. Auth.: ORS 468~~
~~Stats. Implemented: ORS 468.035(1)(h)~~
~~Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 15-1982, f. & ef. 7-27-82; DEQ 10-1989, f. & cert. ef. 6-9-89~~

~~340-053-0035~~

~~Priority List Modification and Bypass Procedure~~

~~(1) The Department shall not modify or add projects to the priority list after the Department declares the final construction grants priority list official and EPA has accepted the list, except as noted under OAR 340-053-0015(9).~~

~~(2) The Department will initiate bypass procedures when any project on the fundable portion of the list is not ready to proceed:~~

~~(a) The determination will be based on quarterly progress reports;~~

~~(b) Written notice will be provided to the applicant of intent to bypass the project;~~

~~(c) If a project is bypassed, it will maintain its priority point rating and remain eligible for grant funding until either the project is funded or September 30, 1991 when federal sewerage construction grant funds are no longer available;~~

~~(d) Department failure to certify a project not on the fundable portion of the list or for which funds are otherwise unavailable will not constitute a "bypass".~~

~~Stat. Auth.: ORS 468~~
~~Stats. Implemented: ORS 468.035(1)(h)~~
~~Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 15-1982, f. & ef. 7-27-82; DEQ 14-1983, f. & ef. 8-26-83; DEQ 10-1989, f. & cert. ef. 6-9-89~~

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

Prepared by: Larry McAllister Date: March 4, 2003

Comment period

The public comment period opened on February 1, 2003, and closed at 5:00 p.m. on February 28, 2003. DEQ held public hearings on February 18 at 7:00 p.m. in Portland, on February 19 at 1:00 p.m. in Salem and at 7:00 p.m. in Eugene, and on February 20 at 7:00 p.m. in Bend. No one attended any of these hearings.

Two organizations submitted written comments: the Umatilla County Soil & Water Conservation District, and EPA's Region 10 Office.

Organization of comments and responses

Summaries of individual comments and the Department's responses are provided below. The persons who provided each comment are referenced by number in parenthesis. A list of commenters and their reference numbers follows the summary of comments and responses. All comments addressed proposed amendments to OAR 340-054.

Summary of Comments and Agency Responses	
Comment 1 CWSRF Financial Terms	CWSRF program should provide more flexibility regarding the "reserve" fund that is required of borrowers. (1)
Response	OAR 340-054-0065 requires borrowers to maintain a reserve account dedicated for CWSRF payments in an amount equal to the borrower's average annual debt service for the CWSRF loan. The CWSRF reserve account requirement has often been a financial concern with past borrowers. This recommendation will make the CWSRF loan more attractive without significantly affecting the security of loans. The proposed rule has been revised to require a reserve account equal to <u>one half</u> of the borrowers average annual debt service for the CWSRF loan.

Comment 2 Project Ranking Criteria	While clearly articulating the project ranking criteria in rule allows all potential borrowers the opportunity to view the ranking criteria, it also eliminates the Department's flexibility to adjust the ranking criteria as the State's water quality priorities change. Removing the project ranking criteria from OAR 340-054-0025(4) would allow the

	Department the flexibility to make minor modifications to the ranking criteria, as needed, without having to go through an extensive rule-change process. (2)
Response	Adopting the program's ranking criteria as rules ensures that the Department complies with the Administrative Procedures Act, ORS 183.310(8), and ranks projects consistently. The resulting "inflexibility" serves the program by eliminating any prospect of a single applicant attempting to negotiate the importance of a criterion. We agree that the Department's water quality priorities will continue to evolve and will update the criteria through rule changes as appropriate. No changes were made to the proposed rule.

Comment 3 Program Reserves	We strongly recommend that the Department release all CWSRF reserves as of the end of the third quarter of the State's fiscal year (March 31) rather than May 31 as proposed in the rules. (2)
Response	Within the proposed rules, the Department sets aside funds in three reserves and a general fund. These reserves include an expedited loan reserve of $2M, a planning reserve of $3M and a small community reserve equaling 15% of the total CWSRF funds. The purpose of these reserves is to ensure that money is available for specific types of projects. Historically, not all funds set aside in reserves are loaned out. At some point late in the program year, unused funds in the reserves are reallocated for use in the program's general fund. Releasing these reserve funds earlier increases the opportunity for those funds to be loaned out to other projects. The proposed rules have been revised to allow the release of the funds in the small community and planning reserves on March 1 of each program year. March 1 was chosen over March 31 because it coincides with the timing of other functions within the program. The release date for the expedited reserve funds remains May 31 to ensure that emergency and urgent repair funds remain in reserve late in the program year.

Comment 4 Environmental Review	We recommend OAR 340-054-0035(1)(c) be changed to have the environmental review prepared in accordance with the Department's EPA-approved alternative state environmental review process. (2)
Response	In 1999, EPA approved Oregon's state environmental review process (SERP) as an alternative to the federal environmental review requirements of the National Environmental Policy Act. Oregon's SERP is incorporated and defined in the CWSRF Procedures Manual. The proposed rule, OAR 340-054-0035(1)(c), currently calls for a project's

	environmental review to be prepared in accordance with the requirements of the Procedures Manual. The Department agrees that specifying the SERP review process as suggested is more accurate and better clarifies the environmental review required. The proposed rules have been revised accordingly.

Comment 5 Program interest rates	The proposed language sets the interest rates in the rule and allows those rates to vary based only on the municipal bond market. The only apparent way for the Department to alter that structure and the interest rate would be to revise the rules. The Department might want to consider including language similar to that used in other states that would allow the Department to lower the rate for a funding cycle if the Department determines that the rate change will not adversely affect the funds' ability to meet the perpetuity requirement of the Clean Water Act. This would lend the program flexibility to see how the new interest rate structure functions and ensure it meets the Department's goals. (2)
Response	The proposed revisions to the program's interest rates in OAR 340-054-0065(5) are significant and are expected to result in an increased demand for loans. They provide flexibility by adjusting interest rates quarterly based on fluctuations of the bond buyers market. The Commission establishes interest rates in the rules to comply with the Administrative Procedures Act, ORS 183.310(8). No changes were made to the proposed rule.

Comment 6 Program interest rates	One of the primary purposes of the proposed interest rate structure seems to be to encourage borrowers to agree to shorter loan repayment periods so the fund "revolves" faster. We believe that the rate differentials proposed (below) may be too small to encourage borrowers to agree to shorter repayments periods. 5 year repayment loan – 2.40% 10 year repayment loan –2.63% 15 year repayment loan –2.87% 20 year repayment loan –3.12% We suggest that, at a minimum, a 1% differential in rates between the 10 and 20 year loans. (2)

Response	The intention of providing optional interest rates was primarily to provide borrowers with some flexibility to choose the most appropriate interest rate. The proposed rule spreads the interest rate for four repayment periods between the lower and upper limits of 50% and 65% of the program's base rate (the municipal bond market rate). The spacing between the interest rates for each repayment period will fluctuate with the market rate. With the current low market interest rates, the spread is more compressed than it will be if interest rates rebound. No changes were made to the proposed rule.

