

**Part 1 of 2**

**OREGON  
ENVIRONMENTAL QUALITY  
COMMISSION MEETING  
MATERIALS 05/08/2003**



**State of Oregon  
Department of  
Environmental  
Quality**

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State of Oregon  
Department of Environmental Quality

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**To:** Environmental Quality Commission      **Date:** May 8, 2003  
**From:** Mikell O'Mealy  
**Subject:** Meeting materials

Enclosed are additional materials for your EQC meeting, including:

- An **amended agenda**, which notes that Items L, M and H will be taken on Thursday afternoon, and Item E (the Oregon Plan Biennial Report presentation) will be taken on Friday morning. This change was made to accommodate a change in Geoff Huntington's schedule, Executive Director of OWEB.
- The **Director's Dialogue**, which Stephanie will present on Thursday afternoon.
- A menu for choosing what you would like for **lunch on Friday**. Please take a quick look and indicate your preference. Thanks.
- Travel expense forms
- Paper and pencil

Please let me know if you have any needs or questions. Thanks.





## Oregon Environmental Quality Commission Meeting May 8-9, 2003

### *Amended Agenda*

*Please note that three Items L, M and H will be taken on Thursday,  
and Item E will be taken on Friday morning.*

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

#### **Thursday, May 8 Beginning at 2:00 p.m.**

- A. Action Item: Request for Dismissal of Contested Case No. WPM/SP-WR-00-188 regarding Case and Sons Logging, Inc.**  
The Commission will consider a request from DEQ to dismiss a petition for review and uphold a proposed order on an enforcement action taken against Case and Sons Logging, Inc., because the petitioner did not file exceptions to the order as required by rule (OAR 340-011-0132(3)).
- B. Action Item: Request for Dismissal of Contested Case No. AQ/AB-WR-01-082 regarding Fred Mendoza, doing business as MCM Company**  
The Commission will consider a request from DEQ to dismiss a petition for review and uphold a proposed order on an enforcement action taken against Fred Mendoza, dba MCM Company, because the petitioner did not file exceptions to the order as required by rule (OAR 340-011-0132(3)).
- C. Action Item: Contested Case No. AQ/AB-WR-02-059 regarding Pegasus Corporation**  
The Commission will consider a contested case between DEQ and Pegasus Corporation, which appealed a proposed order that assessed the company a \$1,200 civil penalty for failing to use a Department-licensed asbestos abatement contractor in a project at a facility it operates.
- D. Discussion Item: Enforcement Rule Development Update**  
Anne Price, DEQ Administrator of the Office of Compliance and Enforcement, will update the Commission on the progress of revisions to DEQ's enforcement rules. Over the past two years, the Department has sought guidance from the Commission for revising the rules to improve enforcement of Oregon's environmental regulations. At this meeting, Ms. Price will talk with Commissioners about key issues and next steps for revising the rules.
- L. Rule Adoption: Temporary Rule Amending the Definition of "Underground Storage Tank"**  
Alan Kiphut, DEQ Environmental Cleanup Manager, will propose a temporary rule to amend the definition of "underground storage tank" to clarify when such tanks are regulated by DEQ. In Oregon, fuel tanks are regulated in one of two ways: the Oregon State Fire Marshal regulates above ground storage tanks and DEQ regulates underground storage tanks. A question was raised recently about the regulation of certain tanks that are partially covered with earthen materials. In recognizing potential ambiguity in the current state rules, DEQ developed a temporary rule to make tank regulations more clear. Mr. Kiphut will ask the Commission to adopt the temporary rule, and explain agency plans to consult with the State Fire Marshal and stakeholders later this year in developing permanent rules to clearly distinguish between underground and above ground storage tanks.

- M. Action Item: Consider Authorization of Clean Water State Revolving Fund Bond Sale**  
DEQ's Clean Water State Revolving Fund program provides loans to public agencies for water pollution control projects, such as upgrades for sewage treatment systems. This program relies on the sale of Pollution Control Bonds to match federal funds that support the loans. At this meeting, Holly Schroeder, DEQ Budget Office Manager, will ask the Commission to authorize DEQ and the State Treasurer to issue and sell up to \$3.1 million in state bonds to fund the clean water loan program as approved by the 2001 Legislature.
- H. Director's Dialogue**  
Stephanie Hallock, DEQ Director, will discuss current events and issues involving the Department and the state with Commissioners.

**Friday, May 9 Beginning at 9:00 a.m.**

Prior to the regular meeting, at approximately 8:00 a.m., the Commission will hold an executive session to consult with counsel concerning legal rights and duties regarding current and potential litigation against the Department. Executive session is held pursuant to ORS 192.660(1)(h). Only representatives of the media may attend, and media representatives may not report on any deliberations during the session.

- F. Approval of Minutes**  
The Commission will review, amend if necessary, and approve draft minutes of the January 30-31 and the March 11, 2003, Environmental Quality Commission meetings.
- G. Action Item: Consideration of Pollution Control Facilities Tax Credit Requests**  
In 1967, the Oregon Legislature established the Pollution Control Facility Tax Credit Program to help businesses meet environmental requirements. The program was later expanded to encourage investment in technologies and processes that prevent, control or reduce significant amounts of pollution. In 1999, facilities that control nonpoint sources of pollution control (such as wood chippers) were made eligible for the program. At this meeting, the Commission will consider approving tax credit applications for facilities that control air and water pollution, recycle solid and hazardous waste, reclaim plastic products, and control pollution from underground fuel tanks.
- E. Informational Item: Presentation of the 2001-2003 Oregon Plan Biennial Report**  
Jay Nicholas, Science and Policy Advisor for the Oregon Watershed Enhancement Board, will present the 2001-2003 biennial report of the Oregon Plan for Salmon and Watersheds. The report evaluates progress of the Oregon Plan to date, including investments in watershed restoration, water quality improvements and efforts to restore endangered fish species.
- I. Informational: Update on Umatilla Chemical Agent Disposal Facility**  
Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, will update the Commission on the Umatilla Chemical Agent Disposal Facility, including the status of trial burns, the progress of a permit modification for the facility, and the schedule for facility operation.
- J. \*Rule Adoption: Amendments to Asbestos Requirements**  
Asbestos is a hazardous air pollutant and a known carcinogen. To protect public health, DEQ regulates disposal of asbestos-containing materials from demolition, construction, repair, and maintenance of public and private buildings. DEQ's asbestos rules, designed to prevent asbestos fiber release and exposure, were modified in January 2002 to be more protective of public health.

Later that year, however, DEQ learned that some of the new regulations were difficult for businesses to interpret and use, and in December, the Commission adopted a temporary rule to relieve businesses of some of the new requirements. At this meeting, Andy Ginsburg, DEQ Air Quality Division Administrator, will update the Commission on plans to work with a stakeholder advisory committee to revise asbestos regulations this fall to protect public health and be easy for businesses to use. Mr. Ginsburg will ask the Commission to adopt a permanent rule to continue the December 2002 changes through the next rulemaking.

**K. \*Rule Adoption: Clean Water State Revolving Fund**

DEQ's Clean Water State Revolving Fund program provides loans to public agencies for water pollution control projects. At this meeting, Mike Llewelyn, DEQ Water Quality Division Administrator, will propose revisions to the program's rules to allow funds to be used to address a broader range of water pollution problems, including nonpoint sources of pollution. The changes would expand DEQ's loan program beyond a historic focus on wastewater treatment facilities to target the water quality benefit of each proposed project. In addition, the revisions would make loans more affordable and attractive to public agencies, and more available for streamside restoration work to support the Oregon Plan for Salmon and Watersheds.

**N. Commissioners' Reports**

Adjourn

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Upcoming 2003 Environmental Quality Commission meetings (tentative):  
July 17-18    August 14-15    October 9-10    December 4-5

**Agenda Notes**

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

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

**Public Forum:** The Commission will break the meeting at approximately 11:30 a.m. on Friday, May 9, to provide members of the public an opportunity to speak to the Commission on environmental issues not part of the agenda for this meeting. Individuals wishing to speak to the Commission must sign a request form at the meeting and limit presentations to five minutes. The Commission may discontinue public forum after a reasonable time if a large number of speakers wish to appear. In accordance with ORS 183.335(13), no comments may be presented on Rule Adoption items for which public comment periods have closed.

**Note:** Because of the uncertain length of time needed for each agenda item, the Commission may hear any item at any time during the meeting. If a specific time is indicated for an agenda item, an effort will be made to consider that item as close to that time as possible. However, scheduled times may be modified if participants agree. Those wishing to hear discussion of an item should arrive at the beginning of the meeting to avoid missing the item.

## Environmental Quality Commission Members

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

### **Mark Reeve, Chair**

Mark Reeve is an attorney with Reeve Kearns in Portland. He received his A.B. at Harvard University and his J.D. at the University of Washington. Commissioner Reeve was appointed to the EQC in 1997 and reappointed for a second term in 2001. He became Chair of the EQC in 2003. Commissioner Reeve also serves as Co-Chair of the Oregon Watershed Enhancement Board.

### **Tony Van Vliet, Vice Chair**

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

### **Harvey Bennett, Commissioner**

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

### **Deirdre Malarkey, Commissioner**

Deirdre Malarkey is a graduate of Reed college, with graduate degrees from the University of Oregon. She has served previously on two state natural resource boards and on the Water Resources Commission and retired as a land use planner. Commissioner Malarkey was appointed to the EQC in 1999 and lives in Eugene.

**Vacant, fifth Commission position**

**Stephanie Hallock, Director**  
**Department of Environmental Quality**  
811 SW Sixth Avenue, Portland, OR 97204-1390  
Telephone: (503) 229-5696 Toll Free in Oregon: (800) 452-4011  
TTY: (503) 229-6993 Fax: (503) 229-6124  
E-mail: [deq.info@deq.state.or.us](mailto:deq.info@deq.state.or.us)

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

State of Oregon  
Department of Environmental Quality

Memorandum

**Date:** April 17, 2003  
**To:** Environmental Quality Commission  
**From:** Stephanie Hallock, Director *S. Hallock*  
**Subject:** Agenda Item A, Action Item: Request for Dismissal of Contested Case No. WPM/SP-WR-00-188 regarding Case and Sons Logging, Inc. May 8, 2003 EQC Meeting

**Appeal to EQC** On November 22, 2002, Merlon A. Case, doing business as Case and Sons Logging, Inc., filed a petition for Commission review of a Proposed Order (Attachment D) that assessed him a \$4,800 civil penalty and found him liable for the release of oil at a logging site over which he had control.

On November 26, 2002, on behalf of the Commission, Mikell O'Mealy sent Mr. Case a letter via certified mail (Attachment B) explaining the requirements for filing exceptions to the Proposed Order as required by OAR 340-011-0132. The postal service certified that the letter was received on December 12, 2002.

Mr. Case did not file exceptions to the order as required, however. Thus, on February 4, 2003, the Department requested that the Commission dismiss the petition for review (Attachment A) and uphold the Proposed Order on this case.

A representative of the Department will be present at the May 8, 2003, Commission meeting to answer any questions you may have about this request.

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

**Alternatives** The Commission may:

1. As requested by the Department, dismiss the petition for review and uphold the Proposed Order.
2. Schedule the case for a future Commission meeting and request copies of the hearing record to review.

**Attachments**

- A. Department's request for dismissal, dated February 4, 2003
- B. Letter from Mikell O'Mealy to Mr. Case, dated November 26, 2002
- C. Petition for Review of the Proposed Order, dated November 18, 2002
- D. Proposed Order for Assessment of Civil Penalty, dated November 7, 2002

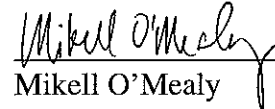
Agenda Item A, Action Item: Request for Dismissal of Contested Case No. WPM/SP-WR-00-188  
regarding Case and Sons Logging, Inc.

May 8, 2003 EQC Meeting

Page 2 of 2

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

Report Prepared By:



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



# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

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

February 4, 2003

Environmental Quality Commission  
c/o Mikell O'Mealy  
Office of the Director  
Oregon Department of Environmental Quality  
811 S.W. 6<sup>th</sup> Avenue  
Portland, Oregon 97204

Re: Case and Sons Logging, Inc.  
Notice of Assessment of Civil Penalty  
No. WPM/SP-WR-00-188  
Lincoln County

Members of the Environmental Quality Commission:

The Department respectfully requests that, pursuant to OAR 340-011-0132(3)(f), the Commission dismiss Petitioner Case and Sons Logging, Inc.'s Petition for Commission Review received by the Department on November 22, 2002. In addition, the Department requests that the Commission uphold the Proposed Order in the above-referenced matter, which was issued on November 7, 2002. The Petition was filed timely, but Petitioner has not filed a brief with written exceptions as required by OAR 340-011-0132(3)(a). The Department cannot prepare an answering brief because Petitioner's exceptions are unknown. Enclosed for your reference is a copy of the Proposed Order and the Petition for Review.

If you have any questions about this action, please contact me at (503) 229-5555.

Sincerely,

Jane K. Hickman  
Environmental Law Specialist

### Enclosures

cc: Case & Sons Logging, Inc.  
Land Quality Division, DEQ  
Gil Hargreaves, DEQ, Western Region, Salem Office



# Oregon

John A. Kitzhaber, M.D., Governor

November 26, 2002

Attachment B

## Department of Environmental Quality

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

### Via Certified Mail

Merlon A. Case  
Case and Sons Logging, Inc.  
P.O. Box 691  
Rainier, OR 97048

RE: Case No. WPM/SP-WR-00-188

Dear Mr. Case:

On November 22, 2002, the Environmental Quality Commission received your timely request for Commission review of the Proposed Order for the above referenced case.

The hearing decision for this case outlined appeal procedures, including filing of exceptions and briefs. The hearing decision and Oregon Administrative Rules (OAR 340-011-0132) state that you must file exceptions and brief within thirty days from the filing of your request for Commission review. Your exceptions should specify the findings and conclusions that you object to in the Proposed Order and include alternative proposed findings. Once your exceptions have been received, or, if no exceptions have been received by December 22, 2002, the Department will file an answer brief within thirty days. I have enclosed a copy of the applicable administrative rules.

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

After both parties file exceptions and briefs, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and I will notify you of the date and location. If you have any questions about this process, or need additional time to file exceptions and briefs, please call me at 503-229-5301 or 800-452-4011 ext. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy  
Assistant to the Commission

cc: Jane Hickman, DEQ



## Oregon Administrative Rules 340-011-0132

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

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

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

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.430 & ORS 183.435

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

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
<b>Total Postage &amp; Fees</b>	\$	

Send To: Merton A. Case  
 Street, Apt. No., or PO Box No.  
 City, State, ZIP+4

PS Form 3811, May 2000 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:  
Merton A. Case  
Case and Sons Logging Inc  
PO Box 691  
Rainier, OR 97048

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
[Signature]

B. Received by (Printed Name) C. Date of Delivery  
ELISE VIARS 12-12-02

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

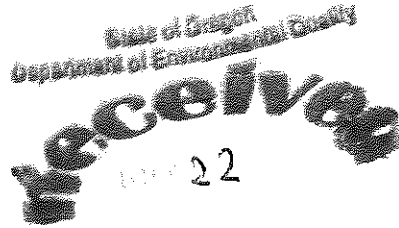
Number (Number from service label) 7000 1670 0009 90059797

Attachment C

Case and Sons Logging, Inc.  
P.O. Box 691  
Rainier, Oregon 97048

November 18, 2002

Environmental Quality Commission  
c/o DEQ-Assistant to the Director  
811 S. W. 6<sup>th</sup> Avenue  
Portland, Oregon 97204



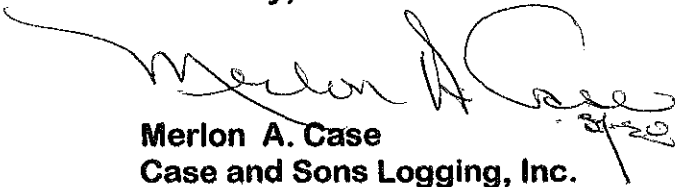
Dear Sirs;

Please accept this letter as a request for "Petition for Review"

In the case # WPM/SP-WR-00-188 Lincoln involving Case and Sons  
Logging, Inc.

Please forward information on OAR-340-011-0132(3) so we may file the  
proper exceptions and brief.

Sincerely,

  
Merlon A. Case  
Case and Sons Logging, Inc.

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

IN THE MATTER OF: ) **PROPOSED ORDER**  
 )  
**CASE AND SONS LOGGING, INC.,** )  
**Respondent,** )  
 ) Hearing Officer Panel Case No. 102454  
 ) Agency Case Number WPM/SP-WR-00-188  
 ) Lincoln County

**HISTORY OF THE CASE**

On February 27, 2001, the Department of Environmental Quality (Department) issued a Notice of Assessment of Civil Penalty (Notice) to Respondent Merlin Case, d.b.a. Case and Sons Logging, Inc. The Notice was reissued on August 8, 2001 and was directed at Case and Sons Logging, Inc., with Merlin Case named as the corporation's registered agent.<sup>1</sup> The Notice alleged that Respondent<sup>2</sup> violated ORS 466.645(1) by failing to immediately clean up an oil spill over which he had ownership or control. The Notice further alleged that Respondent violated ORS 466.635 by failing to immediately notify the Office of Emergency Management of the Department of State Police as soon as Respondent knew that the amount of oil spilled was a reportable quantity. At the time of hearing, the Department dropped the allegation relating to failure to immediately notify authorities about the spill.

On March 21, 2002, Respondent requested a hearing and indicated that he would like to "say some things" regarding the Notice.

The matter was referred to the Hearing Officer Panel on August 14, 2002. A hearing was held on September 24, 2002, at 9:00 a.m., in Portland, Oregon. Andrea H. Sloan, from the Hearing Officer Panel, presided as the Administrative Law Judge (ALJ). Merlin Case appeared in person without counsel as the registered agent of Respondent, and testified at the hearing. Environmental Law Specialist Jane Hickman represented the Department. Witnesses for the Department were: Sr. Troopers Greg Torland and Doug Canfield, of the Oregon State Police, Newport Patrol Office; Joe Petrovich, Hazardous Waste Inspector for the Department, assigned to the Salem Western Regional Office; and Chris Kaufman, the On-Scene Coordinator for hazardous materials releases for the Department. The record was closed at the end of the hearing.

<sup>1</sup> The only difference between the first and second notices was the name of the Respondent.  
<sup>2</sup> In this order, the term "Respondent" will refer to both Mr. Case and/or Case & Sons Logging, Inc.

## ISSUES

1. Whether Respondent is strictly liable for the release of oil on the logging property over which Respondent had control on June 10, 2000, under ORS 466.640.
2. Whether Respondent violated ORS 466.645(1), and if so, whether the civil penalty assessment is warranted.

## EVIDENTIARY RULINGS

Panel Exhibits P1 through P3 and the Department Exhibits A1 through A7 were admitted into the record without objection.

## FINDINGS OF FACT

1. On Friday June 10, 2000, Respondent was logging a site in the Wright Creek and Poole Slough area of Lincoln County. At some point that day, the engine from a piece of logging equipment called the "tower" or the "hi-lead" blew up, spraying oil on the ground near the equipment. Respondent dismantled the engine, and in the process, spilled additional oil from the transmission. Respondent testified that he and his crew drained the oil from the equipment's two large oil filters into five-gallon buckets. Respondent also cut off the face of anti-freeze containers, and laid these on their side under the equipment to catch any oil that might still be leaking from the equipment. (Test. Respondent.)

2. In the process of removing the engine, which took the better part of the day, the fuel line on the tower was broken. Respondent testified that only about three gallons of diesel spilled onto ground in the area of the tower. Respondent testified that additional small amounts of diesel fuel had been spilled onto the ground at this site during the one and one-half weeks preceding the June 10, 2000 spill. (Test. Respondent.)

3. Near the end of the day it began raining "torrentially." Respondent and his crew loaded the engine into a pickup truck, put the buckets of oil and used oil filters under the equipment to keep the rain out, and left the site. Respondent left the buckets of oil, rags, and the anti-freeze containers at the site. Respondent left the logging site at approximately 5:30 p.m. Respondent knew that he and his crew left a mess at the site, but they were concerned with getting out of the rain and into town. (Test. Respondent.)

4. Respondent thought that he did not think that he had to report the oil spill to the Department because it consisted of less than 42 gallons of oil. (Test. Respondent.)

5. Sr. Trooper Torland is assigned to the Fish and Wildlife division of the Oregon State Police, and works out of the Newport Patrol Office. At approximately 11:00 p.m. on June 10, 2000, Sr. Trooper Torland was on routine patrol in the Wright Creek and Poole Slough area of Lincoln County. Sr. Trooper Torland came upon an active logging site and, as part of his duties, checked for signs of poaching, vandalism, or underage parties. The trooper saw several pieces of logging equipment parked on or near the roadway. It was raining and when the trooper got out

of his vehicle he could smell a strong odor of petroleum and diesel in the area around the equipment. The trooper also noticed that the bottom of his boots were slick with an oily material. The trooper observed open containers that held an oily liquid on or near the roadway. In addition, the trooper saw that the ruts in the roadway contained a large amount of oil. The trooper illuminated the roadway with his flashlight and vehicle headlights and observed that the roadway and equipment were covered with an oily material. The trooper also saw that the logging site was strewn with garbage. (Test. Torland; Ex. A1.)

6. Sr. Trooper Torland knew that there was a small tributary in this area that led to Wright Creek, which in turn led to Poole Slough and ultimately to Yaquina Bay. Some of the containers the trooper observed were next to the small tributary and others were scattered throughout the site. The trooper knew that there was a potential that the oily material would reach the waters of the state given the proximity of the containers and oil spill to the tributary and the fact that rain was causing the oily water to run off the roadway. (Test. Torland.)

7. Sr. Trooper Torland has visited hundreds of logging sites during his career and he concluded that the condition of this particular site was "the worst I have ever seen." (Ex. A1; Test. Torland.)

8. On June 11, 2000, Sr. Trooper Canfield viewed the site at the request of Sr. Trooper Torland. Sr. Trooper Canfield was the Oregon Salmon Plan representative for this area, and was also assigned to the Fish and Wildlife Division of the Oregon State Police, working out of the Newport Patrol Office. It had stopped raining, but the trooper observed that the ground was coated with an oily material. The trooper saw puddles of oil in roadway ruts underneath a piece of logging equipment. The trooper also observed that the water running down the roadway ruts, and the oily material on the roadway, had an oily sheen. Sr. Trooper Canfield smelled an overwhelming odor of diesel and oil in the area. He observed what appeared to be broken logging equipment and what looked like anti-freeze containers used as oil drain pans under some of the equipment. The trooper thought that one piece of equipment was partially dismantled, as if the engine had failed and someone had started but not finished a repair job. Sr. Trooper Canfield saw five gallon buckets under some of the equipment and he observed that some of the buckets were tipped over, spilling oily liquid onto the ground. The remaining buckets appeared to be full of crank case oil. There was so much oil on the roadway that the trooper wondered if oil had been sprayed over the surface in an effort to keep down dust. The bottoms of the trooper's boots were coated with oil after walking around the site. The trooper observed garbage throughout the site and he also concluded that this was the worst logging site he had ever inspected. (Ex. A2; Test. Canfield.)

9. There was potential for the oily material to enter nearby waters of the state because a tributary, which flowed into Wright Creek, Poole Slough, and Yaquina Bay, was just downhill from the spill site. The tributary was in the natural direction for water and material flowing off the roadway. (Test. Canfield; Test. Petrovich.) Respondent knew that the tributary was close to the site of the spill. (Test. Respondent.)

10. Both troopers concluded that the source of the oil was the equipment and the containers and buckets. The troopers did not believe that the amount of oil they saw on the site

could have come from drained oil filters. The troopers also did not believe that the ruts, containers and buckets were full of only a small amount of oil floating atop rain water. (Test. Canfield; Test. Torland.)

11. After Respondent left the logging site, he forgot that he left the buckets, rags and containers lying around. He did not take any steps to clean up the mess until after the weekend, on June 12, 2000. (Test. Respondent.)

12. On June 12, 2000, Joe Petrovich, a Hazardous Waste Inspector for the Department learned of the release of oil on the logging site near the Poole Slough when he reviewed a voice mail message left for him by Sr. Trooper Torland. (Test. Petrovich.)

13. On June 12, 2000, Mr. Petrovich contacted Link Smith of the State Department of Forestry, and determined that Respondent had been logging at the site under a permit issued by the Department of Forestry. (Ex. A3; Test. Torland; Test. Petrovich.)

14. On June 12, 2000, Mr. Smith contacted Respondent at the logging site. Respondent testified that Mr. Smith told him that it looked as if Respondent had done all that he could to contain the oil spill at the site, and recommended that Respondent remove the remaining rags, buckets and containers<sup>3</sup>. (Test. Respondent.)

15. On June 12, 2000, two days after the spill, Respondent took steps to contain the released oil at the site. (Test. Respondent; Test. Kaufman.)

16. Between June 10, 2000 at 12:01 a.m. and 10:30 a.m. on June 12, 2000, it rained a total of 1.12 inches at the Hatfield Marine Science Center in Newport, which was approximately three miles from the site of the spill. (Ex. A6; Test. Test. Petrovich.)

17. On June 27, 2000, Mr. Petrovich viewed the site with Mr. Smith and Sr. Trooper Canfield. The trooper provided Mr. Petrovich with photographs of the site taken on June 11, 2000. During his site view, Mr. Petrovich saw "oil-soaked ground under the broken down hi-lead equipment, but no oil on the rest of the road." (Ex. A3; Test. Petrovich.)

18. On July 12, 2000, Mr. Petrovich sent a Notice of Noncompliance (NON) to Respondent. The NON detailed three violations in Respondent's management of waste petroleum: 1) failing to immediately notify the Department about the release of waste petroleum with a potential to enter Waters of the State; 2) failure to immediately contain and clean up a spill or release of petroleum to the environment; and 3) failure to perform hazardous waste determination on waste oil prior to disposal. The NON further advised Respondent that he had until July 24, 2000 to submit a written report detailing his remediation efforts concerning the oil on the roadway, and where the waste oil was disposed of. The NON also directed Respondent to

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<sup>3</sup> Respondent testified that he believed that he had done all that he was required to do about the spill because Mr. Smith told him that the site looked okay. Respondent testified that he was not aware of the Department regulations that required him to immediately clean up hazardous spills that had the potential for reaching waters of the state.



include a plan "for determining that all of the petroleum has been removed from the roadway and the soil surrounding the roadway." (Ex. A3; Test. Petrovich.)

19. On July 24, 2002, Mr. Petrovich met for the first time with Respondent. Mr. Petrovich showed Respondent photographs of the oil spill at the logging site. Mr. Petrovich told Respondent that he was responsible for the cleanup of the site, and recommended that he hire an environmental consulting firm to take soil samples at the site to determine the extent of the contamination. (Test. Respondent.)

20. Wright Creek and Poole Slough are environmentally sensitive, salmonoid rearing streams. (Test. Petrovich; Test. Torland; Test. Canfield; Test. Kaufman.)

21. Sometime in August 2000, Respondent hired "Edgewater Environmentalists" to take soil samples at the logging site to detect the presence of oil and/or diesel. Respondent did not know the date that he hired the consultants, or when the samples were taken. (Test. Respondent.)

22. Respondent provided Mr. Petrovich with the sampling report on September 7, 2000. The report indicated that the samples had been taken on August 4, 2000, 65 days after the spill. The report confirmed the presence of both diesel and oil in several locations at the logging site. The amount of diesel found in the samples was as much as 3,150 parts per million (ppm). The amount of oil products found in the samples was as much as 13,000 ppm. The amounts of diesel and oil contamination found in the soil samples exceeded the Department's cleanup standards. The report indicated two areas of high concentration of contaminants: 1) Area A was the area where the fuel supply truck used by Respondent and his crew had been parked; and 2) Area B was the area where the tower was parked on the roadway. (Ex. A4; Test. Petrovich.)

23. Respondent did not take any steps to remove the contaminated soil at the site until Mr. Petrovich received the sampling report and directed Respondent to remove the soil. (Test. Respondent.)

24. On November 13, 2000, Valley Landfills, Inc., of Corvallis, Oregon, issued a Certificate of Disposal, confirming that it had disposed of 6.5 tons of diesel contaminated soil. Valley Landfills, Inc. received the soil on October 20, 2000. (Ex. A5.)

25. Soil samples taken after removal of the 6.5 tons of contaminated soil indicated that the site was not adequately cleaned until December 13, 2000. (Test. Petrovich.)

26. At the time of the spill, Respondent did not have any hazardous spill kits or containment pads.<sup>4</sup> Respondent now keeps spill kits at his logging sites. (Test. Respondent.)

27. The Department expects that persons responsible for spills will take immediate steps to contain oil or hazardous material spills and to mitigate further damage to the environment. When oil spills or releases that have the potential for reaching the waters of this state occur, the

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<sup>4</sup> Respondent testified that he was not aware of such items until after he met with Mr. Petrovich in July 2000.

Department expects the responsible person to immediately take steps to contain, and then to cleanup the spill the spill. (Test. Kaufman.)

28. The Department assessed a civil penalty of \$4,800 against Respondent for his failure to immediately cleanup the oil spill on logging property under his control on June 10, 2000. The Department found that the violation was in the Class One category and was of moderate magnitude. The Department also determined that Respondent had no prior significant actions or history with the Department, and that the spill in question lasted more than one day. The Department further determined that Respondent intentionally failed to immediately cleanup the spill, and that he was cooperative with the Department because he took steps to minimize the effects of the spill. Finally, the Department concluded that Respondent received no economic benefit from failing to immediately cleanup the spill. (Ex. P2.)

### CONCLUSIONS OF LAW

1. Respondent was strictly liable for the release of oil at the logging site over which Respondent had control on June 10, 2000. ORS 466.640.

2. Respondent violated ORS 466.645(1) and the amount of civil penalties assessed by the Department is warranted.

### OPINION

The issues to be resolved are whether Respondent is strictly liable for the release of oil on the logging property over which Respondent had control on June 10, 2000, under ORS 466.640 and whether Respondent violated ORS 466.645(1), warranting a civil penalty in the amount of \$4,800. In this regard, the Department has the burden of proving the allegations by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position.); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). I conclude that the Department has met its burden.

Respondent argued at hearing that he was "caught in the middle" between the Department and the Department of Forestry, and that he did not believe that it was fair to penalize him for an accidental oil spill given the conflicting information he received. For the reasons discussed below, Respondent's argument is not persuasive.

## Strict Liability

The Department argued that Respondent was strictly liable for the release of oil at the logging site because it had the potential to reach waters of the state.<sup>5</sup> Respondent argued that the release of oil was minor and unintentional.

ORS 466.640 provides that:

any person owning or having control over any oil or hazardous material spilled or released<sup>6</sup> or threatening to spill or release shall be strictly liable without regard to fault for the spill or release or threatened spill or release.

The statute provides a defense to the strict liability standard if, in an action to recover damages, the person owning or having control over the oil can prove that the spill or release of oil was caused by:

(1) An act of war or sabotage or an act of God. (2) Negligence on the part of the United States Government or the State of Oregon. (3) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

ORS 466.640.

The administrative rules promulgated by the Department define "having control over any oil or hazardous material" as including, but not limited to "persons using, handling, processing, manufacturing, storing, treating, disposing or transporting oil or hazardous material." OAR 340-108-0002(8). "Oil" is defined to include "gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse or any other petroleum product." ORS 466.605(8); OAR 340-108-0002(11).

Here, Respondent acknowledged that the oil spilled when the tower engine blew, and as Respondent attempted to remove the engine from the tower. Respondent did not offer any evidence that the spill was caused by an act of war or sabotage or an act of God, or by negligence on the part of the federal or state governments, or by an act or omission of a third party.

Consequently, I conclude that Respondent is strictly liable for the release of oil at the logging site over which Respondent had control on June 10, 2000.

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<sup>5</sup> "Waters of the State" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction." OAR 340-108-0002(17).