Comment 7 Program interest rates	We would like to encourage the Department to consider dropping the interest rate on a five-year loan below one percent. (2)
Response	The current loan structure sets the 5-year loans at 50% of the municipal market rate. The Department agrees that lowering this interest rate would enhance the program. The proposed rule has been revised to set the interest rate on both 5-year loans at 25% of the municipal market rate, which will result in an interest rate of 1.2% under current market conditions.

List of Commenters and Reference Numbers				
Reference Number	***Name***	***Organization***	***Address***	***Date on comments***
1	Mr. Marty King	Umatilla Soil & Water Conservation District	Umatilla, OR	Feb 25, 2003
2	Ms. Michelle Tucker	U.S.EPA, Region 10 (Advisory Comm. member)	Seattle, WA	Feb 28, 2003

Attachment C

Oregon Department of Environmental Quality
2002 Clean Water State Revolving Fund

Advisory Committee Members

MEMBERS:	*ORGANIZATION*
Chris Hathaway	Lower Columbia River Estuary Partnership
John Killin	Western Advocates (rep. special districts)
Bev Kopperud	Umatilla Soil & Water Conservation District
Ted Kyle	Clackamas County Water Environment Services
Bob Nipper	City of Jefferson
Fred Ringer	Farm Service Agency
Pete Test	Oregon Farm Bureau
Willie Tiffany	Oregon League of Cities
Michelle Tucker	EPA, Region X
Anita Winkler	Oregon Water Resources Congress

Internal Rule Making Team

Keith Andersen	DEQ, Western Region, WQ Manager
Laura Arcidiacono	DEQ, HQ, Management Services
Bob Baumgartner	DEQ, NW Region, WQ Manager
Mark Charles	DEQ, HQ, CWSRF Manager
Peggy Halferty	DEQ, HQ, Community Solutions
Janet Hillock	OECDD
Jaime Isaza	DEQ, Western Region, CWSRF Staff
Larry McAllister	DEQ, HQ CWSRF Staff
Dick Nichols	DEQ, Eastern Region, WQ Manager
Richard Santner	DEQ, NW Region, CWSRF Staff
Rick Watters	DEQ, HQ CWSRF Staff
Jennifer Weaver	DEQ, HQ , WQ Staff
Don Yon	DEQ, HQ, Nonpoint Source Staff

Attachment D
Presiding Officer's Reports on Public Hearings

State of Oregon
Department of Environmental Quality **Memorandum**

March 5, 2003

To: Larry McAllister
CWSRF Coordinator, PPPA Section

From: Loretta Pickerell
Presiding Officer

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Clean Water Act State Revolving Fund Rules, OAR 340-054 Clean Water State Revolving Fund Rules
Hearing Date and Time: February 18, 2003 7:00p.m.
Hearing Location: DEQ Headquarters Office
Room 3A
Portland, Oregon 97204

The Department convened this public hearing on the proposed rules, but no attendees appeared between 7:00 and 8:00p.m. The hearing was concluded at 8:00p.m.

State of Oregon
Department of Environmental Quality **Memorandum**

March 4, 2003

To: Larry McAllister
CWSRF Coordinator, PPPA Section

From: Mark Charles
Presiding Officer

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: February 19, 2003 1:00p.m.
Hearing Location: DEQ Office
750 Front Street
Salem, Oregon 97301

Title of Proposal: Rulemaking Proposal – Amendment of OAR 340-054
Clean Water State Revolving Fund Rules

The public hearing on the proposed rules regarding the Clean Water State Revolving Fund was convened at 1:00pm on February 19, 2003. Although DEQ personnel, including Mark Charles and Larry McAllister, attended the session, no members of the public appeared between approximately 1:00p.m. and 2:00p.m. The hearing was concluded at 2:00p.m.

State of Oregon
Department of Environmental Quality **Memorandum**

March 4, 2003

To: Larry McAllister
CWSRF Coordinator, PPPA Section
From: Mark Charles
Presiding Officer

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: February 19, 2003 7:00p.m.
Hearing Location: Eugene Office
1102 Lincoln Street
Eugene, Oregon 97401

Title of Proposal: Rulemaking Proposal – Amendment of OAR 340-054
Clean Water State Revolving Fund Rules

The public hearing on the proposed rules regarding the Clean Water State Revolving Fund was convened at 7:00pm on February 19, 2003. Although DEQ personnel, including Mark Charles and Larry McAllister, attended the session, no members of the public appeared between approximately 7:00p.m. and 8:00p.m. The hearing was concluded at 8:00p.m.

State of Oregon
Department of Environmental Quality **Memorandum**

March 4, 2003

To: Larry McAllister
CWSRF Coordinator, PPPA Section
From: Mark Charles
Presiding Officer

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: February 20, 2003 7:00p.m.

Hearing Location: DEQ Office
2146 NE Fourth Avenue
Bend, Oregon 97701

Title of Proposal: Rulemaking Proposal – Amendment of OAR 340-054
Clean Water State Revolving Fund Rules

The public hearing on the proposed rules regarding the Clean Water State Revolving Fund was convened at 7:00pm on February 20, 2003. Although DEQ personnel, including Mark Charles and Larry McAllister, attended the session, no members of the public appeared between approximately 7:00p.m. and 8:00p.m. The hearing was concluded at 8:00p.m.

Attachment E

Relationship to Federal Requirement Questions

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

Chapter 340, Division 054 - CWSRF

Yes there are federal requirements in the federal Water Pollution Control Act, (33 USC § 1251 to 1387), subchapter VI §601 to 607 and implementing regulations in 40 CFR Part 35.

Chapter 340, Division 015 – Surety Bond requirements

No applicable federal requirements

Chapter 340, Division 053 – Construction Grants program

No applicable federal requirements

Chapter 340, Division 018 – State Agency Coordination program

Amends no applicable federal requirements.

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

Chapter 340, Division 054 - CWSRF

The federal requirements cited above relate to administrative procedures not performance or technology based standards.

Chapter 340, Divisions 015, 018 and 053

No applicable federal requirements

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?

Chapter 340, Division 054 - CWSRF

The applicable federal requirements address issues of concern in Oregon, although information from Oregon was not specifically considered in the federal process that established the requirements. Federal requirements direct how states must administer the Clean Water State Revolving Fund and define what types of projects are eligible for funding.

Chapter 340, Divisions 015, 018 and 053
No applicable federal requirements

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

Chapter 340, Division 054 - CWSRF
The proposed amendments clarify the eligibility of nonpoint source projects and the application requirements for those projects; establish expedited funding for communities in need of emergency repairs to wastewater facilities; and eliminate a loan administration fee to make the funds less costly for communities. These changes provide clearer direction and an incentive to public agencies considering funding through this program. This program and the proposed rule revisions support the efforts of public agencies to comply with federal and state regulations.

Chapter 340, Divisions 015, 018 and 053
Not applicable. No requirements are being proposed for these divisions

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

No

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

Chapter 340, Division 054 - CWSRF
The proposed rules refine a program that provides loans that may help communities accommodate uncertainty and future growth.

Chapter 340, Divisions 015, 018 and 053
Not applicable. No requirements are being proposed for these divisions.

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

Chapter 340, Division 054 - CWSRF

The rule revisions include new procedures and criteria to ensure that all proposed projects submitted to the Department for possible funding are evaluated and pursued equitably, including projects addressing nonpoint source pollution.