<sup>6</sup> "Spill or Release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state \* \* \*." ORS 466.605(12); OAR 340-108-0002(15).

## **Initiate immediate cleanup**

The Department argues that Respondent was required to immediately initiate cleanup of the oil spill at the logging site. As authority, the Department relies on ORS 466.645, which provides, in pertinent part, as follows:

(1) Any person liable for a spill or release or threatened spill or release under ORS 466.640 shall immediately clean up the spill or release under the direction of the Department of Environmental Quality. *Any person liable for a spill or release or a threatened spill or release shall immediately initiate cleanup, whether or not the department has directed the cleanup.*

ORS 466.646(1)(emphasis added). ORS 466.605(2) defines cleanup as follows:

‘Cleanup’ means the containment, collection, removal, treatment or disposal of oil or hazardous material; site restoration; and any investigations, monitoring, surveys, testing and other information gathering required or conducted by the Department of Environmental Quality.

Chris Kaufman, an On Scene Coordinator for oil and hazardous waste spills for the Department, testified that the Department expects that responsible persons will take immediate steps to contain the spills and mitigate further damage to the environment.

The release of oil at issue in this case occurred before 5:30 p.m., June 10, 2000, when Respondent left the logging site for the weekend. When Respondent drove away that day, he left behind five-gallon buckets and anti-freeze containers full of oil and oily water. Respondent left two large oil filters and oily rags at the site. It was raining heavily when Respondent left the site, and he knew that there was a tributary a short distance downhill from the site of the spill. Respondent did not return to the site for two days. During these two days, it continued to rain at the site. Respondent did not take immediate steps to contain the spill, and took no action to clean up the spill site for two days. Respondent did not fully clean up the spill site for over six months after the spill.

Based on Respondent’s own testimony and the other evidence in this record, Respondent did not take immediate steps to contain and cleanup the oil spill, in violation of ORS 466.646(1).

## **Assessment of Civil Penalty**

The Director of the Department is authorized to assess civil penalties for any violations of the Department’s rules or statutes. OAR 340-012-0042. The amount of civil penalties assessed is determined through use of a matrix and formula contained in OAR 340-012-0045. *See* OAR 340-012-0042.

In this case, the Department determined that Respondent was liable for \$4,800 in civil penalties based on Respondent’s failure to immediately cleanup the oil spill over which

Respondent had control on June 10, 2000. (Ex. P2.) This penalty was determined by calculating the base penalty (BP) and considering other factors, such as prior significant actions (P), past history (H), the number of occurrences (O), the cause of the violation (R), Respondent's cooperation (C), and the economic benefit that Respondent gained by noncompliance with the Department's rules and statutes. The formula for determining civil penalties in this case is expressed as follows: "BP + [(0.1 x BP) x (P + H + O + R + C)] + EP."<sup>7</sup>

The determination of the base penalty involves consideration of the class and magnitude of the violation. OAR 340-012-0045(1)(a). In this case, the Department determined that Respondent committed a Class One violation. "The failure by any person having ownership or control over oil or hazardous materials to immediately cleanup spills or releases or threatened spills or releases" is a Class One violation under OAR 340-012-0069(1)(c). After determining the class of violation, the Department concluded that the magnitude of the violation was "moderate"<sup>8</sup>. OAR 340-012-0045(1)(a)(B).

Specifically, the Department determined that the appropriate base penalty (BP) in this case was \$3,000. OAR 340-012-0042(1)(a)(A)(ii). The Department further determined that Respondent did not have any significant prior actions (P) under OAR 340-012-0030(14)<sup>9</sup>, and no prior history (H) with the Department under OAR 340-012-0045(1)(c)(B)(ii)<sup>10</sup>. The "P" and "H" factors were both assigned values of zero. The Department determined that the violation in question existed for more than one day, from June 10, 2000 until at least June 12, 2000, so the "O" factor was assigned a value of 2 pursuant to OAR 340-012-0045(1)(c)(C)(ii)<sup>11</sup>. The Department also determined that Respondent intentionally failed to cleanup the spill immediately, so the "R" factor was assigned a value of 6 in accordance with OAR 340-012-0045(1)(D)(iii)<sup>12</sup>. The Department further determined that Respondent was cooperative and assigned the "C" factor a value of -2.<sup>13</sup> OAR 340-012-0045(1)(E)(i). Finally, the Department

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<sup>7</sup> The penalty calculation utilized by the Department, contained in Exhibit P2, is set out in full in the Appendix, which is incorporated by reference to this order as if fully set forth herein.

<sup>8</sup> "The magnitude of the violation is moderate pursuant to OAR 340-012-0045(1)(a)(B), because there is no selected magnitude for this violation, and the Department has insufficient evidence upon which to base a finding that the magnitude of the violation was either minor or major." (Ex. P2.)

<sup>9</sup> "Prior Significant Action" means any violation established either with or without admission of a violation by payment of a civil penalty, or by a final order of the Commission or the Department, or by judgment of a court." OAR 340-012-0030(14).

<sup>10</sup> "H" is Respondent's history in correcting prior significant actions or taking reasonable efforts to minimize the effects of the violation. \* \* \*. The values for "H" and the finding which supports each are as follows: \* \* \* (ii) 0 if there is no prior history or if there is insufficient information on which to base a finding." OAR 340-012-0045(1)(c)(B)(ii).

<sup>11</sup> "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows: \* \* \* (ii) 2 if the violation existed for more than one day or if the violation recurred on the same day." OAR 340-012-0045(1)(c)(C)(ii).

<sup>12</sup> "R" is whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act of the Respondent. The values for "R" and the finding which supports each are as follows: \* \* \* (iii) 6 if intentional." OAR 340-012-0045(1)(D)(iii).

<sup>13</sup> "C" is Respondent's cooperativeness and efforts to correct the violation. The values for "C" and the finding which supports each are as follows: (i) -2 if Respondent was cooperative and took reasonable

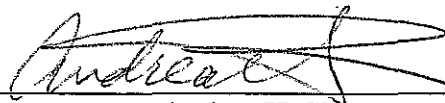
determined that the "EB" factor, for economic benefit gained through the noncompliance, was a zero because there was "insufficient evidence upon which to base a finding that Respondent obtained an economic benefit by delaying the cost of cleaning up the spilled oil" under OAR 340-012-0045(1)(E). (Ex. P2.)

Based on this record, the civil penalty assessment of \$4,800 is accurate and appropriate.

### PROPOSED ORDER

I propose that the Board issue the following order:

Respondent is subject to a civil penalty in the amount of \$4,800.



Andrea H. Sloan  
Administrative Law Judge  
Hearing Officer Panel

ISSUANCE AND MAILING DATE:

November 7, 2002

### REVIEW

If you are not satisfied with this decision, you have a right to petition the Environmental Quality Commission for review. To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date of service of this Order, as provided in Oregon Administrative Rule (OAR) 340-011-0132(1) and (2). Service is defined in OAR 340-011-0097, as the date the Order is mailed to you, not the date you receive it. The Petition for Review must be filed with:

Environmental Quality Commission  
c/o DEQ – Assistant to the Director  
811 SW 6th Avenue  
Portland OR 97204

Within 30 days of filing the Petition, you must also file exceptions and a brief as provided in OAR 340-011-0132(3).

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efforts to correct a violation, took reasonable affirmative efforts to minimize the effects of the violation, or took extraordinary efforts to ensure the violation would not be repeated." OAR 340-012-0045(1)(E)(i).

## APPENDIX

VIOLATION 1: Failing to immediately cleanup a spill of oil over which Respondent had ownership or control in violation of Oregon Revised Statute (ORS) 466.645(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0069(1)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0045(1)(a)(B), because there is no selected magnitude for this violation, and the Department has insufficient evidence upon which to base a finding that the magnitude of the violation was either minor or major.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  
$$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$

“BP” is the base penalty, which is \$3,000 pursuant to OAR 340-012-0042(1)(f).

“P” is Respondent’s prior significant actions and receives a value of 0 pursuant to OAR 340-012-0045(1)(c)(A)(i), because Respondent has no prior significant actions as defined by OAR 340-012-0030(14).

“H” is the past history of the Respondent in correcting prior significant actions or taking reasonable efforts to minimize the effects of the violations and receives a value of 0 pursuant to OAR 340-012-0045(1)(c)(B)(ii), because Respondent has no prior history.

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

“R” is the cause of the violation and receives a value of 6 pursuant to OAR 340-012-0045(1)(D)(iii), because Respondent’s failure to immediately clean up the oil was intentional. Respondent was aware that the spill had occurred at the time of its occurrence in June 2000, but did not take steps to clean up the spilled oil until approximately October 20, 2000.

“C” is Respondent’s cooperativeness in correcting the violation and receives a value of -2 pursuant to OAR 340-012-0045(1)(E)(i), because Respondent was cooperative and took reasonable steps to correct the violation or minimize the effects of the violation by having the spill cleaned up.

“EB” is the approximate dollar sum of the economic benefit that Respondent gained through noncompliance pursuant to OAR 340-012-0045(1)(F) and receives a value of 0, because there is insufficient evidence upon which to base a finding that Respondent obtained an economic benefit by delaying the cost of cleaning up the spilled oil.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 2 + 6 - 2) + 0] \\ &= \$3,000 + (\$300 \times 6) + \$0 \\ &= \$3,000 + \$1,800 + \$0 \\ &= \$4,800 \end{aligned}$$



## CERTIFICATE OF SERVICE

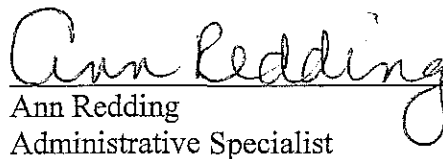
I certify that on November 7, 2002, I served the attached Proposed Order by mailing in a sealed envelope, by certified mail or with first class postage prepaid, as noted below, a copy thereof addressed as follows:

CASE AND SONS LOGGING INC  
C/O MERLON CASE, PRESIDENT  
75546 LOST CREEK RD  
CLATSKANIE OR 97016

**BY CERTIFIED MAIL RECEIPT # 7001 1940 0000 5113 5403**

JANE K HICKMAN  
OREGON DEQ  
OFFICE OF COMPLIANCE AND ENFORCEMENT  
811 SW 6TH AVE  
PORTLAND OR 97204-1390

**BY FIRST CLASS MAIL**

  
Ann Redding  
Administrative Specialist

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Merlon A. Case  
Case and Sons Logging, Inc.  
PO Box 691  
Rainier, OR 97048

2. Article Number

(Transfer from service label)

7099 3220 0001 7183 2284

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X Michael H Forst  Agent  
 Addressee

B. Received by (Printed Name)

Michael H Forst

C. Date of Delivery

5-23-03

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

3. Service Type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

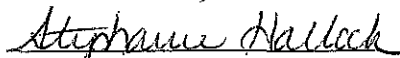
**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON**

In the Matter of	)	
Case and Sons Logging, Inc.	)	Order Dismissing
	)	Petition for
	)	Commission Review
	)	
	)	No. WPM/SP-WR-00-188

This matter came before the Environmental Quality Commission during its regular meeting on May 8, 2003. The procedural history of this matter is set out in the Staff Report (Attachment A).

The Commission finds that Petitioner has failed to file exceptions and a brief as required by OAR 340-011-0132(3). Accordingly, the petition for Commission review is dismissed in accordance with OAR 340-011-0132(3). The proposed decision of the Hearing Officer issued on November 7, 2002, incorporated as Attachment D in Attachment A, is the final order of the Commission.

Dated this 14<sup>th</sup> day of May, 2003.

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

Notice of Appeal Rights

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

Attachments A and B  
GENF5889.DOC

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 A, Action Item: Request for Dismissal of Contested Case No. WPM/SP-WR-00-188 regarding Case and Sons Logging, Inc. May 8, 2003 EQC Meeting

**Appeal to EQC** On November 22, 2002, Merlon A. Case, doing business as Case and Sons Logging, Inc., filed a petition for Commission review of a Proposed Order (Attachment D) that assessed him a \$4,800 civil penalty and found him liable for the release of oil at a logging site over which he had control.

On November 26, 2002, on behalf of the Commission, Mikell O'Mealy sent Mr. Case a letter via certified mail (Attachment B) explaining the requirements for filing exceptions to the Proposed Order as required by OAR 340-011-0132. The postal service certified that the letter was received on December 12, 2002.

Mr. Case did not file exceptions to the order as required, however. Thus, on February 4, 2003, the Department requested that the Commission dismiss the petition for review (Attachment A) and uphold the Proposed Order on this case.

A representative of the Department will be present at the May 8, 2003, Commission meeting to answer any questions you may have about this request.

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

**Alternatives** The Commission may:

1. As requested by the Department, dismiss the petition for review and uphold the Proposed Order.
2. Schedule the case for a future Commission meeting and request copies of the hearing record to review.

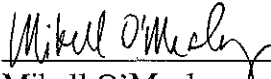
**Attachments**

- A. Department's request for dismissal, dated February 4, 2003
- B. Letter from Mikell O'Mealy to Mr. Case, dated November 26, 2002
- C. Petition for Review of the Proposed Order, dated November 18, 2002
- D. Proposed Order for Assessment of Civil Penalty, dated November 7, 2002

Agenda Item A, Action Item: Request for Dismissal of Contested Case No. WPM/SP-WR-00-188  
regarding Case and Sons Logging, Inc.  
May 8, 2003 EQC Meeting  
Page 2 of 2

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

Report Prepared By:

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



# Oregon

Theodore R. Kulongoski, Governor

(A: Attachment A)

## Department of Environmental Quality

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

February 4, 2003

Environmental Quality Commission  
c/o Mikell O'Mealy  
Office of the Director  
Oregon Department of Environmental Quality  
811 S.W. 6<sup>th</sup> Avenue  
Portland, Oregon 97204

Re: Case and Sons Logging, Inc.  
Notice of Assessment of Civil Penalty  
No. WPM/SP-WR-00-188  
Lincoln County

### Members of the Environmental Quality Commission:

The Department respectfully requests that, pursuant to OAR 340-011-0132(3)(f), the Commission dismiss Petitioner Case and Sons Logging, Inc.'s Petition for Commission Review received by the Department on November 22, 2002. In addition, the Department requests that the Commission uphold the Proposed Order in the above-referenced matter, which was issued on November 7, 2002. The Petition was filed timely, but Petitioner has not filed a brief with written exceptions as required by OAR 340-011-0132(3)(a). The Department cannot prepare an answering brief because Petitioner's exceptions are unknown. Enclosed for your reference is a copy of the Proposed Order and the Petition for Review.

If you have any questions about this action, please contact me at (503) 229-5555.

Sincerely,

Jane K. Hickman  
Environmental Law Specialist

### Enclosures

cc: Case & Sons Logging, Inc.  
Land Quality Division, DEQ  
Gil Hargreaves, DEQ, Western Region, Salem Office



# Oregon

John A. Kitzhaber, M.D., Governor

November 26, 2002

(A: Attachment B)

## Department of Environmental Quality

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

### Via Certified Mail

Merlon A. Case  
Case and Sons Logging, Inc.  
P.O. Box 691  
Rainier, OR 97048

RE: Case No. WPM/SP-WR-00-188

Dear Mr. Case:

On November 22, 2002, the Environmental Quality Commission received your timely request for Commission review of the Proposed Order for the above referenced case.

The hearings decision for this case outlined appeal procedures, including filing of exceptions and briefs. The hearing decision and Oregon Administrative Rules (OAR 340-011-0132) state that you must file exceptions and brief within thirty days from the filing of your request for Commission review. Your exceptions should specify the findings and conclusions that you object to in the Proposed Order and include alternative proposed findings. Once your exceptions have been received, or, if no exceptions have been received by December 22, 2002, the Department will file an answer brief within thirty days. I have enclosed a copy of the applicable administrative rules.