Chapter 340, Divisions 015, 018 and 053

Not applicable. No requirements are being proposed for these divisions.

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

Chapter 340, Division 054 - CWSRF

No. The proposed rules increase a community's access and options to financing water pollution control projects through the Clean Water State Revolving Fund.

Chapter 340, Divisions 015, 018 and 053

Not applicable

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

Chapter 340, Divisions 015, 018, 053 and 054

No. The proposed rule revisions do not include different procedural, reporting or monitoring requirements.

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

Not applicable

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

Chapter 340, Division 054 - CWSRF

Yes. The proposed rules make more types of loans available to communities to address water pollution.

- The local community loan allows public agencies to directly address nonpoint source pollution.
- The Sponsorship Option allows very cost effective financing of water restoration projects.

The proposed rules eliminate the loan origination fee and provide more flexibility with loan interest rates and payback periods. The proposed ranking criteria emphasize the environmental benefits of each submitted project.

Chapter 340, Divisions 015, 018 and 053
Not applicable. No requirements are being proposed for these divisions.

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal
For
Amendments and Repeals to OAR Chapter 340, Division 054
Repeal of OAR Chapter 340, Division 015
Repeal of OAR Chapter 340, Division 053
Amendments to OAR Chapter 340, Division 018

STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

This form accompanies a Notice of Proposed Rulemaking

Title of Proposed Rulemaking:	Division 054, Clean Water State Revolving Fund Rule (CWSRF) amendments Division 015, Surety Bonds repeal Division 053, Construction Grants Program for Municipal Wastewater Treatment Works repeal Division 018, State Agency Coordination Program amendments
Need for the Rule(s)	The proposed changes to the CWSRF rules will enable the Department and communities to use the CWSRF more effectively to address priority water pollution problems. Most importantly, the amendments expand the loan program beyond a historic focus on wastewater treatment facilities, to make loans available for controlling nonpoint sources of pollution and addressing other local needs. Additional flexibility in the financial terms of the loans also make the program more affordable and attractive to public agencies. The proposed repeal Surety Bonds (Division 015) and the Construction Grants program (Division 053) rules will eliminate outdated administrative rules. The amendment to the State Agency Coordination (Division 018) removes a reference to Division 053, to be repealed, and updates the definition "Total Maximum Daily Load (TMDL)" to conform to new TMDL rules.
Documents Relied Upon for Rulemaking	No specific documents, reports or studies were relied upon in developing these rules.
Overview	**Division 054 Clean Water State Revolving Fund** The Department administers the Clean Water State Revolving Fund (CWSRF) through Division 054 rules. This loan program was established in the l987 amendments to the federal Clean Water Act . Funded annually by grants from the U.S. Environmental Protection Agency and state matching funds, the loan continues as a primary source of funding for projects that protect or improve the quality of Oregon's waters. The CWSRF loan is offered to public agencies (cities, counties, special districts, etc.) to assist them in addressing both point source and nonpoint sources of water pollution. Eligible projects range from major rehabilitation of municipal wastewater treatment facilities to stream bank restoration. The current program offers loans for planning, design and construction of these projects at below-market interest rates. The Department's loan continues to be attractive to Oregon communities seeking financial assistance to address water quality concerns. In FY 2003, the Department had approximately $60 million available in

funds for projects. Demand continues to exceed the level of funds available. In early 2003, the program received 40 new loan applications requesting more than $150 million.

The proposed rule revisions are the first administrative changes in the program since 1995. The primary purpose of these revisions is to expand the use of the CWSRF loan program beyond its historical focus on municipal wastewater facilities to address projects controlling nonpoint sources of pollution as well.

The proposed revisions also allow funding for emergency and urgent repairs of treatment facilities, and community loans for nonpoint source projects; reduce loan fees; add more flexibility to loan terms and conditions and simplify the loan process for applicants.

In addition to encouraging funding for nonpoint source control, revisions to the criteria used to prioritize proposed projects focus on the benefits of each project to ground and surface waters. These criteria should be more effective in evaluating the unique approaches of both point and nonpoint pollution control projects.

New administrative procedures expedite loans for emergency and urgent repair of wastewater treatment plants to prevent significant environmental degradation of a water body or a threat to public health.

Modifications to the program's fee structure should encourage use of the program. Currently the program includes two fees - an origination fee and an annual service fee. Both fees support the Department's administration of the program. Proposed rule revisions will eliminate the origination fee and limit the service fee to specific types of loans.

Proposed revisions modify the interest rates and loan repayment periods for a majority of the program's loans. The proposed changes comply with statutory requirements that limit interest rates of the program to a range between the current market rate and zero interest, require loans be repaid within twenty years, and require a perpetual source of funding. The proposed revisions establish the following range of interest rates and related repayment periods.

	Current	Proposed
Planning loans	50% base rate,* 5 yr term	25% base rate, 5 yr term
Local Community loans	(not available)	50% base rate, 10 yr term
Construction loans	67% base rate, up to 20 yr term	65% base rate, 20 yr term 60% base rate, 15 yr term 55% base rate, 10 yr term 25% base rate, 5 yr term
Expedited loans		
Emergency loans	(not available)	same as Construction loans
Urgent Repair loans	(not available)	Base Rate, 10 yr term

*base rate is the state and local government bond interest rates--the "bond buyer index" as reported quarterly by the Federal Reserve (current base rate is 4.80%).

In addition to those described above, proposed changes will improve both the loan process for the public and the internal procedures used in administering the program. These include streamlining the application process, allowing applications to be submitted year-round, simplifying and clarifying the program's requirements, and updating rule language.

Division 015 Surety Bonds

This division was adopted in 1975 to require security bonds or equivalent financial security during the construction, operation, and maintenance of certain wastewater treatment facilities to assure compliance with the Department's construction requirements. Repeal of this division is proposed because the bonds are no longer required, and in 1997, the legislature repealed ORS 454.425 which authorized surety bonds.

Division 053 Construction Grants Program

This division was established in 1980 to define how the former Construction Grants Program would prioritize projects for funding. Repeal of this division is proposed because the Construction Grants Program no longer exists. The U.S. Environmental Protection Agency last authorized grants through this