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

After both parties file exceptions and briefs, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and I will notify you of the date and location. If you have any questions about this process, or need additional time to file exceptions and briefs, please call me at 503-229-5301 or 800-452-4011 ext. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy  
Assistant to the Commission

cc: Jane Hickman, DEQ

## Oregon Administrative Rules 340-011-0132

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

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



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

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.430 & ORS 183.435

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

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**OFFICIAL USE**

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Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To Merton A. Case  
 Street, Apt. No., or PO Box No.  
 City, State, ZIP+4

PS Form 3800, May 2000 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
Article Addressed to: <u>Merton A. Case</u> <u>Case and Sons Logging Inc</u> <u>PO Box 691</u> <u>Rainier, OR 97048</u>	B. Received by (Printed Name) <u>ELOISE VIARS</u> C. Date of Delivery <u>12-2-02</u>
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes

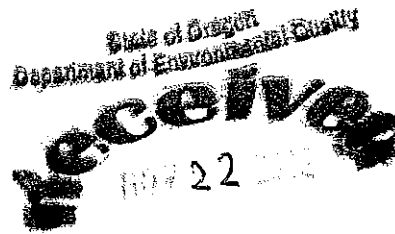
Number from service label 7000 1670 0009 90059797

(A: Attachment C)

Case and Sons Logging, Inc.  
P.O. Box 691  
Rainier, Oregon 97048

November 18, 2002

Environmental Quality Commission  
c/o DEQ-Assistant to the Director  
811 S. W. 6<sup>th</sup> Avenue  
Portland, Oregon 97204



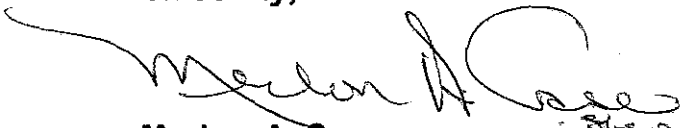
Dear Sirs;

Please accept this letter as a request for "Petition for Review"

In the case # WPM/SP-WR-00-188 Lincoln involving Case and Sons  
Logging, Inc.

Please forward information on OAR-340-011-0132(3) so we may file the  
proper exceptions and brief.

Sincerely,

  
Merlon A. Case  
Case and Sons Logging, Inc.

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

IN THE MATTER OF:

) **PROPOSED ORDER**

**CASE AND SONS LOGGING, INC.,  
Respondent,**

)

)

)

) Hearing Officer Panel Case No. 102454

) Agency Case Number WPM/SP-WR-00-188

) Lincoln County

**HISTORY OF THE CASE**

On February 27, 2001, the Department of Environmental Quality (Department) issued a Notice of Assessment of Civil Penalty (Notice) to Respondent Merlin Case, d.b.a. Case and Sons Logging, Inc. The Notice was reissued on August 8, 2001 and was directed at Case and Sons Logging, Inc., with Merlin Case named as the corporation's registered agent.<sup>1</sup> The Notice alleged that Respondent<sup>2</sup> violated ORS 466.645(1) by failing to immediately clean up an oil spill over which he had ownership or control. The Notice further alleged that Respondent violated ORS 466.635 by failing to immediately notify the Office of Emergency Management of the Department of State Police as soon as Respondent knew that the amount of oil spilled was a reportable quantity. At the time of hearing, the Department dropped the allegation relating to failure to immediately notify authorities about the spill.

On March 21, 2002, Respondent requested a hearing and indicated that he would like to "say some things" regarding the Notice.

The matter was referred to the Hearing Officer Panel on August 14, 2002. A hearing was held on September 24, 2002, at 9:00 a.m., in Portland, Oregon. Andrea H. Sloan, from the Hearing Officer Panel, presided as the Administrative Law Judge (ALJ). Merlin Case appeared in person without counsel as the registered agent of Respondent, and testified at the hearing. Environmental Law Specialist Jane Hickman represented the Department. Witnesses for the Department were: Sr. Troopers Greg Torland and Doug Canfield, of the Oregon State Police, Newport Patrol Office; Joe Petrovich, Hazardous Waste Inspector for the Department, assigned to the Salem Western Regional Office; and Chris Kaufman, the On-Scene Coordinator for hazardous materials releases for the Department. The record was closed at the end of the hearing.

<sup>1</sup> The only difference between the first and second notices was the name of the Respondent.

<sup>2</sup> In this order, the term "Respondent" will refer to both Mr. Case and/or Case & Sons Logging, Inc.

## ISSUES

1. Whether Respondent is strictly liable for the release of oil on the logging property over which Respondent had control on June 10, 2000, under ORS 466.640.
2. Whether Respondent violated ORS 466.645(1), and if so, whether the civil penalty assessment is warranted.

## EVIDENTIARY RULINGS

Panel Exhibits P1 through P3 and the Department Exhibits A1 through A7 were admitted into the record without objection.

## FINDINGS OF FACT

1. On Friday June 10, 2000, Respondent was logging a site in the Wright Creek and Poole Slough area of Lincoln County. At some point that day, the engine from a piece of logging equipment called the "tower" or the "hi-lead" blew up, spraying oil on the ground near the equipment. Respondent dismantled the engine, and in the process, spilled additional oil from the transmission. Respondent testified that he and his crew drained the oil from the equipment's two large oil filters into five-gallon buckets. Respondent also cut off the face of anti-freeze containers, and laid these on their side under the equipment to catch any oil that might still be leaking from the equipment. (Test. Respondent.)

2. In the process of removing the engine, which took the better part of the day, the fuel line on the tower was broken. Respondent testified that only about three gallons of diesel spilled onto ground in the area of the tower. Respondent testified that additional small amounts of diesel fuel had been spilled onto the ground at this site during the one and one-half weeks preceding the June 10, 2000 spill. (Test. Respondent.)

3. Near the end of the day it began raining "torrentially." Respondent and his crew loaded the engine into a pickup truck, put the buckets of oil and used oil filters under the equipment to keep the rain out, and left the site. Respondent left the buckets of oil, rags, and the anti-freeze containers at the site. Respondent left the logging site at approximately 5:30 p.m. Respondent knew that he and his crew left a mess at the site, but they were concerned with getting out of the rain and into town. (Test. Respondent.)

4. Respondent thought that he did not think that he had to report the oil spill to the Department because it consisted of less than 42 gallons of oil. (Test. Respondent.)

5. Sr. Trooper Torland is assigned to the Fish and Wildlife division of the Oregon State Police, and works out of the Newport Patrol Office. At approximately 11:00 p.m. on June 10, 2000, Sr. Trooper Torland was on routine patrol in the Wright Creek and Poole Slough area of Lincoln County. Sr. Trooper Torland came upon an active logging site and, as part of his duties, checked for signs of poaching, vandalism, or underage parties. The trooper saw several pieces of logging equipment parked on or near the roadway. It was raining and when the trooper got out

of his vehicle he could smell a strong odor of petroleum and diesel in the area around the equipment. The trooper also noticed that the bottom of his boots were slick with an oily material. The trooper observed open containers that held an oily liquid on or near the roadway. In addition, the trooper saw that the ruts in the roadway contained a large amount of oil. The trooper illuminated the roadway with his flashlight and vehicle headlights and observed that the roadway and equipment were covered with an oily material. The trooper also saw that the logging site was strewn with garbage. (Test. Torland; Ex. A1.)

6. Sr. Trooper Torland knew that there was a small tributary in this area that led to Wright Creek, which in turn led to Poole Slough and ultimately to Yaquina Bay. Some of the containers the trooper observed were next to the small tributary and others were scattered throughout the site. The trooper knew that there was a potential that the oily material would reach the waters of the state given the proximity of the containers and oil spill to the tributary and the fact that rain was causing the oily water to run off the roadway. (Test. Torland.)

7. Sr. Trooper Torland has visited hundreds of logging sites during his career and he concluded that the condition of this particular site was "the worst I have ever seen." (Ex. A1; Test. Torland.)

8. On June 11, 2000, Sr. Trooper Canfield viewed the site at the request of Sr. Trooper Torland. Sr. Trooper Canfield was the Oregon Salmon Plan representative for this area, and was also assigned to the Fish and Wildlife Division of the Oregon State Police, working out of the Newport Patrol Office. It had stopped raining, but the trooper observed that the ground was coated with an oily material. The trooper saw puddles of oil in roadway ruts underneath a piece of logging equipment. The trooper also observed that the water running down the roadway ruts, and the oily material on the roadway, had an oily sheen. Sr. Trooper Canfield smelled an overwhelming odor of diesel and oil in the area. He observed what appeared to be broken logging equipment and what looked like anti-freeze containers used as oil drain pans under some of the equipment. The trooper thought that one piece of equipment was partially dismantled, as if the engine had failed and someone had started but not finished a repair job. Sr. Trooper Canfield saw five gallon buckets under some of the equipment and he observed that some of the buckets were tipped over, spilling oily liquid onto the ground. The remaining buckets appeared to be full of crank case oil. There was so much oil on the roadway that the trooper wondered if oil had been sprayed over the surface in an effort to keep down dust. The bottoms of the trooper's boots were coated with oil after walking around the site. The trooper observed garbage throughout the site and he also concluded that this was the worst logging site he had ever inspected. (Ex. A2; Test. Canfield.)

9. There was potential for the oily material to enter nearby waters of the state because a tributary, which flowed into Wright Creek, Poole Slough, and Yaquina Bay, was just downhill from the spill site. The tributary was in the natural direction for water and material flowing off the roadway. (Test. Canfield; Test. Petrovich.) Respondent knew that the tributary was close to the site of the spill. (Test. Respondent.)

10. Both troopers concluded that the source of the oil was the equipment and the containers and buckets. The troopers did not believe that the amount of oil they saw on the site

could have come from drained oil filters. The troopers also did not believe that the ruts, containers and buckets were full of only a small amount of oil floating atop rain water. (Test. Canfield; Test. Torland.)

11. After Respondent left the logging site, he forgot that he left the buckets, rags and containers lying around. He did not take any steps to clean up the mess until after the weekend, on June 12, 2000. (Test. Respondent.)

12. On June 12, 2000, Joe Petrovich, a Hazardous Waste Inspector for the Department learned of the release of oil on the logging site near the Poole Slough when he reviewed a voice mail message left for him by Sr. Trooper Torland. (Test. Petrovich.)

13. On June 12, 2000, Mr. Petrovich contacted Link Smith of the State Department of Forestry, and determined that Respondent had been logging at the site under a permit issued by the Department of Forestry. (Ex. A3; Test. Torland; Test. Petrovich.)

14. On June 12, 2000, Mr. Smith contacted Respondent at the logging site. Respondent testified that Mr. Smith told him that it looked as if Respondent had done all that he could to contain the oil spill at the site, and recommended that Respondent remove the remaining rags, buckets and containers<sup>3</sup>. (Test. Respondent.)

15. On June 12, 2000, two days after the spill, Respondent took steps to contain the released oil at the site. (Test. Respondent; Test. Kaufman.)

16. Between June 10, 2000 at 12:01 a.m. and 10:30 a.m. on June 12, 2000, it rained a total of 1.12 inches at the Hatfield Marine Science Center in Newport, which was approximately three miles from the site of the spill. (Ex. A6; Test. Test. Petrovich.)

17. On June 27, 2000, Mr. Petrovich viewed the site with Mr. Smith and Sr. Trooper Canfield. The trooper provided Mr. Petrovich with photographs of the site taken on June 11, 2000. During his site view, Mr. Petrovich saw "oil-soaked ground under the broken down hi-lead equipment, but no oil on the rest of the road." (Ex. A3; Test. Petrovich.)

18. On July 12, 2000, Mr. Petrovich sent a Notice of Noncompliance (NON) to Respondent. The NON detailed three violations in Respondent's management of waste petroleum: 1) failing to immediately notify the Department about the release of waste petroleum with a potential to enter Waters of the State; 2) failure to immediately contain and clean up a spill or release of petroleum to the environment; and 3) failure to perform hazardous waste determination on waste oil prior to disposal. The NON further advised Respondent that he had until July 24, 2000 to submit a written report detailing his remediation efforts concerning the oil on the roadway, and where the waste oil was disposed of. The NON also directed Respondent to

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<sup>3</sup> Respondent testified that he believed that he had done all that he was required to do about the spill because Mr. Smith told him that the site looked okay. Respondent testified that he was not aware of the Department regulations that required him to immediately clean up hazardous spills that had the potential for reaching waters of the state.

include a plan "for determining that all of the petroleum has been removed from the roadway and the soil surrounding the roadway." (Ex. A3; Test. Petrovich.)

19. On July 24, 2002, Mr. Petrovich met for the first time with Respondent. Mr. Petrovich showed Respondent photographs of the oil spill at the logging site. Mr. Petrovich told Respondent that he was responsible for the cleanup of the site, and recommended that he hire an environmental consulting firm to take soil samples at the site to determine the extent of the contamination. (Test. Respondent.)

20. Wright Creek and Poole Slough are environmentally sensitive, salmonoid rearing streams. (Test. Petrovich; Test. Torland; Test. Canfield; Test. Kaufman.)

21. Sometime in August 2000, Respondent hired "Edgewater Environmentalists" to take soil samples at the logging site to detect the presence of oil and/or diesel. Respondent did not know the date that he hired the consultants, or when the samples were taken. (Test. Respondent.)

22. Respondent provided Mr. Petrovich with the sampling report on September 7, 2000. The report indicated that the samples had been taken on August 4, 2000, 65 days after the spill. The report confirmed the presence of both diesel and oil in several locations at the logging site. The amount of diesel found in the samples was as much as 3,150 parts per million (ppm). The amount of oil products found in the samples was as much as 13,000 ppm. The amounts of diesel and oil contamination found in the soil samples exceeded the Department's cleanup standards. The report indicated two areas of high concentration of contaminants: 1) Area A was the area where the fuel supply truck used by Respondent and his crew had been parked; and 2) Area B was the area where the tower was parked on the roadway. (Ex. A4; Test. Petrovich.)

23. Respondent did not take any steps to remove the contaminated soil at the site until Mr. Petrovich received the sampling report and directed Respondent to remove the soil. (Test. Respondent.)

24. On November 13, 2000, Valley Landfills, Inc., of Corvallis, Oregon, issued a Certificate of Disposal, confirming that it had disposed of 6.5 tons of diesel contaminated soil. Valley Landfills, Inc. received the soil on October 20, 2000. (Ex. A5.)

25. Soil samples taken after removal of the 6.5 tons of contaminated soil indicated that the site was not adequately cleaned until December 13, 2000. (Test. Petrovich.)

26. At the time of the spill, Respondent did not have any hazardous spill kits or containment pads.<sup>4</sup> Respondent now keeps spill kits at his logging sites. (Test. Respondent.)

27. The Department expects that persons responsible for spills will take immediate steps to contain oil or hazardous material spills and to mitigate further damage to the environment. When oil spills or releases that have the potential for reaching the waters of this state occur, the

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<sup>4</sup> Respondent testified that he was not aware of such items until after he met with Mr. Petrovich in July 2000.



Department expects the responsible person to immediately take steps to contain, and then to cleanup the spill the spill. (Test. Kaufman.)

28. The Department assessed a civil penalty of \$4,800 against Respondent for his failure to immediately cleanup the oil spill on logging property under his control on June 10, 2000. The Department found that the violation was in the Class One category and was of moderate magnitude. The Department also determined that Respondent had no prior significant actions or history with the Department, and that the spill in question lasted more than one day. The Department further determined that Respondent intentionally failed to immediately cleanup the spill, and that he was cooperative with the Department because he took steps to minimize the effects of the spill. Finally, the Department concluded that Respondent received no economic benefit from failing to immediately cleanup the spill. (Ex. P2.)

### CONCLUSIONS OF LAW

1. Respondent was strictly liable for the release of oil at the logging site over which Respondent had control on June 10, 2000. ORS 466.640.
2. Respondent violated ORS 466.645(1) and the amount of civil penalties assessed by the Department is warranted.

### OPINION

The issues to be resolved are whether Respondent is strictly liable for the release of oil on the logging property over which Respondent had control on June 10, 2000, under ORS 466.640 and whether Respondent violated ORS 466.645(1), warranting a civil penalty in the amount of \$4,800. In this regard, the Department has the burden of proving the allegations by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position.); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). I conclude that the Department has met its burden.

Respondent argued at hearing that he was “caught in the middle” between the Department and the Department of Forestry, and that he did not believe that it was fair to penalize him for an accidental oil spill given the conflicting information he received. For the reasons discussed below, Respondent’s argument is not persuasive.

## Strict Liability

The Department argued that Respondent was strictly liable for the release of oil at the logging site because it had the potential to reach waters of the state.<sup>5</sup> Respondent argued that the release of oil was minor and unintentional.

ORS 466.640 provides that:

any person owning or having control over any oil or hazardous material spilled or released<sup>6</sup> or threatening to spill or release shall be strictly liable without regard to fault for the spill or release or threatened spill or release.

The statute provides a defense to the strict liability standard if, in an action to recover damages, the person owning or having control over the oil can prove that the spill or release of oil was caused by:

(1) An act of war or sabotage or an act of God. (2) Negligence on the part of the United States Government or the State of Oregon. (3) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

ORS 466.640.

The administrative rules promulgated by the Department define "having control over any oil or hazardous material" as including, but not limited to "persons using, handling, processing, manufacturing, storing, treating, disposing or transporting oil or hazardous material." OAR 340-108-0002(8). "Oil" is defined to include "gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse or any other petroleum product." ORS 466.605(8); OAR 340-108-0002(11).

Here, Respondent acknowledged that the oil spilled when the tower engine blew, and as Respondent attempted to remove the engine from the tower. Respondent did not offer any evidence that the spill was caused by an act of war or sabotage or an act of God, or by negligence on the part of the federal or state governments, or by an act or omission of a third party.

Consequently, I conclude that Respondent is strictly liable for the release of oil at the logging site over which Respondent had control on June 10, 2000.

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<sup>5</sup> "Waters of the State" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction." OAR 340-108-0002(17).

<sup>6</sup> "Spill or Release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state \* \* \*." ORS 466.605(12); OAR 340-108-0002(15).

## **Initiate immediate cleanup**

The Department argues that Respondent was required to immediately initiate cleanup of the oil spill at the logging site. As authority, the Department relies on ORS 466.645, which provides, in pertinent part, as follows:

(1) Any person liable for a spill or release or threatened spill or release under ORS 466.640 shall immediately clean up the spill or release under the direction of the Department of Environmental Quality. *Any person liable for a spill or release or a threatened spill or release shall immediately initiate cleanup, whether or not the department has directed the cleanup.*

ORS 466.646(1)(emphasis added). ORS 466.605(2) defines cleanup as follows:

'Cleanup' means the containment, collection, removal, treatment or disposal of oil or hazardous material; site restoration; and any investigations, monitoring, surveys, testing and other information gathering required or conducted by the Department of Environmental Quality.

Chris Kaufman, an On Scene Coordinator for oil and hazardous waste spills for the Department, testified that the Department expects that responsible persons will take immediate steps to contain the spills and mitigate further damage to the environment.

The release of oil at issue in this case occurred before 5:30 p.m., June 10, 2000, when Respondent left the logging site for the weekend. When Respondent drove away that day, he left behind five-gallon buckets and anti-freeze containers full of oil and oily water. Respondent left two large oil filters and oily rags at the site. It was raining heavily when Respondent left the site, and he knew that there was a tributary a short distance downhill from the site of the spill. Respondent did not return to the site for two days. During these two days, it continued to rain at the site. Respondent did not take immediate steps to contain the spill, and took no action to clean up the spill site for two days. Respondent did not fully clean up the spill site for over six months after the spill.

Based on Respondent's own testimony and the other evidence in this record, Respondent did not take immediate steps to contain and cleanup the oil spill, in violation of ORS 466.646(1).

## **Assessment of Civil Penalty**

The Director of the Department is authorized to assess civil penalties for any violations of the Department's rules or statutes. OAR 340-012-0042. The amount of civil penalties assessed is determined through use of a matrix and formula contained in OAR 340-012-0045. *See* OAR 340-012-0042.

In this case, the Department determined that Respondent was liable for \$4,800 in civil penalties based on Respondent's failure to immediately cleanup the oil spill over which

Respondent had control on June 10, 2000. (Ex. P2.) This penalty was determined by calculating the base penalty (BP) and considering other factors, such as prior significant actions (P), past history (H), the number of occurrences (O), the cause of the violation (R), Respondent's cooperation (C), and the economic benefit that Respondent gained by noncompliance with the Department's rules and statutes. The formula for determining civil penalties in this case is expressed as follows: "BP + [(0.1 x BP) x (P + H + O + R + C)] + EP."<sup>7</sup>

The determination of the base penalty involves consideration of the class and magnitude of the violation. OAR 340-012-0045(1)(a). In this case, the Department determined that Respondent committed a Class One violation. "The failure by any person having ownership or control over oil or hazardous materials to immediately cleanup spills or releases or threatened spills or releases" is a Class One violation under OAR 340-012-0069(1)(c). After determining the class of violation, the Department concluded that the magnitude of the violation was "moderate"<sup>8</sup>. OAR 340-012-0045(1)(a)(B).

Specifically, the Department determined that the appropriate base penalty (BP) in this case was \$3,000. OAR 340-012-0042(1)(a)(A)(ii). The Department further determined that Respondent did not have any significant prior actions (P) under OAR 340-012-0030(14)<sup>9</sup>, and no prior history (H) with the Department under OAR 340-012-0045(1)(c)(B)(ii)<sup>10</sup>. The "P" and "H" factors were both assigned values of zero. The Department determined that the violation in question existed for more than one day, from June 10, 2000 until at least June 12, 2000, so the "O" factor was assigned a value of 2 pursuant to OAR 340-012-0045(1)(c)(C)(ii)<sup>11</sup>. The Department also determined that Respondent intentionally failed to cleanup the spill immediately, so the "R" factor was assigned a value of 6 in accordance with OAR 340-012-0045(1)(D)(iii)<sup>12</sup>. The Department further determined that Respondent was cooperative and assigned the "C" factor a value of -2.<sup>13</sup> OAR 340-012-0045(1)(E)(i). Finally, the Department

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<sup>7</sup> The penalty calculation utilized by the Department, contained in Exhibit P2, is set out in full in the Appendix, which is incorporated by reference to this order as if fully set forth herein.

<sup>8</sup> "The magnitude of the violation is moderate pursuant to OAR 340-012-0045(1)(a)(B), because there is no selected magnitude for this violation, and the Department has insufficient evidence upon which to base a finding that the magnitude of the violation was either minor or major." (Ex. P2.)

<sup>9</sup> "Prior Significant Action" means any violation established either with or without admission of a violation by payment of a civil penalty, or by a final order of the Commission or the Department, or by judgment of a court." OAR 340-012-0030(14).

<sup>10</sup> "H" is Respondent's history in correcting prior significant actions or taking reasonable efforts to minimize the effects of the violation. \* \* \*. The values for "H" and the finding which supports each are as follows: \* \* \* (ii) 0 if there is no prior history or if there is insufficient information on which to base a finding." OAR 340-012-0045(1)(c)(B)(ii).

<sup>11</sup> "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows: \* \* \* (ii) 2 if the violation existed for more than one day or if the violation recurred on the same day." OAR 340-012-0045(1)(c)(C)(ii).

<sup>12</sup> "R" is whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act of the Respondent. The values for "R" and the finding which supports each are as follows: \* \* \* (iii) 6 if intentional." OAR 340-012-0045(1)(D)(iii).

<sup>13</sup> "C" is Respondent's cooperativeness and efforts to correct the violation. The values for "C" and the finding which supports each are as follows: (i) -2 if Respondent was cooperative and took reasonable

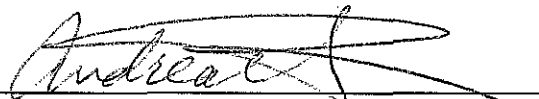
determined that the "EB" factor, for economic benefit gained through the noncompliance, was a zero because there was "insufficient evidence upon which to base a finding that Respondent obtained an economic benefit by delaying the cost of cleaning up the spilled oil" under OAR 340-012-0045(1)(E). (Ex. P2.)

Based on this record, the civil penalty assessment of \$4,800 is accurate and appropriate.

**PROPOSED ORDER**

I propose that the Board issue the following order:

Respondent is subject to a civil penalty in the amount of \$4,800.



Andrea H. Sloan  
Administrative Law Judge  
Hearing Officer Panel

ISSUANCE AND MAILING DATE:

November 7, 2002

**REVIEW**

If you are not satisfied with this decision, you have a right to petition the Environmental Quality Commission for review. To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date of service of this Order, as provided in Oregon Administrative Rule (OAR) 340-011-0132(1) and (2). Service is defined in OAR 340-011-0097, as the date the Order is mailed to you, not the date you receive it. The Petition for Review must be filed with:

Environmental Quality Commission  
c/o DEQ – Assistant to the Director  
811 SW 6th Avenue  
Portland OR 97204

Within 30 days of filing the Petition, you must also file exceptions and a brief as provided in OAR 340-011-0132(3).

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efforts to correct a violation, took reasonable affirmative efforts to minimize the effects of the violation, or took extraordinary efforts to ensure the violation would not be repeated." OAR 340-012-0045(1)(E)(i).

## APPENDIX

VIOLATION 1: Failing to immediately cleanup a spill of oil over which Respondent had ownership or control in violation of Oregon Revised Statute (ORS) 466.645(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0069(1)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0045(1)(a)(B), because there is no selected magnitude for this violation, and the Department has insufficient evidence upon which to base a finding that the magnitude of the violation was either minor or major.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  
$$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$

“BP” is the base penalty, which is \$3,000 pursuant to OAR 340-012-0042(1)(f).

“P” is Respondent’s prior significant actions and receives a value of 0 pursuant to OAR 340-012-0045(1)(c)(A)(i), because Respondent has no prior significant actions as defined by OAR 340-012-0030(14).

“H” is the past history of the Respondent in correcting prior significant actions or taking reasonable efforts to minimize the effects of the violations and receives a value of 0 pursuant to OAR 340-012-0045(1)(c)(B)(ii), because Respondent has no prior history.

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

“R” is the cause of the violation and receives a value of 6 pursuant to OAR 340-012-0045(1)(D)(iii), because Respondent’s failure to immediately clean up the oil was intentional. Respondent was aware that the spill had occurred at the time of its occurrence in June 2000, but did not take steps to clean up the spilled oil until approximately October 20, 2000.

“C” is Respondent’s cooperativeness in correcting the violation and receives a value of -2 pursuant to OAR 340-012-0045(1)(E)(i), because Respondent was cooperative and took reasonable steps to correct the violation or minimize the effects of the violation by having the spill cleaned up.

“EB” is the approximate dollar sum of the economic benefit that Respondent gained through noncompliance pursuant to OAR 340-012-0045(1)(F) and receives a value of 0, because there is insufficient evidence upon which to base a finding that Respondent obtained an economic benefit by delaying the cost of cleaning up the spilled oil.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 2 + 6 - 2) + 0] \\ &= \$3,000 + (\$300 \times 6) + \$0 \\ &= \$3,000 + \$1,800 + \$0 \\ &= \$4,800 \end{aligned}$$

## CERTIFICATE OF SERVICE

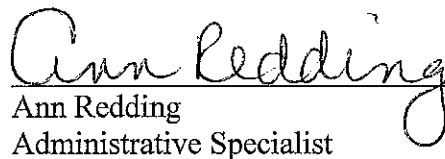
I certify that on November 7, 2002, I served the attached Proposed Order by mailing in a sealed envelope, by certified mail or with first class postage prepaid, as noted below, a copy thereof addressed as follows:

CASE AND SONS LOGGING INC  
C/O MERLON CASE, PRESIDENT  
75546 LOST CREEK RD  
CLATSKANIE OR 97016

**BY CERTIFIED MAIL RECEIPT # 7001 1940 0000 5113 5403**

JANE K HICKMAN  
OREGON DEQ  
OFFICE OF COMPLIANCE AND ENFORCEMENT  
811 SW 6TH AVE  
PORTLAND OR 97204-1390

**BY FIRST CLASS MAIL**

  
Ann Redding  
Administrative Specialist



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 B, Action Item: Request for Dismissal of Contested Case No. AQ/AB-WR-01-082 regarding Fred Mendoza, dba MCM Company  
May 8, 2003 EQC Meeting

**Appeal to EQC** On February 17, 2003, Fred Mendoza, doing business as MCM Company, filed a petition for Commission review of a Proposed Order (Attachment E) that assessed him a \$3,000 civil penalty for unlawfully performing an asbestos abatement project without a license.

On February 19, on behalf of the Commission, Mikell O'Mealy sent Mr. Mendoza a letter via certified mail (Attachment C) explaining the process for filing exceptions to the Proposed Order as required by OAR 340-011-0132. On March 14, that letter was returned unopened to the Department with notice that it was refused by Mr. Mendoza. Ms. O'Mealy attempted to contact Mr. Mendoza at two phone numbers, but learned the numbers were disconnected or not belonging to Mr. Mendoza. Thus, also on March 14, Ms. O'Mealy sent a second letter via overnight mail and regular mail (Attachment B), restating the requirements for filing briefs. Those letters were also refused.

On April 8, the Department requested that the Commission dismiss the petition for review (Attachment A) and uphold the Proposed Order on this case, because Mr. Mendoza failed to file exceptions as required by rule.

A representative of the Department will be present at the May 8, 2003, Commission meeting to answer any questions you may have about this request.

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

**Alternatives** The Commission may:

1. As requested by the Department, dismiss the petition for review and uphold the Proposed Order.
2. Schedule the case for a future Commission meeting and request copies of the hearing record to review and consider.

Agenda Item B, Action Item: Request for Dismissal of Contested Case No. AQ/AB-WR-01-082  
regarding Fred Mendoza, dba MCM Company

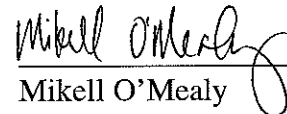
May 8, 2003 EQC Meeting

Page 2 of 2

- Attachments**
- A. Department's request for dismissal, dated April 8, 2003
  - B. Letter from Mikell O'Mealy to Mr. Mendoza, dated March 14, 2003
  - C. Letter from Mikell O'Mealy to Mr. Mendoza, dated February 19, 2003
  - D. Petition for Review of the Proposed Order, dated February 11, 2003
  - E. Proposed Order for Assessment of Civil Penalty, dated January 17, 2003

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

Report Prepared By:

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



# Oregon

Theodore R. Kulongoski, Governor

Attachment A

## Department of Environmental Quality

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

April 8, 2003

Environmental Quality Commission  
c/o Mikell O'Mealy  
Office of the Director  
Oregon Department of Environmental Quality  
811 S.W. 6<sup>th</sup> Avenue  
Portland, Oregon 97204

Re: Fred Mendoza, dba M.C.M. Company  
Notice of Assessment of Civil Penalty  
No. AQ/AB-WR-01-082  
Lincoln County

Members of the Environmental Quality Commission:

The Department respectfully requests that, pursuant to OAR 340-011-0132(3)(f), the Commission dismiss Petitioner Fred Mendoza's Petition for Commission Review received by the Department on February 18, 2003. In addition, the Department requests that the Commission uphold the Proposed Order in the above-referenced matter, which was issued on January 17, 2003. The Petition was filed timely, but Petitioner has not filed a brief with written exceptions as required by OAR 340-011-0132(3)(a). The Department cannot prepare an answering brief because Petitioner's exceptions are unknown. Enclosed for your reference is a copy of the Proposed Order and the Petition for Review.