	program in 1990, and the federal assistance for construction of these types of projects is now provided through the CWSRF program. **Division 018 State Agency Coordination Program** The changes proposed for Division 018 remove outdated references to construction grants, proposed for repeal in this rulemaking, and update the definition of "Total Maximum Daily Load (TMDL)" to conform to the definition in new TMDL rules.
General public	**Division 054 Clean Water State Revolving Fund** Because the CWSRF program provides loans to public agencies, the proposed rule changes will not directly affect Oregon's private sector. Proposed changes in funding criteria to encourage nonpoint source controls and expansion of projects eligible for CWSRF loans will better support the needs of public agencies, and indirectly, the private sector. The CWSRF loans to public agencies make water pollution control less expensive. The proposed rule revisions (regarding interest rates, payment periods and fees) will make future CWSRF loans even more affordable. To the extent public agencies pass those cost savings along through lower fees or taxes or higher quality services, the private sector will indirectly benefit. Proposed changes making loans available to local communities for local loan programs for residential on-site system improvements may benefit some individuals. Providing more attractive, widely used loans will also improve the quality of Oregon's waters. No costs to the general public have been identified. **Division 015 Surety Bonds, and Division 053 Construction Grants** Because these divisions relate only to inactive programs, their repeal will have no impact on the general public. **Division 018 State Agency Coordination Program** Because this amendment only removes a reference to an inactive program and modifies a definition, there will be no impact to the general public.
Small Business	**Division 054 Clean Water State Revolving Fund** Potential fiscal and economic impacts on small businesses are similar to those discussed above for the general public. Businesses are not eligible to participate in the CWSRF loan program, but businesses pay wastewater costs through sewer user fees and contribute to the costs of other water pollution control through other fees or taxes. CWSRF loans to public agencies make water pollution control less expensive. The proposed rule revisions (regarding interest rates, payment periods and fees) will make future CWSRF loans even more affordable. To the extent public agencies pass those cost savings along through lower fees or taxes or higher quality services, businesses will indirectly benefit. No costs to small businesses have been identified. The following calculation shows the impact on user fees comparing a community participating in a CWSRF loan under both the current rule and the proposed rule: Example: A community with a population of 15,000 (consisting of 6,000 users), borrows $2 million through the CWSRF program over 20 years to upgrade their sewer treatment facility. Scenario 1 Current: 1.5% loan origination fee; 0.5% annual fee; 3.14 % interest rate; monthly user fee – $2.02 Proposed: no loan origination fee; 0.5% annual fee; 3.06% interest rate; monthly user fee - $1.99 Another option created by this rule revision would allow communities borrowing funds for a shorter period to qualify for a reduced interest rate. In a scenario similar to that above, this option would provide the following results:

	Scenario 2 Current: 20 year term; 1.5% loan origination fee; 0.5% annual service fee; 3.14% interest rate; monthly user fee -$2.02 Proposed: 10 year term; no origination fee; 0.5% annual service fee; 2.59% interest rate; monthly user fee – $3.26 Although, the monthly user fee costs are considerably higher in this second scenario, the total cost to the community over the life of the loan will be 18% less, and after 10 years the user fee to all users would theoretically be eliminated. **Division 015 Surety Bonds, and Division 053 Construction Grants** Because these divisions relate only to inactive programs, their repeal will have no impact on small businesses. **Division 018 State Agency Coordination Program** Because this amendment only removes a reference to an inactive program and modifies a definition, there will be no impact on small businesses.
Large Business	**Division 054 Clean Water State Revolving Fund** Potential fiscal and economic impacts on large businesses are the same as those described above for small businesses. No costs to large businesses have been identified. **Division 015 Surety Bonds, and Division 053 Construction Grants** Because these divisions relate only to inactive programs, their repeal will have no impact on large businesses. **Division 018 State Agency Coordination Program** Because this amendment only removes a reference to an inactive program and modifies a definition, there will be no impact on large businesses.
Local Government	**Division 054 Clean Water State Revolving Fund** Local governments are one of the primary recipients of the CWSRF loans. The proposed changes in fees, interest rates and loan terms all make the CWSRF loans more attractive and should benefit local governments financing water pollution controls through the CWSRF program. The proposed changes in ranking to encourage projects controlling nonpoint sources and new loan categories, such as the Local Community Loans, will provide public agencies better access to the CWSRF program to address local water pollution control needs. Indirectly, the mitigation of these local water quality problems may have secondary benefits to the local economy. An example is the elimination of septic system water pollution that threatens commercial shellfish production. Proposed revisions also encourage more loans to nonpoint source projects. Because the costs of nonpoint source projects is generally much less than the cost of larger, point source projects, this new emphasis is not expected to significantly reduce the level of funding available for traditional municipal treatment facility projects. No costs to local governments have been identified. **Division 015 Surety Bonds, and Division 053 Construction Grants** Because these divisions relate only to inactive programs, their repeal will have no on local governments.

	Division 018 State Agency Coordination Program Because this amendment only removes a reference to an inactive program and modifies a definition, there will be no impact on local governments.
State Agencies	**Division 054 Clean Water State Revolving Fund** Although the CWSRF loans are available to other state agencies, the Department has not signed loans with other agencies. The revisions in this rule should not affect other agencies fiscally or economically. The revisions will not alter any arrangements or requirements between the Department and other state agencies. **Division 015 Surety Bonds, and Division 053 Construction Grants** Because these divisions relate only to inactive programs, their repeal will have no impact on other state agencies. **Division 018 State Agency Coordination Program** Because this amendment only removes a reference to an inactive program and modifies a definition, there will be no impact on state agencies.
DEQ	**Division 054 Clean Water State Revolving Fund** The Department will revise procedures and documents to incorporate these proposed changes. No new revenue will be derived from these revisions. These rules will be implemented with the staff and funding currently budgeted to the Department. The revisions related to the financial components of the loan program have been examined regarding their impact on the perpetuity of the revolving fund. Discussion during the development of the rulemaking focused on the balance between serving Oregon's wastewater needs today and ensuring the viability of the fund for future needs. The reduction in interest rates will diminish the growth of the revolving fund, but not to an unacceptable level. **Division 015 Surety Bonds, and Division 053 Construction Grants** Because these divisions relate only to inactive programs, their repeal will have no impact on the Department **Division 018 State Agency Coordination Program** Because this amendment only removes a reference to an inactive program and modifies a definition, there will be no impact on the Department.
Other agencies	**Division 054 Clean Water State Revolving Fund** The rule revisions are not expected to have any fiscal impacts on other agencies associated with the CWSRF program. Both the Oregon Economic and Community Development Department and the federal Rural Utilities offices provide similar types of financial assistance for wastewater pollution control in Oregon. The revisions to the rules may encourage more CWSRF applications and reduce the demand on these two agencies. Although that is possible, it would not be a significant impact on these two agencies. The Department does not anticipate that these revisions will have a significant fiscal impact on U.S. EPA's Region 10, which oversees Oregon's CWSRF program. The primary impact would involve reporting and evaluation. **Division 015 Surety Bonds, and Division 053 Construction Grants** Because these divisions relate only to inactive programs, their repeal should have no impact on these other agencies. **Division 018 State Agency Coordination Program** Because this amendment only removes a reference to an inactive program and modifies a definition, there will be no impact on other agencies.

Assumptions	This fiscal and economic analysis is based on the review of the proposed revisions to Divisions 054, 015, 018 and 053, and the impact of those changes on existing state laws and administrative rules protecting and restoring Oregon's water quality. An overall assumption is that improvements to the CWSRF loan program will result in a more cost effective program.
Housing Costs	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.
Administrative Rule Advisory Committee	The rulemaking process for Division 054 included the participation of an Advisory Committee consisting of a wide range of stakeholders. The committee included representation from Clackamas County Water Environment Services, Lower Columbia River Estuary Partnership, Western Advocates, Farm Service Agency, City of Jefferson, Oregon Farm Bureau, USEPA-Region 10, Oregon Water Resources Congress, Oregon League of Cities and the Umatilla Soil and Water Conservation District. The committee met on a regular basis over a six month period beginning in April, 2002. The committee worked in conjunction with the Department's rulemaking team providing feedback and expertise to the process. The Advisory Committee's input in this rulemaking was substantial and appreciated.

Larry McAllister — Prepared by
Larry McAllister — Printed name
April 9 2003 — Date

Approved by DEQ Budget Office
Holly Schroeder — Printed name
9 April 2003 — Date

Attachment G

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal

Clean Water State Revolving Fund Program Rule Amendments,
Repeal of Requirements of Surety Bonds for Construction of Wastewater Facilities
Repeal of Procedures for the Management of the Construction Grants Priority List
and
Amendments to the State Agency Coordination Program

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

A. This proposed rule revision would amend Oregon Administrative Rule (OAR), Chapter 34, Division 054 governing the state revolving loan program, which provides loans to public agencies for water pollution control projects. The proposed amendments will:

- Make new projects eligible for CWSRF funding, including community loans for residential on-site system improvements, emergency and urgent repair of wastewater treatment facilities, and security improvements for those facilities;
- Revise the criteria used in ranking proposed projects to better address both point and nonpoint source pollution;
- Increase flexibility in the terms and interest rates for loans;
- Simplify and increase the flexibility of the application process;
- Reduce the administrative fee for loans; and
- Reduce requirements for planning loans.

B. This proposed rule revision will repeal OAR Chapter 340, Division 015 in its entirety. The division requires surety bonds to be submitted as financial security during the construction, operation and maintenance of specific types of wastewater facilities. The Department has not required this financial security for several years. The statute that authorized this division, ORS 454.425, was repealed by the legislature in 1997.

C. This proposed rule revision will also repeal OAR Chapter 340, Division 053 in its entirety. The division established procedures for developing a priority list of projects for the Construction Grants program. The Construction Grants program no longer exists and this division of rules in no longer used.

D. This proposed rule revision will amend OAR Chapter 340, Division 018 by removing Construction Grants Program applications as a program affecting land use. Specifically, OAR 340-018-0030(5)(b) will be removed from the rule. The rule revision will also amend the definition of "TMDL" in OAR-340-018-0020(15).

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 following land use action is affected: Approval of State Revolving Loan Application, OAR 340-018-0030(5)(c)

The repeal of Division 053 necessitates removal of Construction Grants Program applications as an activity that affects land use as currently listed in OAR 340-018-0030(5)(b).

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

The application for a CWSRF loan is considered an action affecting land use. Building wastewater facilities and purchasing land for specific reasons are among the uses eligible for funding. These activities and the Department' s ability to fund these activities are dependent on acquiring local planning approval. A Land Use Compatibility Statement, signed by the local land use authority, is still required from the Applicant prior to the Department' s final approval of the CWSRF loan agreement being signed.

c. If no, apply the following criteria to the proposed rules.
Not applicable

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

Larry McKibben — Water Quality Division

Intergovernmental Coordinator

4-9-03 — Date

State of Oregon
Department of Environmental Quality Memorandum

Date: April 17, 2003

To: Environmental Quality Commission

From: Stephanie Hallock, Director S. Hallock

Subject: Agenda Item L, Temporary Rule Amending the Definition of "Underground Storage Tank"
May 9, 2003 EQC Meeting

Proposed Action Adoption of a temporary rule to amend the definition of an underground storage tank (UST) and related terms to clarify when tanks and related equipment are subject to regulation as "underground storage tanks."

Background Fuel tanks are regulated in one of two ways: the Oregon State Fire Marshal regulates above ground storage tanks and the Department of Environmental Quality (Department) regulates underground storage tanks. In 1988, the Environmental Protection Agency (EPA), and subsequently the Department, adopted statutes and rules concerning underground storage tanks to ensure that tanks were installed and operated to prevent and detect releases into the environment. The definition of an "underground storage tank" was intended to allow the Department to regulate those tanks that would be subject to corrosion and that could leak directly into the environment undetected.

On January 30, 2003, the Environmental Quality Commission (Commission) heard an appeal of an enforcement case concerning a tank that was placed on the ground surface and partially covered with soil and pea gravel. The Commission upheld the Hearing Officer's decision that the definition of "underground storage tank" was ambiguous as to whether the type of tank addressed in this case would be considered an "underground storage tank" under the Department's rules. The Commission's decision raised questions about the clarity of the definition of "underground storage tank" and about whether certain tanks partially covered by "earthen" materials are "underground storage tanks" for purposes of the Department's rules. The Commission requested that the Department address the issue.

Key Issues

- The Department has statutory authority and responsibility to regulate USTs in order to ensure their proper operation and to prevent leaks into the environment.
- Based on the Hearing Officer's decision as upheld by the Commission, it is possible that certain tanks may not be regulated by either the State Fire Marshal or the Department. Such tanks may lack proper safeguards and may create environmental problems. The proposed temporary rule would clarify Department authority over tanks that are subject to corrosion because they are in contact with earthen materials and could leak directly into the environment undetected.
- With the current interpretation of UST rules, state regulations regarding USTs are less stringent than federal rules. This could cause EPA to withhold State Delegated Program Approval of the state's UST program. The proposed temporary rule is necessary to make Oregon's regulations no less stringent than federal regulations for underground storage tanks and thus to allow EPA to approve the state's UST program.

Key Issues (cont.)

- The federal definition of "underground storage tank" includes tanks that are partially covered by "earthen" materials. This was not included in the state definition of "underground storage tank." The amendments proposed in Attachment A would make DEQ's definition of an "underground storage tank" consistent with the federal rule by including in the definition tanks that are partially covered by "earthen" materials. The Department has used the Federal Register Vol. 53, No. 185, Friday, September 23, 1988, p. 37116 as guidance in this area.[1]

- Upon the Commission's approval of the temporary rule, the Department will engage an advisory committee to begin development of a permanent rule regarding UST regulation. During the permanent rulemaking effort, the Department will consult with the State Fire Marshal and stakeholders to develop rules that clearly distinguish between an underground storage tank and an above ground storage tank.

Department Recommendation

The Department recommends that the Commission approve the proposed temporary rule amendments to revise the definition of "underground storage tank" and related terms as described in Attachment A.

Attachments

Attachment A: OAR 340-150-0010 with revisions
Attachment B: Statement Of Need and Justification for Temporary Rulemaking

Available Upon Request

- 40 CFR 280.12 (definitions)
- Federal Register Vol. 53, No. 185, Friday, September 23, 1988, p. 37116(d)

Approved:

Section: _____
Alan D. Kiphut, Manager, Environmental Cleanup & Tanks

Division: _____
Dick Pedersen, Administrator, Land Quality Division

Report Prepared By: Laurie McCulloch, UST Policy Coordinator
Phone: (503) 229-5769

[1] This section of the preamble to the federal UST regulations discusses use of the terms "beneath the surface of the ground" and "earthen materials" and describes the background information used in defining an underground storage tank.

340-150-0010
Definitions

For the purpose of this division and as applicable for OAR chapter 340, divisions 151 and 160, the following definitions apply:

(1) "*Ancillary equipment*" means any devices including, but not limited to, connected piping, fittings, flanges, valves and pumps used to distribute, meter or control the flow of regulated substances to and from an UST.