Sincerely,

Bryan Smith  
Environmental Law Specialist

Enclosures

cc: Fred Mendoza  
Air Quality Division, DEQ  
Dottie Boyd, DEQ, Western Region, Salem Office

*Refused*  
*R B*  
*Did not order*  
*440*

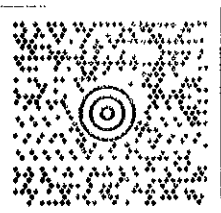
*325*  
*SP*

Place Labels in This Space  
Options:  UPS Tracking Label and your address label  
 UPS Air Shipping Document  
 UPS Worldwide Waybill

MAIL ROOM  
(503) 229-5298  
DEQ-STATE OF OREGON  
811 SW 6TH AVENUE  
PORTLAND OR 97204

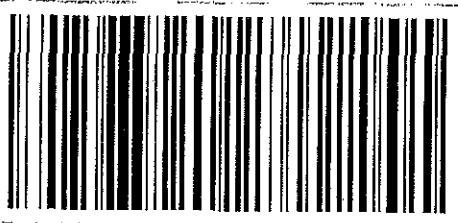
LTR 1 OF 1

SHIP TO:  
FRED MENDOZA  
RETURN TO SHIPPER 03/27/2003 17:16 09732  
REASON FOR RETURN:  
RECEIVER DID NOT ORDER, REFUSED  
ORIGINAL RECEIVER:  
MENDOZA, F



OR 972 9-01

UPS NEXT DAY AIR 1  
TRACKING #: 1Z 863 059 01 4137 0018



BILLING: P/P

REF 1: 03 14010 MSD02  
REF 2: ANDREA CROZIER

UOM 5.0.35 UPS Thermal 2 20.0A 09/2002

UPS International Shipping Notice - Carriage forward may be subject to the rules relating to liability and other terms under conditions established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the Warsaw Convention) or the Convention on the Contract for the International Carriage of Goods by Road (the CMR Convention). These conventions, including their amendments, apply to the extent they are not inconsistent with the Special Administration Regulations. Diversion contrary to U.S. law prohibited. For shipping rates, call 1-800-782-7800. United Parcel Service, Lubbock, TX

Do not send cash or cash equivalent.

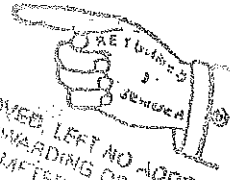
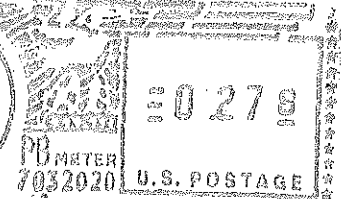
regon

DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

811 SW Sixth Ave.  
Portland, OR 97204-1390

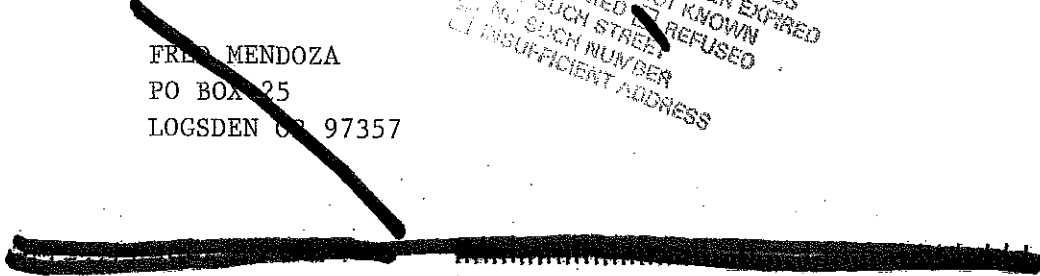
Address Service Requested

PRECEDENCE  
FIRST CLASS



- MOVED, LEFT NO ADDRESS
- FORWARDING ORDER EXPIRED
- UNCLAIMED NOT KNOWN
- NO SUCH STREET REFUSED
- NO SUCH NUMBER
- INSUFFICIENT ADDRESS

~~FRED MENDOZA~~  
~~PO BOX 25~~  
~~LOGSDEN OR 97357~~





# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

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

March 14, 2003

Via Regular Overnight

Fred Mendoza  
P.O. Box 25  
Logsdon, OR 97357

11967 Logsdon Rd.  
Blodgett, OR 97326

RE: Case No. AQ/AB-WR-01-082

Dear Mr. Mendoza:

On February 17, 2003, the Environmental Quality Commission received your timely request for Commission review of the Proposed Order for the above referenced case. On March 14 (today), I received back the letter I mailed to you via certified mail on February 19, containing the instructions below for appealing this case. The returned envelop indicates you refused the letter. I attempted to reach you today by phone at 541-444-2283 and 541-444-2976, but the numbers were disconnected and not belonging to you (respectively).

The Proposed Order for this case outlined appeal procedures, including filing of exceptions and briefs. The hearing decision and Oregon Administrative Rules (OAR 340-011-0132) state that you must file exceptions and brief within thirty days from the filing of your request for Commission review, or March 19, 2003. Your exceptions should specify the findings and conclusions that you object to in the Proposed Order and include alternative proposed findings. Once your exceptions have been received, a representative of the Department of Environmental Quality may file an answer brief within thirty days. I have enclosed a copy of the applicable administrative rules for your information.

To file exceptions and briefs, please mail these documents to Mikell O'Mealy, on behalf of the Environmental Quality Commission, at 811 SW 6th Avenue, Portland, Oregon, 97204. You may also send me a fax at 503-229-6762. Please send copies to Bryan Smith, Oregon Department of Environmental Quality, 811 SW 6<sup>th</sup> Ave., Portland, Oregon 97204.

After both parties file exceptions and briefs, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and I will notify you of the date and location. If you have any questions about this process, or need additional time to file exceptions and briefs, please call me at 503-229-5301 or 800-452-4011 ext. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy  
Assistant to the Commission

cc: Bryan Smith, Oregon DEQ

## Oregon Administrative Rules 340-011-0132

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

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

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

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.430 & ORS 183.435

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





# Oregon

Theodore R. Kulongoski, Governor

Attachment B

## Department of Environmental Quality

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

March 14, 2003

Via Regular Overnight

Fred Mendoza  
P.O. Box 25  
Logsdon, OR 97357

11967 Logsdon Rd.  
Blodgett, OR 97326

RE: Case No. AQ/AB-WR-01-082

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Sincerely,

Mikell O'Mealy  
Assistant to the Commission

cc: Bryan Smith, Oregon DEQ

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  - (b) The timely filing of a Petition is a jurisdictional requirement and cannot be waived.
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  - (a) Petitioner's Exceptions and Brief: Within 30 days from the filing of the Petition, the Petitioner must file with the Commission and serve upon each participant written exceptions, brief and proof of service. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the Petitioner relies. Matters not raised before the hearing officer will not be considered except when necessary to prevent manifest injustice.
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  - (c) Reply Brief: Each participant will have 20 days from the date of filing of a Respondent's brief, in which to file with the Commission and serve upon each participant a reply brief and proof of service.
  - (d) Briefing on Commission Invoked Review: When one or more members of the Commission wish to review a hearing officer's Order, and no participant has timely filed a Petition, the Chairman will promptly notify the participants of the issue that the Commission desires the participants to brief. The Chairman will also establish the schedule for filing of briefs. The participants must limit their briefs to those issues. When the Commission wishes to review a hearing officer's Order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.
  - (e) Extensions: The Chairman or the Director, may extend any of the time limits contained in this rule except for the filing of a Petition under subsection (1) of this rule. Each extension request must be in writing and be served upon each participant. Any request for an extension may be granted or denied in whole or in part.

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

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.430 & ORS 183.435

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



# Oregon

Theodore R. Kulongoski, Governor

Attachment C

## Department of Environmental Quality

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

February 19, 2003

Via Certified Mail

Fred Mendoza  
P.O. Box 25  
Logsdon, OR 97357

RE: Case No. AQ/AB-WR-01-082

Dear Mr. Mendoza:

On February 17, 2003, the Environmental Quality Commission received your timely request for Commission review of the Proposed Order for the above referenced case.

The Proposed Order outlined appeal procedures, including filing of exceptions and briefs. The hearing decision and Oregon Administrative Rules (OAR 340-011-0132) state that you must file exceptions and brief within thirty days from the filing of your request for Commission review, or March 19, 2003. Your exceptions should specify the findings and conclusions that you object to in the Proposed Order and include alternative proposed findings. Once your exceptions have been received, a representative of the Department of Environmental Quality may file an answer brief within thirty days. I have enclosed a copy of the applicable administrative rules for your information.

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

After both parties file exceptions and briefs, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and I will notify you of the date and location. If you have any questions about this process, or need additional time to file exceptions and briefs, please call me at 503-229-5301 or 800-452-4011 ext. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy  
Assistant to the Commission

cc: Bryan Smith, Oregon DEQ

## Oregon Administrative Rules 340-011-0132

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

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

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

Stat. Auth.: ORS 183.335 & ORS 468.020

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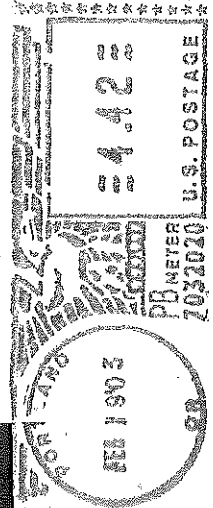
**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

ED06 5004 4000 0797 0000

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To  
**Fred Mendoza**  
 Street, Apt. No., or PO Box No.  
 City, State, ZIP+4

PS Form 3800, May 2000 See Reverse for Instructions



2-21-03  
 3-7-03  
 3

**CERTIFIED MAIL**

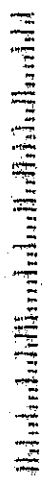


7000 1670 0009 9005 9803

**Oregon**  
 DEPARTMENT OF  
 ENVIRONMENTAL  
 QUALITY  
 811 SW Sixth Ave.  
 Portland, OR 97204-1390

Address Service Requested  
 MOVED, LEFT NO ADDRESS  
 FORWARDING ORDER EXPIRED  
 UNCLAIMED NOT KNOWN  
 NO SUCH STREET  
 NO SUCH NUMBER  
 INSUFFICIENT ADDRESS

Fred Mendoza  
 PO Box 25  
 Logsdon, OR 97357



57204/1390

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Fred Mendoza  
PO Box 25  
Logsdan, OR 97357

2. Article Number

(Transfer from service label)

7000 1670 0009 9005 9803

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-2509

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes



Attachment D

TO : ENVIRONMENTAL QUALITY COMMISSION  
C/O DEQ -ASSISTANT TO THE DIRECTOR  
811 S.W. 6th. AVE.  
PORTLAND, OR. 97204

FROM : FRED MENDOZA  
P.O. BOX 25  
LOGSDEN, OR. 97357

DATE : 2-11-03

RE : AGENCY CASE NO. AQ/AB-WR-01-082

RECEIVED  
FEB 18 2003

DEPT OF ENVIRONMENTAL QUALITY  
NORTHWEST REGION

---

BY THIS NOTICE FRED MENDOZA IS FILLING " PETITION FOR REVIEW"

AS PROVIDED IN OREGON ADMINISTRATIVE RULE (OAR) 340-011-0132 (1) AND (2)



FRED MENDOZA

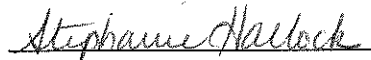
**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON**

In the Matter of	)	
Fred Mendoza d/b/a	)	Order Dismissing
M.C.M. Company	)	Petition for
	)	Commission Review
	)	
	)	No. AQ/AB-WR-01-082

This matter came before the Environmental Quality Commission during its regular meeting on May 8, 2003. The procedural history of this matter is set out in the Staff Report (Attachment A).

The Commission finds that Petitioner has failed to file exceptions and a brief as required by OAR 340-011-0132(3). Accordingly, the petition for Commission review is dismissed in accordance with OAR 340-011-0132(3). The proposed decision of the Hearing Officer issued on January 17, 2003, incorporated as Attachment E in Attachment A, is the final order of the Commission.

Dated this 14<sup>th</sup> day of May, 2003.

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

Notice of Appeal Rights

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

Attachments A and B  
GENF5839.DOC

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 B, Action Item: Request for Dismissal of Contested Case No. AQ/AB-WR-01-082 regarding Fred Mendoza, dba MCM Company  
 May 8, 2003 EQC Meeting

**Appeal to EQC** On February 17, 2003, Fred Mendoza, doing business as MCM Company, filed a petition for Commission review of a Proposed Order (Attachment E) that assessed him a \$3,000 civil penalty for unlawfully performing an asbestos abatement project without a license.

On February 19, on behalf of the Commission, Mikell O'Mealy sent Mr. Mendoza a letter via certified mail (Attachment C) explaining the process for filing exceptions to the Proposed Order as required by OAR 340-011-0132. On March 14, that letter was returned unopened to the Department with notice that it was refused by Mr. Mendoza. Ms. O'Mealy attempted to contact Mr. Mendoza at two phone numbers, but learned the numbers were disconnected or not belonging to Mr. Mendoza. Thus, also on March 14, Ms. O'Mealy sent a second letter via overnight mail and regular mail (Attachment B), restating the requirements for filing briefs. Those letters were also refused.

On April 8, the Department requested that the Commission dismiss the petition for review (Attachment A) and uphold the Proposed Order on this case, because Mr. Mendoza failed to file exceptions as required by rule.

A representative of the Department will be present at the May 8, 2003, Commission meeting to answer any questions you may have about this request.

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

**Alternatives** The Commission may:

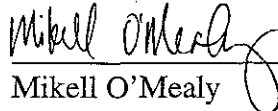
1. As requested by the Department, dismiss the petition for review and uphold the Proposed Order.
2. Schedule the case for a future Commission meeting and request copies of the hearing record to review and consider.

Agenda Item B, Action Item: Request for Dismissal of Contested Case No. AQ/AB-WR-01-082  
regarding Fred Mendoza, dba MCM Company  
May 8, 2003 EQC Meeting  
Page 2 of 2

- Attachments**
- A. Department's request for dismissal, dated April 8, 2003
  - B. Letter from Mikell O'Mealy to Mr. Mendoza, dated March 14, 2003
  - C. Letter from Mikell O'Mealy to Mr. Mendoza, dated February 19, 2003
  - D. Petition for Review of the Proposed Order, dated February 11, 2003
  - E. Proposed Order for Assessment of Civil Penalty, dated January 17, 2003

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

Report Prepared By:

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



# Oregon

Theodore R. Kulongoski, Governor

(A: Attachment A)

Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR 97204-1390

503-229-5696

TTY 503-229-6993

April 8, 2003

Environmental Quality Commission  
c/o Mikell O'Mealy  
Office of the Director  
Oregon Department of Environmental Quality  
811 S.W. 6<sup>th</sup> Avenue  
Portland, Oregon 97204

Re: Fred Mendoza, dba M.C.M. Company  
Notice of Assessment of Civil Penalty  
No. AQ/AB-WR-01-082  
Lincoln County

Members of the Environmental Quality Commission:

The Department respectfully requests that, pursuant to OAR 340-011-0132(3)(f), the Commission dismiss Petitioner Fred Mendoza's Petition for Commission Review received by the Department on February 18, 2003. In addition, the Department requests that the Commission uphold the Proposed Order in the above-referenced matter, which was issued on January 17, 2003. The Petition was filed timely, but Petitioner has not filed a brief with written exceptions as required by OAR 340-011-0132(3)(a). The Department cannot prepare an answering brief because Petitioner's exceptions are unknown. Enclosed for your reference is a copy of the Proposed Order and the Petition for Review.

Sincerely,

Bryan Smith  
Environmental Law Specialist

Enclosures

cc: Fred Mendoza  
Air Quality Division, DEQ  
Dottie Boyd, DEQ, Western Region, Salem Office



# Oregon

Theodore R. Kulongoski, Governor

(A: Attachment B)

Department of Environmental Quality

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

March 14, 2003

Via Regular Overnight

Fred Mendoza  
P.O. Box 25  
Logsdon, OR 97357

11967 Logsdon Rd.  
Blodgett, OR 97326

RE: Case No. AQ/AB-WR-01-082

Dear Mr. Mendoza:

On February 17, 2003, the Environmental Quality Commission received your timely request for Commission review of the Proposed Order for the above referenced case. On March 14 (today), I received back the letter I mailed to you via certified mail on February 19, containing the instructions below for appealing this case. The returned envelop indicates you refused the letter. I attempted to reach you today by phone at 541-444-2283 and 541-444-2976, but the numbers were disconnected and not belonging to you (respectively).