(2) "*As built drawing*" or "*as built*" means a line drawing to-scale that accurately illustrates the location of USTs, underground piping and all related equipment in relation to buildings or other structures at an UST facility and provides thorough construction documentation. Other terms used in lieu of "*as built*" are "record drawing" or "measured drawing", which indicate that the drawing is for an existing structure or UST system.

(3) "*Cathodic protection*" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, an UST system can be cathodically protected through the application of either galvanic anodes or impressed current.

(4) "*Cathodic protection tester*" means a person who demonstrates an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged underground metal piping and tank equipment.

(5) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

(6) "*Change-in-service*" means to transfer an UST system containing a regulated substance from regulated status (i.e., subject to the requirements of this division) to nonregulated status while the UST remains in its original location.

(7) "*Closure*" means to permanently decommission an UST (by removal, filling in-place with an inert material or change-in-service) or to temporarily remove an UST from operation.

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

(9) "*Compatible*" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST.

(10) "*Confirmed release*" means:

(a) <u>For petroleum</u>. Contamination observed in soil or groundwater as a sheen, stain or petroleum odor or petroleum contamination detected in soil by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996) or detected in groundwater by any appropriate analytical method specified in OAR 340-122-0218; or

(b) <u>For hazardous substances other than petroleum</u>. Contamination observed in soil or groundwater as a sheen, stain or identifiable odor or as detected in soil, surface water or groundwater by any appropriate analytical method specified in "Test Methods for Evaluating Solid Waste," SW-846, 3rd Edition, Revised May 1997 (U.S. Environmental Protection Agency EPA).

(11) "*Connected piping*" means all piping located beneath the ~~surface of the~~ ground *surface or otherwise covered by earthen materials,* including valves, elbows, joints, flanges and flexible connectors attached to an UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

(12) "*Corrective action*" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "*Corrective action*" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(13) "*Corrosion expert*" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged underground metal piping systems and metal tanks. Corrosion experts must be accredited or certified by NACE (National Association of Corrosion Engineers) and licensed by the department under OAR chapter 340, division 160.

(14) "*Decommission*" means temporary or permanent closure, including temporary or permanent removal from operation, filling in-place, removal from the ground or change-in-service to a nonregulated status.

(15) "*Deferred*" means an UST system that may be subject to state or federal regulation at some point in the future.

(16) "*De minimis*" means an insignificant amount of regulated substance (e.g., meets the definition of "*empty*") or is less than a reportable quantity as defined under CERCLA.

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

(18) "*Dielectric material*" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate an UST system from the surrounding soils. Dielectric bushings are used to electrically isolate portions of an UST system (e.g., the tank from underground piping).

(19) "*Dispenser*" means a device that is used for the delivery of a regulated substance from an UST (e.g., fuel from an UST to a motor vehicle). The term includes associated metering, delivery mechanisms and other equipment contained inside a housing unit for the dispenser.

(20) "*Distributor*" means a person who is engaged in the business of selling regulated substances to an owner or permittee of an UST.

(21) "*Electrical equipment*" means equipment that is *located* beneath the ~~surface of the~~ ground *surface or otherwise covered by earthen materials* and contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

(22) "*Emergency generator*" means an engine that uses fuel (regulated substance) to produce auxiliary electrical or mechanical energy for use in emergencies.

(23) "*Empty*" means that all materials have been removed using commonly employed practices so that no more than one inch (2.5 centimeters) of residue or 0.3 percent by weight of the total capacity of the tank remain in the UST system.

(24) "*Excavation zone*" means an area containing an UST system and backfill material bounded by the ground surface, walls and floor of the pit and trenches into which the UST system is placed at the time of installation.

(25) "*Farm tank*" means a tank located on a tract of land devoted to the production of crops or raising animals, including fish and associated residences and improvements. A farm tank must be located on the farm property. "*Farm*" includes fish hatcheries, rangeland and nurseries with growing operations.

(26) "*Fee*" means a fixed charge or service charge.

(27) "*Field constructed tank*" means an UST that is constructed at the location it will be installed rather than factory-built.

(28) "*Field penalty*" means a civil penalty amount assessed in a field citation.

(29) "*Flow-through process tank*" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials before their introduction into the production process or for the storage of finished products or by-products from the production process.

(30) "*Free product*" means a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

(31) "*Gathering lines*" means any pipeline, equipment, facility or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(32) "*General permit*" means a permit issued for a category of UST activities (e.g., installing, decommissioning or operating an UST) in lieu of individual permits developed for each UST facility.

(33) "*Hazardous substance UST system*" means an UST system that contains a hazardous substance defined in section 101(14) of CERCLA or any mixture of such substances and petroleum and which is not a petroleum UST system (but not including any substance regulated as a hazardous waste under Subtitle C of the SWDA).

(34) "*Heating oil*" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers or furnaces.

(35) "*Heating oil tank*" means a tank used for storing heating oil for consumptive use on the premises where stored (i.e., the tank is located on the same property where the stored heating oil is used).

(36) "*Hydraulic lift tank*" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators and other similar devices.

(37) "*Install*" or "*installation*" means the physical construction of an UST system, including, but not limited to, activities such as excavating, backfilling, testing, placement of the tank, underground piping, release detection devices, corrosion protection systems, spill and overfill devices and any associated administrative activities such as notifications, record keeping and record submissions.

(38) "*Interstitial*" means the space between the primary and secondary containment systems (i.e., the space between the inner and outer walls of a tank or pipe).

(39) "*Investigation*" means monitoring, surveying, testing, sampling, analyzing or other information gathering techniques.

(40) "*Leak*" has the same meaning as "*release*" as defined by OAR 340-150-0010(63).

(41) "*Liquid traps*" means sumps, well cellars and other traps used in association with oil and gas production, gathering and extraction operations (including gas production plants), for the purpose of collecting oil, water and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream or may collect and separate liquids from a gas stream.

(42) "*Maintenance*" means the normal operational upkeep to prevent an UST system from releasing a regulated substance or to ensure that a release is detected.

(43) "*Modification*" means to change an UST system currently in use by the installation of new UST system components. This includes, but is not limited to, the addition of corrosion protection to a previously lined tank, installation of new underground piping or replacement of existing underground piping, changing the primary release detection method to one of the methods listed in OAR 340-150-0450 through 340-150-0470 or adding secondary containment. "*Modification*" does not include those activities defined as "*repair*" or "*replacement*".

(44) "*Motor fuel*" means petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel or any grade of gasohol and is typically used in the operation of a motor engine.

(45) "*Multichamber*" or "*multicompartment*" means an UST that contains two or more chambers or compartments created by the presence of an interior wall so that two or more regulated substances can be stored at the same time within a single tank shell. Even if the same regulated substance is stored in all chambers or compartments, the UST is a multichambered or multicompartmented UST for the purpose of these rules.

(46) "*Native soil*" means the soil outside of the immediate boundaries of the pit that was originally excavated for the purpose of installing an UST.

(47) "*OAR*" means Oregon Administrative Rule.

(48) "*Operate*" or "*operation*" means depositing a regulated substance into an UST, storing a regulated substance in or dispensing a regulated substance from an UST and such other activities, including, but not limited to, performing release detection, maintaining corrosion protection, preventing spills and overfills, investigating and confirming suspected releases, conducting maintenance, additions, modifications, replacements and repairs of equipment, maintaining a financial responsibility mechanism and keeping and submitting records on the UST and underground pipings' performance.

(49) "*Operational life*" means the period beginning when installation of the UST system has commenced until the time the UST system is permanently closed.

(50) "*ORS*" means Oregon Revised Statute.

(51) "*Owner*" means a person who currently owns an UST or owned an UST during the tank's operational life, including:

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

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

(52) "*Permittee*" means the owner or person designated by the owner, who is in control of or has responsibility for daily UST system operation and maintenance, financial responsibility and UST operator training requirements under a general permit pursuant to OAR 340-150-0160 through 340-150-0168.

(53) "*Person*" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity or the federal government or any agency of the federal government.

(54) "*Petroleum*" or "*oil*" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse and crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils, diesel fuels and any other petroleum-related product or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute. "*Petroleum*" does not include any substance identified as a hazardous waste under 40 CFR Part 261.

(55) "*Petroleum UST system*" means an UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils.

(56) "*Pipe*" or "*piping*" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

(57) "*Pipeline facilities*" (including gathering lines) means new and existing pipe rights-of-way and any associated equipment, facilities or buildings.

(58) "*Probability of detection*" means the likelihood, expressed as a percentage, that a test method will correctly identify a release from an UST system.

(59) "*Probability of false alarm*" means the likelihood, expressed as a percentage, that a test method will incorrectly identify an UST system as leaking when a release is not occurring.

(60) "*Property owner*" means the legal owner of the real property on which an UST is located.

(61) "*Registration certificate*" means a document issued by the department that authorizes a person to install, operate or decommission an UST system under a general permit pursuant to OAR 340-150-0160 through 340-150-0168.

(62) "*Regulated substance*" includes, but is not limited to:

(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C of the SWDA);

(b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and

(c) Petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil though processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils.

(63) "*Release*" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an UST into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(64) "*Release detection*" or "*leak detection*" means determining whether a release of a regulated substance has occurred from the UST system into the environment, into the interstitial space between the UST system and its secondary barrier or into a secondary containment unit or sump around the UST.

(65) "*Repair*" means to restore any portion of an UST system that has failed, but does not include the activities defined by "*modification*" or "*replacement*".

(66) "*Replacement*" means to effect a change in any part of an UST system by exchanging one unit for a like or similar unit, but does not include activities defined as "*repair*" or "*modification*".

(67) "*Residential tank*" means a tank located on property used primarily for single family dwelling purposes.

(68) "*Septic tank*" means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(69) "*Service provider*" means a person licensed by the department to offer to perform or perform UST services on USTs regulated under OAR chapter 340, division 150.

(70) "*Storm water*" or "*wastewater collection system*" means piping, pumps, conduits and any other equipment necessary to collect and transport the flow of surface water run off resulting from precipitation or domestic, commercial or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

(71) "*Supervisor*" means an individual licensed by the department to direct and oversee specific UST services.

(72) "*Surface impoundment*" means a natural topographic depression, human-made excavation or diked area formed primarily of earthen materials (although it may be lined with human-made materials) that is not an injection well.

(73) "*Suspected release*" has the same meaning as described in OAR 340-150-0500.

(74) "*Tank*" means a stationary device designed to contain an accumulation of regulated substances and is constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

(75) "*Tank tightness testing*" means a method used to determine if an UST is leaking and is used to supplement another release detection method (such as inventory control or manual tank gauging) and to verify a suspected release when another method indicates a failure.

(76) "*Temporary closure*" means a halt in operation activities of an UST system for a limited time where the UST system will be brought back into operation or permanently decommissioned at some future date. For example, an UST may be temporarily closed due to corrective action activities on site, abandonment by the owner and permittee, bankruptcy proceedings, failure to maintain a financial responsibility mechanism, sale in progress or for any other reason that a permittee may choose to stop operating the UST. The term applies to an UST system that meets the definition of "*temporary closure*" whether or not the department has issued a registration certificate for this activity to the owner and permittee.

(77) "*Testing*" means applying a method to determine the integrity or operational status of any part of an UST system.

(78) "*Third party evaluation*" means an evaluation of a method or system including, but not limited to, a release detection system or tank integrity assessment method that is conducted by an independent organization. The evaluation includes certification that the method evaluated will operate as designed and includes information about any limitations of the method. As used in this definition, "independent" means that the organization that conducted the evaluation may not be owned, controlled by or associated with any client, industry organization or any other institution with a financial interest in the method or system evaluated.

(79) "*Underground area*" means an underground room, such as a basement, cellar, shaft or vault that provides enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(80) "*Underground piping*" means connected piping that is located beneath the ~~surface of the~~ ground *surface or otherwise covered by earthen materials.*

(81) "*Underground storage tank*" or "*UST*" means any one or combination of tanks (including connected underground pipes) that is used to contain an accumulation of regulated substances and the volume of which (including the volume of connected underground pipes) is 10 percent or more beneath the ~~surface of the~~ ground *surface or otherwise covered by earthen materials.*

(82) "*UST facility*" means the real property on which an UST is installed or will be installed. An UST facility encompasses all contiguous real property owned by the same property owner that is associated with the operation of the UST system.

(83) "*UST services*" includes without limitation, installation, decommissioning, modification, testing (e.g., cathodic protection and tank tightness) and inspection of UST systems.

(84) "*UST system*" means an underground storage tank, underground piping, underground ancillary equipment and containment system, if any.

(85) "*UST system operator*" means the individual designated by the owner and permittee as having control of or responsibility for the operation of an UST system, including the on-site operation and maintenance of the system in a manner to ensure that the UST system is in compliance with applicable state and federal regulations and industry standards.

(86) "*Wastewater treatment tank*" means a tank that is designed to receive and treat influent wastewater through physical, chemical or biological methods.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 466.706 - ORS 466.835, ORS 466.994 & ORS 466.995
Stats. Implemented: ORS 466.706, ORS 466.746
Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 3-1989, f. & cert. ef. 3-10-89; DEQ 21-1989(Temp), f. & cert. ef. 9-18-89; DEQ 10-1990, f. & cert. ef. 3-13-90; DEQ 20-1990, f. & cert. ef. 6-7-90; DEQ 24-1998, f. & cert. ef. 11-2-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 6-2003, f. & cert. ef. 2-14-03

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Environmental Quality, Land Quality Division
Agency and Division

OAR Chapter 340
Administrative Rules Chapter Number

In the Matter of: UST Compliance Rules - OAR 340-150-0010

Statutory Authority: ORS 466.706 - 466.835, 466.994 & 466.995

Other Authority: Not applicable

Statutes Implemented: ORS 466.706 & 466.746

Need for the Temporary Rule: On January 30, 2003, the Environmental Quality Commission (Commission) heard an appeal of an enforcement case concerning a tank that was placed on the ground surface and partially covered with soil and pea gravel. The Commission upheld the Hearing Officer's decision that the definition of "underground storage tank" was ambiguous as to whether the type of tank addressed in this case would be considered an "underground storage tank" under the Department's rules. The Commission's decision raised questions about the clarity of the definition of "underground storage tank" and about whether certain tanks partially covered by "earthen" materials are "underground storage tanks" for purposes of the Department's rules. Revisions to OAR 340-150-0010 are necessary to make Oregon regulations no less stringent than federal regulations for underground storage tanks.