The Proposed Order for this case outlined appeal procedures, including filing of exceptions and briefs. The hearing decision and Oregon Administrative Rules (OAR 340-011-0132) state that you must file exceptions and brief within thirty days from the filing of your request for Commission review, or March 19, 2003. Your exceptions should specify the findings and conclusions that you object to in the Proposed Order and include alternative proposed findings. Once your exceptions have been received, a representative of the Department of Environmental Quality may file an answer brief within thirty days. I have enclosed a copy of the applicable administrative rules for your information.

To file exceptions and briefs, please mail these documents to Mikell O'Mealy, on behalf of the Environmental Quality Commission, at 811 SW 6th Avenue, Portland, Oregon, 97204. You may also send me a fax at 503-229-6762. Please send copies to Bryan Smith, Oregon Department of Environmental Quality, 811 SW 6<sup>th</sup> Ave., Portland, Oregon 97204.

After both parties file exceptions and briefs, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and I will notify you of the date and location. If you have any questions about this process, or need additional time to file exceptions and briefs, please call me at 503-229-5301 or 800-452-4011 ext. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy  
Assistant to the Commission

cc: Bryan Smith, Oregon DEQ

## Oregon Administrative Rules 340-011-0132

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

- (1) Commencement of Review by the Commission:
  - (a) Copies of the hearing officer's Order will be served on each of the participants in accordance with OAR 340-011-0097. The hearing officer's Order will be the final order of the Commission unless within 30 days from the date of service, a participant or a member of the Commission files with the Commission and serves upon each participant a Petition for Commission Review. A proof of service should also be filed, but failure to file a proof of service will not be a ground for dismissal of the Petition.
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  - (a) Petitioner's Exceptions and Brief: Within 30 days from the filing of the Petition, the Petitioner must file with the Commission and serve upon each participant written exceptions, brief and proof of service. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the Petitioner relies. Matters not raised before the hearing officer will not be considered except when necessary to prevent manifest injustice.
  - (b) Respondent's Brief: Each participant will have 30 days from the date of filing of the Petitioner's exceptions and brief, in which to file with the Commission and serve upon each participant an answering brief and proof of service. If multiple Petitions have been filed, the Respondent must also file exceptions as required in (3)(a) at this time.
  - (c) Reply Brief: Each participant will have 20 days from the date of filing of a Respondent's brief, in which to file with the Commission and serve upon each participant a reply brief and proof of service.
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- (g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the Chairman will schedule the appeal for oral argument before the Commission.
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- (5) Scope of Review: The Commission may substitute its judgment for that of the hearing officer in making any particular finding of fact, conclusion of law, or order except as limited by OAR 137-003-0665.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.430 & ORS 183.435

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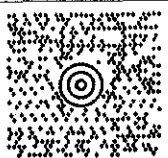
MAIL ROOM  
15831 229-8298  
DEPT STATE OF OREGON  
811 SW 6TH AVENUE  
PORTLAND OR 97204

LTR 1 OF 1

SHIP TO:  
FRED MENDOZA  
RETURN TO SHIPPER

03/27/2003 17:16 09732

REASON FOR RETURN:  
RECEIVER DID NOT ORDER, REFUSED  
ORIGINAL RECEIVER:  
MENDOZA, F



OR 972 9-01



UPS NEXT DAY AIR

TRACKING #: 12 863 059 01 4137 0018

1



BILLING: P/P

REF 1: 03 14010 MSD02  
REF 2: ANDREA CROZIER

UOH 5.0.35 UPS Thermal 2.20.0A 08/2002

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010195201 Fax 12/01 BL United Parcel Service, Louisville, KY

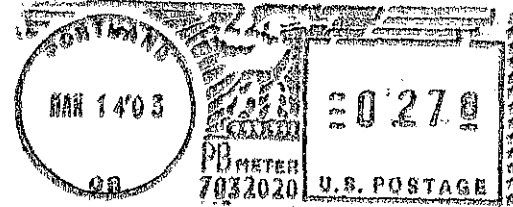
# Oregon

DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

811 SW Sixth Ave.  
Portland, OR 97204-1390

Address Service Requested

REGISTERED  
FIRST CLASS



- ALLOWED, LEFT NO ADDRESS
- RETURNING ORDER EXPIRED
- UNCLAIMED NOT KNOWN
- NO SUCH STREET REFUSED
- NO SUCH NUMBER
- INSUFFICIENT ADDRESS

~~FRED MENDOZA  
PO BOX 25  
LOGSDEN OR 97357~~

DEC-3



# Oregon

Theodore R. Kulongoski, Governor

(A: Attachment C)

Department of Environmental Quality

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

February 19, 2003

Via Certified Mail

Fred Mendoza  
P.O. Box 25  
Logsden, OR 97357

RE: Case No. AQ/AB-WR-01-082

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Sincerely,

Mikell O'Mealy  
Assistant to the Commission

cc: Bryan Smith, Oregon DEQ



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  - (b) Respondent's Brief: Each participant will have 30 days from the date of filing of the Petitioner's exceptions and brief, in which to file with the Commission and serve upon each participant an answering brief and proof of service. If multiple Petitions have been filed, the Respondent must also file exceptions as required in (3)(a) at this time.
  - (c) Reply Brief: Each participant will have 20 days from the date of filing of a Respondent's brief, in which to file with the Commission and serve upon each participant a reply brief and proof of service.
  - (d) Briefing on Commission Invoked Review: When one or more members of the Commission wish to review a hearing officer's Order, and no participant has timely filed a Petition, the Chairman will promptly notify the participants of the issue that the Commission desires the participants to brief. The Chairman will also establish the schedule for filing of briefs. The participants must limit their briefs to those issues. When the Commission wishes to review a hearing officer's Order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.
  - (e) Extensions: The Chairman or the Director, may extend any of the time limits contained in this rule except for the filing of a Petition under subsection (1) of this rule. Each extension request must be in writing and be served upon each participant. Any request for an extension may be granted or denied in whole or in part.

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

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.430 & ORS 183.435

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

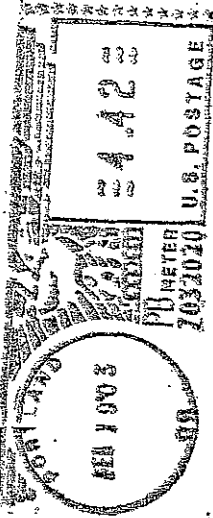
U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To  
**Fred Mendoza**  
 Street, Apt. No., or PO Box No.  
 City, State, ZIP+4

PS Form 3800, Mar. 2004 See Reverse for Instructions



*Handwritten:* 2-21-03  
 3-7-03

**CERTIFIED MAIL**



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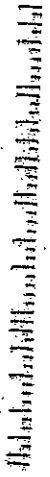
**Oregon**  
 DEPARTMENT OF  
 ENVIRONMENTAL  
 QUALITY  
 811 SW Sixth Ave.  
 Portland, OR 97204-1390

Fred Mendoza  
 PO Box 25  
 Logsdon, OR 97357

Address Service Requested

MOVED, LEFT NO ADDRESS  
 FORWARDING ORDER EXPIRED  
 UNCLAIMED NOT KNOWN  
 NO SUCH STREET  
 NO SUCH NUMBER  
 INSUFFICIENT ADDRESS

97204/1390



(A: Attachment D)

TO : ENVIRONMENTAL QUALITY COMMISSION  
C/O DEQ -ASSISTANT TO THE DIRECTOR  
811 S.W. 6th. AVE.  
PORTLAND, OR. 97204

FROM : FRED MENDOZA  
P.O. BOX 25  
LOGSDEN, OR. 97357

DATE : 2-11-03

RE : AGENCY CASE NO. AQ/AB-WR-01-082

RECEIVED  
FEB 18 2003

DEPT OF ENVIRONMENTAL QUALITY  
NORTHWEST REGION

---

BY THIS NOTICE FRED MENDOZA IS FILLING " PETITION FOR REVIEW"

AS PROVIDED IN OREGON ADMINISTRATIVE RULE (OAR) 340-011-0132 (1) AND (2)



FRED MENDOZA

(A: Attachment E)

cc - 1-222

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

IN THE MATTER OF ) **PROPOSED ORDER**  
)  
**FRED MENDOZA** )  
dba **M.C.M. COMPANY** ) Agency Case No. AQ/AB-WR-01-082  
**RESPONDENT** ) Hearing Officer Panel No. 100110  
)

**HISTORY OF THE CASE**

On March 1, 2001, the Department of Environmental Quality (DEQ) issued to Respondent, Fred Mendoza, dba M.C.M. Company (MCM), a Notice of Noncompliance, asserting that Respondent violated OAR 340-248-0110(3), 340-248-0250(2), 340-248-0270(2) and 340-248-0280(2) by engaging in an asbestos abatement project without a license, accumulation of asbestos-containing waste material, failure to adequately wet asbestos-containing material when it has been removed, and failure to ensure that asbestos-containing material remained wet until disposed of. Thereafter, on August 8, 2001, DEQ issued a Notice of Assessment of Civil Penalty, assessing MCM \$6,000 as a civil penalty for conducting an asbestos abatement project without a license, accumulating asbestos-containing material, and failure to adequately wet asbestos-containing material while removing it. Respondent requested a hearing.

On May 1, 2002, the case was referred to the Hearing Officer Panel for hearing. On December 10, 2002, Administrative Law Judge Maurice L. Russell, II conducted a hearing in this matter in Salem, Oregon. Respondent appeared in person, without counsel. Brian Smith appeared as Agency Representative for DEQ. Dottie Boyd, W.L. Thomas, Jr., and Randolph D. Walker testified on behalf of DEQ. Fred Mendoza testified on his own behalf. DEQ moved to amend the Notice of Assessment of Civil Penalty, to reduce the penalty amount to \$3,000, based upon an amount of asbestos-containing material removed of less than 160 square feet. The evidentiary record remained open to allow DEQ to submit additional evidence until December 19, 2002. Thereafter, DEQ requested an extension of time to file additional argument. This motion was denied, and the record closed on December 19, 2002, without additional submission.

**ISSUES**

- 1) Whether MCM, as a subcontractor, is liable for removal of asbestos-containing material at the instruction of the general contractor.
- 2) Whether the material removed contained asbestos.
- 3) Whether DEQ exercised its discretion properly in determining the amount of the penalty.

**This hearing decision has been copied to:  
field person & his/her mgr, Anne, Les & staff  
the EQC, the DA, the Business Office,  
West Publishing, and LexusNexus. Let me  
know if anyone else needs a copy. Deb**



- 4) Whether Chrysotile is a hazardous material.
- 5) Whether respondent's claim for compensation for loss may be considered in an administrative hearing.

### **EVIDENTIARY RULING**

Exhibits A-1 through A-4, offered by DEQ, were marked and admitted into the record. Exhibit R-1 through R-18, offered by MCM, were marked. DEQ objected to the admission of Exhibits R-4, a page from an Earth Science Textbook, and R-8, a letter from Christopher Rich, attorney. The objections were taken under advisement.

The objection as to Exhibit R-4 is sustained because the proffered evidence is not material to this case. As discussed more fully in the Opinion, below, it is immaterial whether Chrysotile Asbestos is actually a hazardous material, since the Legislature has listed this form of asbestos as being subject to regulation.

### **FINDINGS OF FACT**

- 1) On or about February 27, 2001, an employee of MCM removed less than 160 square feet of sheet vinyl flooring from a room at the Hatfield Marine Science Center, 2130 Mark Hatfield Drive, Newport, Oregon. The work was performed under an agreement for compensation with the Center. (Ex. R-10.) The vinyl was removed in strips, and no water was used during removal. (Ex. A-3; Test. Respondent, Test. Randy Walker) A sample of the material was taken by Wally Thomas, an asbestos abatement contractor called to the scene, and left at Thomas' office for Dotty Boyd, an employee of DEQ. Dotty Boyd submitted the sample to the DEQ Laboratories and Applied Research, Inorganic/Nonmetals section. (Ex. A-2 at 2; Test. Wally Thomas; Test. Dotty Boyd.)
- 2) The vinyl removed contained 20 percent Chrysotile Asbestos in its backing. (Ex. A-2 at 3.)
- 3) MCM did not know that the vinyl flooring contained asbestos at the time it was removed. (Test. Fred Mendoza.) MCM had been told that the flooring was installed several years after asbestos was removed from flooring materials being manufactured. (Test. Fred Mendoza.) MCM was cooperative with DEQ in eliminating the violation. (Test. Dotty Boyd.) In calculating the amount of the proposed penalty, DEQ assumed that MCM received no financial benefit from the violation, and cooperated with DEQ in correcting the violation. (Notice of Assessment of Civil Penalty-Appendix at 2.) DEQ amended the amount of the penalty proposed, when it was determined that the amount of flooring removed did not exceed 160 square feet. (Test. Dotty Boyd.)

### **CONCLUSIONS OF LAW**

- 1) MCM, as a subcontractor, is liable for removal of asbestos-containing material at the instruction of the general contractor.

- 2) The material removed contained asbestos.
- 3) DEQ exercised its discretion properly in determining the amount of the penalty.
- 4) It is immaterial whether Chrysotile is actually a hazardous material.
- 5) Respondent's claim for compensation for loss may not be considered in this administrative hearing.

### OPINION

The public policy underlying the statutes and rules governing the handling of asbestos-containing materials was described by the Legislature in ORS 468A.705 as follows:

The Legislative Assembly finds and declares that:

- (1) Asbestos-containing material in a friable condition, or when physically or chemically altered, can release asbestos fibers into the air. Asbestos fibers are respiratory hazards proven to cause lung cancer, mesothelioma and asbestosis and as such, are a danger to the public health.
- (2) There is no known minimal level of exposure to asbestos fibers that guarantees the full protection of the public health.
- (3) Asbestos-containing material found in or on facilities or used for other purposes within the state is a potential health hazard.
- (4) The increasing number of asbestos abatement projects increases the exposure of contractors, workers and the public to the hazards of asbestos.
- (5) If improperly performed, an asbestos abatement project creates unnecessary health and safety hazards that are detrimental to citizens and to the state in terms of health, family life, preservation of human resources, wage loss, insurance, medical expenses and disability compensation payments.
- (6) It is in the public interest to reduce exposure to asbestos caused by improperly performed asbestos abatement projects through the upgrading of contractor and worker knowledge, skill and competence.

For the implementation of that policy, ORS 468A.700 (3), (4), (5) and (6) provide as follows:

As used in ORS 468A.700 to 468A.760:

(3) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.

(4) "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 or disposal of any material with the potential of releasing asbestos fibers from asbestos-containing material into the air.

(5) "Asbestos-containing material" means any material containing more than one percent asbestos by weight.

(6) "Contractor" means a person that undertakes for compensation an asbestos abatement project for another person. As used in this subsection, "compensation" means wages, salaries, commissions and any other form of remuneration paid to a person for personal services.

ORS 468A.710 provides in pertinent part as follows:

(1) Except as provided in ORS 468A.707 (1)(c) and (3), after the Environmental Quality Commission adopts rules under ORS 468A.707 and 468A.745, no contractor shall work on an asbestos abatement project unless the contractor holds a license issued by the Department of Environmental Quality under ORS 468A.720.

(2) A contractor carrying out an asbestos abatement project shall be responsible for the safe and proper handling and delivery of waste that includes asbestos-containing material to a landfill authorized to receive such waste.

DEQ has adopted rules governing the handling of asbestos. (OAR 340-248-0005 *et seq.*)

OAR 340-248-0120(1) provides that: "Any contractor performing an asbestos abatement project must be licensed by the Department."

By removing the asbestos-containing flooring material, MCM's employees performed "an asbestos abatement project" which required a license. Since the statute defines "contractor" as any person who undertakes for compensation to perform an asbestos abatement project for another, it is immaterial whether MCM was acting as general contractor or a subcontractor on the

project. MCM was acting under an agreement whereby MCM would receive compensation for the removal. MCM is therefore subject to the requirements of OAR 340-248-0120(1).

There is no requirement that MCM know that the flooring contained asbestos when it was removed. MCM violated OAR 340-248-0120(1) by the act of removing the flooring whether the presence of asbestos was known, or not, and whether or not MCM was falsely told that asbestos was not present.