Documents Relied Upon: 40 CFR 280.12; and
Federal Register Vol. 53, No. 185, Friday, September 23, 1988

Justification of Temporary Rule: The Commission finds that failure to adopt the temporary rule will result in serious prejudice to the public interest because it will have the following consequences:

- Some storage tanks would be unregulated as either an underground or above-ground tank, potentially harming both human health and the environment.
- If rule revisions are not made as quickly as possible, some tank owners may install tanks that fall into this regulatory gap, increasing the risk to human health and the environment until permanent rules can be adopted.
- Oregon cannot submit an application for State Program Approval to the Environmental Protection Agency as required by statute, since the current definition of an UST is less stringent than the federal program.

Housing Cost Impacts: 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.

Mark Reeve, Chair
Environmental Quality Commission

Date Signed

State of Oregon
Department of Environmental Quality Memorandum

Date: April 17, 2003

To: Environmental Quality Commission

From: Stephanie Hallock, Director

Subject: Agenda Item M, Action Item: Pollution Control Bonds
May 8-9 2003 EQC Meeting

Proposed Action

The Department of Environmental Quality (DEQ, Department) requests that the Environmental Quality Commission (EQC, Commission) adopt a bond issuance resolution authorizing the DEQ and the State Treasurer to issue and sell State of Oregon General Obligation Pollution Control Bonds, to be used to provide State Match for the Clean Water State Revolving Fund (SRF).

Reason for EQC Action

This General Obligation Bond would be a Pollution Control Bond, which requires the Commission's authorization for the Department to issue.

Under ORS 286.033, an agency must authorize issuance of bonds by resolution of its governing body. Following Commission resolution, DEQ has the authority to authorize both the issuance of Pollution Control Bonds and the uses of Bond proceeds under ORS 468.195 to 468.260.

Background

The Commission has previously authorized the issuance of Pollution Control Bonds for the purpose of the state match to the Federal SRF capitalization grant. DEQ sold SRF match bonds in 1993, 1994, 1995, 1997 and 2000. Historically, the debt service on these bonds has been paid from the General Fund.

The 2001 Legislature approved the sale of Lottery Bonds to provide the SRF match for the 2001-03 biennium. The sale of Lottery Bonds would not require EQC authorization. During the development of the Governor's Balance Budget for 2003-05, however, DEQ's General Fund budget for bond debt service was reduced by $2.083 million (from about $10.8 million to $8.7 million). Several actions are planned to offset this reduction. The key action the Department is planning is to self-finance debt service from SRF loan interest repayments.

DEQ desires to begin this self-financing mechanism using this upcoming bond sale. To do so, the appropriate bonding mechanism is to forego the SRF Lottery Bond sale and instead sell a General Obligation Bond with debt service financed by SRF loan interest repayments. This General Obligation Bond would be a Pollution Control Bond, which requires the Commission's

authorization for the Department to issue.

Key Issue

The key issue is:

- Approval of this bond sale allows the Department to meet both its match requirement for the 2003 federal SRF capitalization grant of $15 million and the funding reduction included in the Governor's Balanced Budget.

EQC Action Alternatives

The Lottery Bonds could be sold as previously planned and be used for the current SRF Match requirement. A different set of General Fund reductions would then have to be substituted to manage the funding reduction included in the Governor's Balanced Budget. These alternate reductions would have a wider impact on other elements of DEQ's work, than simply upon the SRF program.

Department Recommendation

The Department recommends that the Commission adopt the attached Resolution authorizing the Department and the State Treasurer to issue and sell not more than $3.1 million in original principal amount of State of Oregon General Obligation Pollution Control Bonds to provide state match funding for the Department's Clean Water State Revolving Fund Program.

Attachments

A. Form of Resolution

Approved:

Section:

Division:

Prepared By: Jim Roys and Islay Robertson

Phone: (503) 229-6817

Agenda Item M, Action Item: Pollution Control Bonds
May 8-9, 2003 EQC Meeting
Attachment A

RESOLUTION AUTHORIZING AND REQUESTING ISSUANCE OF BONDS

Section 1. Findings. The Environmental Quality Commission of the State of Oregon finds:

A. The Department of Environmental Quality (the "Department") may be empowered, by resolution of the Environmental Quality Commission, to authorize and request the issuance of general obligation pollution control bonds to fund the match for the Clean Water State Revolving Fund program;

B. It is now desirable to authorize and request the issuance of general obligation pollution control bonds for this purpose.

C. Oregon Revised Statutes, Section 286.031, provides that all bonds of the State of Oregon shall be issued by the State Treasurer.

Section 2. Resolutions. The Environmental Quality Commission of the State of Oregon hereby resolves:

A. The State Treasurer of the State of Oregon is hereby authorized and requested to issue State of Oregon general obligation pollution control bonds ("Pollution Control Bonds") in amounts that the State Treasurer determines, after consultation with the Director of the Department or the Director's designee, will be sufficient to provide funding for the purposes described in Section 1.A of this resolution, and to pay costs associated with issuing the Pollution Control Bonds. The Pollution Control Bonds may be issued in one or more series at any time during the current biennium, mature, bear interest, be subject to redemption, and otherwise be issued and sold upon the terms established by the State Treasurer after consultation with the Director of the Department or the Director's designee.

B. The Department shall comply with all provisions of the Internal Revenue Code of 1986, as amended (the "Code") that are required for interest on tax-exempt Pollution Control Bonds to be excludable from gross income under the Code, and shall pay any rebates or penalties that may be due to the United States under Section 148 of the Code in connection with the Pollution Control Bonds. The Director of the Department or the Director's designee may, on behalf of the Department, enter into covenants for the benefit of the owners of Pollution Control Bonds to maintain the tax-exempt status of the Pollution Control Bonds.

Section 3. Other Action. The Director of the Department or the Director's designee may, on behalf of the Department, execute any agreements or certificates, and take any other action the Director or the Director's designee determines is desirable to issue and sell the Pollution Control Bonds and to provide funding for the purposes described in this resolution.

Environmental Quality Commission
Record of Attendance

Date of Meeting May 8-9th, 2003	Location Portland DEQ Headquarters 811 SW 6th Avenue
Date Sent to Judy Simmons 5/13/03	Date Paid 05/30/03

Member's Name & Address	Amount of Claim	Warrant Number
Mark Reeve 610 SW Alder, Suite 803 Portland, OR 97205	$60	4543817
Deirdre Malarkey 990 Lincoln St Eugene, OR 97401	$60	4543816
Tony Van Vliet 1530 NW 13th Corvallis, OR 97330	$60	4543818
Harvey Bennett 551 Towne St Grants Pass, OR 97527	$60	4543815

Approved	Date
Mikell O'Mealy	5/13/03

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MAY 14 2003
Accounting Office
Dept. of Environmental Quality