The flooring was not wetted during its removal. This is also a violation of *former* OAR 340-248-0270(2)- now OAR 340-248-0270(5). Thus, a preponderance of the evidence establishes that MCM failed to wet the material as required. A contractor in Respondent's position is strictly responsible for ensuring that asbestos-containing material is handled appropriately. Thus, Respondent is not relieved of responsibility for this incident because another person misrepresented the contents of the material.

In light of the Legislative finding that improper handling of asbestos creates a danger to the public health, a potential health hazard, and an unnecessary health and safety hazard, DEQ's interpretation of OAR 340-248-0120(1) as defining a "strict liability" offense that required special care on the part of contractors is entirely appropriate.

MCM argued that a discrepancy in the color of the material as described in various documents raises a question as to whether the material tested as containing asbestos was the material that MCM removed. Exhibit A2, the report of the analysis of the material described the material as "light green flooring with gray, fibrous backing." MCM submitted statements from the workers who performed the removal, stating that the material was pale yellow.

In administrative hearings, the standard of proof is by a preponderance of the evidence. *Gallant v. Board of Medical Examiners*, 159 Or App 175 (1999); *Cook v. Employment Division* 47 Or App 437 (1980); *Metcalf v. AFSD* 65 Or App 761 (1983), *rev den* 296 Or 411 (1984); *OSCI v. Bureau of Labor and Industries*, 98 Or App 548 *rev den* 308 Or 660 (1989). Thus, it is only necessary for DEQ to show that it is more likely than not that the material that was tested came from the flooring that MCM removed.

The testimony of Wally Thomas and Dotty Boyd establishes that Exhibit A-1 is an accurate photograph of the flooring in question at the time MCM stopped working and left the job. The color of the flooring is unclear from the photograph, because of evident ambiguities in the colors in the photograph. (The entire photograph has a reddish hue, suggesting that the colors displayed may not be true.) However, Thomas testified that he removed a piece of material from the pile, and either submitted it for analysis himself, or gave it to Dotty Boyd to have analyzed. Boyd testified that she asked Thomas to get a sample for her, arranged to pick up the sample at Thomas' office, did so, and submitted it for analysis. While this chain of custody of the sample might not withstand scrutiny if this were a criminal case, where the standard of proof would require proof beyond a reasonable doubt, it is more than sufficient to meet the standard of proof in administrative hearings. More likely than not, the sample tested was the sample taken from the flooring MCM removed.

MCM requested that DEQ's exercise of discretion be reviewed, in light of the very small financial benefit received for the work, and MCM's cooperation in the matter. A review of the standards used to determine the amount of the penalty discloses that DEQ assumed, for the purpose of calculating the penalty, that MCM received no financial benefit from the work, and took into account the "cooperativeness" displayed by MCM in correcting the violation. DEQ also reduced the penalty significantly when it discovered that the amount of material removed had been overstated in previous reports. Moreover, MCM was only penalized for one violation, when the Notice of Assessment of Civil Penalty described three. Under the circumstances, it would be inappropriate for me to reduce the penalty further.


MCM argued, from an Earth Sciences Textbook offered in evidence (Hewitt, Suchocki and Hewitt-*Conceptual Physical Science*, Second Edition), that Chrysotile asbestos, the form of asbestos found in the flooring, is not hazardous. However, the language of ORS 468A.700 and 468A.710 does not require a finding that the material is harmless. The legislature has chosen to impose strict regulations on the handling of Chrysotile asbestos. It is immaterial that this material might not be harmful. Until the legislature changes the statute, the handling of Chrysotile asbestos without a license will subject the handler to penalties.

Finally, MCM asserted that the Hearing Officer Panel has the authority to allow its claim against DEQ for compensation. However, such a claim is predicated on MCM showing that DEQ acted outside its authority in imposing a civil penalty in this case. In light of the foregoing conclusions that DEQ's action was within its authority, the question of possible compensation to MCM is not properly before me.

### ORDER

I propose that DEQ order the following:

Fred Mendoza, dba MCM Company is assessed \$3,000 as a civil penalty for unlawfully performing an asbestos abatement project without a license.

  
Maurice L. Russell, II, Administrative Law Judge  
Hearing Officer Panel

ISSUANCE AND MAILING DATE:

January 17, 2003

## REVIEW

If you are not satisfied with this decision, you have a right to petition the Environmental Quality Commission for review. To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date of service of this Order, as provided in Oregon Administrative Rule (OAR) 340-011-0132(1) and (2). Service is defined in OAR 340-011-0097, as the date the Order is mailed to you, not the date you receive it. The Petition for Review must be filed with:

Environmental Quality Commission  
c/o DEQ – Assistant to the Director  
811 SW 6th Avenue  
Portland OR 97204

Within 30 days of filing the Petition, you must also file exceptions and a brief as provided in OAR 340-011-0132(3).

## CERTIFICATE OF SERVICE

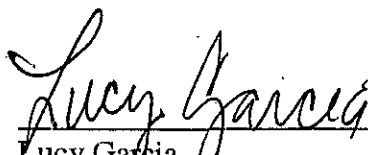
I certify that on January 17, 2003, I served the attached Proposed Order by mailing in a sealed envelope, by certified mail or with first class postage prepaid, as noted below, a copy thereof addressed as follows:

FRED MENDOZA  
DBA M.C.M. COMPANY  
PO BOX 25  
LOGSDEN OR 97357

**BY FIRST CLASS MAIL AND  
CERTIFIED MAIL RECEIPT # 7001 1940 0000 5113 6240**

BRYAN SMITH  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
811 SW 6TH AVE  
PORTLAND OR 97204

**BY FIRST CLASS MAIL**

  
\_\_\_\_\_  
Lucy Garcia  
Administrative Specialist

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 C: Contested Case No. AQ/AB-WR-02-059 regarding Pegasus Corporation, May 8, 2003 EQC Meeting

**Appeal to EQC** On January 15, 2003, Pegasus Corporation (Pegasus) appealed the Proposed Order (Attachment G) which assessed the company a \$1,200 civil penalty for failing to require a Department-licensed asbestos abatement contractor to conduct an asbestos abatement project on a facility it operates.

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

In April 2001, Pegasus, by and through its President, Franklin C. Hoover, leased the FedEx Terminal (the Facility) located at 1411 East Airport Road in North Bend, Oregon, from the Oregon International Port of Coos Bay. The Facility contains cement asbestos board (CAB) siding. In October 2001, Pegasus hired Mike Collins of O'Neill's Overhead Doors & Continuous Gutters (O'Neill's) to remodel the Facility. O'Neill's then hired Virgil Stemmerman as a subcontractor to enlarge the spaces of the existing doors and create a window on the west side of the Facility.

Prior to the start of the remodel project, Mr. Hoover, Mr. Collins, Mr. Stemmerman and a FedEx representative toured the Facility to discuss the remodel. During that tour, the age of the Facility and the fact that it may contain asbestos was discussed. Mr. Hoover did not require the contractors to hold DEQ asbestos abatement licenses.

In January 2002, Mr. Stemmerman removed more than three (3) but less than eighty (80) square feet of the Facility's CAB siding. Mr. Stemmerman's cutting and removal of the CAB siding rendered the asbestos in that siding friable and allowed asbestos fibers to be released into the environment. At the time he removed the CAB siding, Mr. Stemmerman did not have a license issued by the Department to conduct an asbestos abatement project. Also at the time of siding removal, Pegasus was aware that the Facility may contain asbestos, but did not inquire further to definitively determine whether the remodel would disturb any asbestos-containing materials.

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AIR QUALITY SECTION  
Dept. Environmental Quality



On January 29, 2002, Martin Abts of the Department received a complaint that the Facility's CAB siding had been cut. Mr. Abts inspected the Facility and observed that the CAB siding had recently been altered and that small pieces of shattered CAB siding were on the ground near the Facility's enlarged doors. Mr. Abts contacted Mr. Stemmerman, who admitted to sawing and removing the Facility's CAB siding.

A Notice of Civil Penalty Assessment was issued on May 20, 2002, which alleged that Pegasus was liable for a penalty in the amount of \$1,200 for failing to require a Department-licensed asbestos abatement contractor to conduct an asbestos abatement project on a facility it operates.

A contested case hearing was held, and on December 16, 2002, the Hearing Officer issued a Proposed Order holding that Pegasus was liable for the \$1,200 civil penalty. Pegasus appealed the Proposed Order on January 15, 2003.

On February 14, 2003, Pegasus filed exceptions to the Proposed Order (Attachment D), and enclosed payment of the \$1,200 civil penalty. In its brief, Pegasus states that it was unfairly singled out for enforcement by the Department and that the Port of Coos Bay, the City of North Bend, and the contractor should have been "charged" because they were most knowledgeable. Pegasus also argues that "the Proposed Order holds Pegasus to a duty of compliance with statutes for which Pegasus was not charged and enforcement rules which were not even written."

On March 14, 2003, the Department filed a Reply Brief (Attachment A) noting that Pegasus' exceptions did not challenge any finding of fact, interpretation or conclusion of law on which the Proposed Order is based. The Department contends that a penalty against other responsible parties would not exonerate Pegasus for its own violations. The Department notes, however, that it did assess penalties against the contractor for his own violations related to this project and states that operators of facilities, like Pegasus, are in the best position to identify whether the facility contains asbestos.

**EQC  
Authority**

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

**Alternatives**

The Commission may:

1. As requested by the Department, uphold the Hearing Officer's Proposed Order that Pegasus failed to require a Department-licensed asbestos

On January 29, 2002, Martin Abts of the Department received a complaint that the Facility's CAB siding had been cut. Mr. Abts inspected the Facility and observed that the CAB siding had recently been altered and that small pieces of shattered CAB siding were on the ground near the Facility's enlarged doors. Mr. Abts contacted Mr. Stemmerman, who admitted to sawing and removing the Facility's CAB siding.

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**EQC  
Authority**

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

**Alternatives**

The Commission may:

1. As requested by the Department, uphold the Hearing Officer's Proposed Order that Pegasus failed to require a Department-licensed asbestos

abatement contractor to conduct an asbestos abatement project on a facility it operates and is liable for the \$1,200 civil penalty.

2. As requested by Pegasus, reverse the Hearing Officer's decision, based on the reasoning offered by Pegasus.
3. Uphold the Hearing Officer's decision but adopt different reasoning.
4. Remand the case to the Hearing Officer for further proceeding and to consider new evidence.

In reviewing the proposed order, findings of fact and conclusions of law, the Commission may substitute its judgment for that of the Hearing Officer except as noted below.<sup>1</sup> The proposed order was issued under current statutes and rules governing the Hearing Officer Panel Pilot Project.<sup>2</sup> Under these statutes, the Department's contested case hearings must be conducted by a hearing officer appointed to the panel, and the Commission's authority to review and reverse the Hearing Officer's decision is limited by the statutes and the rules of the Department of Justice that implement the project.<sup>3</sup>

The most important limitations are as follows:

- (1) The Commission may not modify the form of the Hearing Officer's Proposed Order in any substantial manner without identifying and explaining the modifications.<sup>4</sup>
- (2) The Commission may not modify a recommended finding of historical fact unless it finds that the recommended finding is not supported by a preponderance of the evidence.<sup>5</sup> Accordingly, the Commission may not modify any historical fact unless it has reviewed the entire record or at least all portions of the record that are relevant to the finding.
- (3) The Commission may not consider any new or additional evidence, but may only remand the matter to the Hearing Officer to take the evidence.<sup>6</sup>

The rules implementing these statutes also have more specific provisions addressing how Commissioners must declare and address any ex parte

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<sup>1</sup> OAR 340-011-0132.

<sup>2</sup> Or Laws 1999 Chapter 849.

<sup>3</sup> *Id.* at § 5(2); § 9(6).

<sup>4</sup> *Id.* at § 12(2).

<sup>5</sup> *Id.* at § 12(3). A historical fact is a determination that an event did or did not occur or that a circumstance or status did or did not exist either before or at the time of the hearing.

<sup>6</sup> *Id.* at § 8; OAR 137-003-0655(4).

communications and potential or actual conflicts of interest.<sup>7</sup>

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

- (1) The Commission will not consider matters not raised before the hearing officer unless it is necessary to prevent a manifest injustice.<sup>8</sup>
- (2) The Commission will not remand a matter to the Hearing Officer to consider new or additional facts unless the proponent of the new evidence has properly filed a written motion explaining why evidence was not presented to the hearing officer.<sup>9</sup>

**Attachments**

- A. Department's Reply Brief, dated March 14, 2003
- B. Email from Cindi Hoover to Mikell O'Mealy, dated February 27, 2003
- C. Letter from Mikell O'Mealy to Franklin C. Hoover, dated February 19, 2003
- D. Appellant's Exceptions and Brief, dated February 14, 2003
- E. Letter from Mikell O'Mealy to Franklin C. Hoover, dated January 17, 2003
- F. Appellant's Petition for Commission Review, dated January 15, 2003
- G. Proposed Order for Assessment of Civil Penalty, dated December 16, 2002
- H. Exhibits from Hearing of November 6, 2002
  - A1. Notice of Assessment of Civil Penalty, dated May 20, 2002
  - A2. Request For Hearing, dated July 1, 2002
  - A3. Appellant's Answer, dated July 1, 2002
  - A4. Appellant's Statement of Facts and Argument, dated July 1, 2002
  - A5. Notice of Hearing/Contested Case Rights, dated September 25, 2002
  - A6. Revised Notice of Hearing, dated October 29, 2002
  - A7. Stipulated Facts, dated November 5, 2002
  - A8. OAR 340-248-0010
  - A9. Notice of Noncompliance, dated April 18, 2002
  - A10. Lease Agreement, dated April 17, 2001
  - A11. Section 6.3 of Lease Agreement
  - R1-5. Photographs
  - R6. Oregon Contractor's Reference Manual
  - R7. Contract between Pegasus and O'Neill's, dated November 17, 2001
  - R8. Contract between Pegasus and O'Neill's, dated November 13, 2001

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<sup>7</sup> OAR 137-003-0655(5); 137-003-0660.

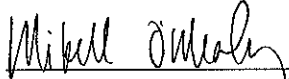
<sup>8</sup> OAR 340-011-0132(3)(a).

<sup>9</sup> *Id.* at (4).

- R9. Intergovernmental Agreement, dated August 19, 1998
- R10. Letter from FedEx to Pegasus, dated October 31, 2001
- R11. Invoice from Koos Environmental Services, dated February 19, 2002
- R12. Invoice from Valley Environmental Services, dated February 22, 2002
- R13. Invoice from Port of Coos Bay, dated March 6, 2002
- R14. Building Permit, dated January 15, 2002
- R15. Invoice from O'Neill's, dated April 19, 2002

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

Report Prepared By:

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



# Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR 97204-1390

503-229-5696

TTY 503-229-6993

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

CERTIFICATE OF PERSONAL DELIVERY

I, Deborah Nesbit, being a competent person over the age of eighteen (18) years, do hereby certify that on the 14th day of March, 2003, I served Mikell O'Mealy, Environmental Quality Commission, by personally delivering to

Mikell O'Mealy, Same  
(Name of person to whom document delivered & relationship to party served)

the following:

Respondent's Brief in Case No. AQ/AB-WR-02-059, Pegasus Corporation

DATED this 14<sup>th</sup> day of March, 2003.

Deborah Nesbit  
Delivered by

Admin Asst, DEQ  
Title

Mikell O'Mealy  
Received by

Assistant to Environmental Quality Commission  
Title

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

3 IN THE MATTER OF: ) RESPONDENT'S BRIEF  
4 PEGASUS CORPORATION, )  
an Oregon corporation, ) No. AQ/AB-WR-02-059  
5 PETITIONER ) COOS COUNTY  
6

7 Respondent, Department of Environmental Quality (Department), submits this Brief to the  
8 Environmental Quality Commission (Commission) for its consideration in the appeal of the  
9 Hearing Officer's Proposed Order in Notice of Assessment of Civil Penalty (Notice) No. AQ/AB-  
10 02-059, filed by Pegasus Corporation, an Oregon corporation, Petitioner.

11 I. CASE HISTORY

12 On May 20, 2002, the Department assessed Petitioner a \$1,200 civil penalty for allowing a  
13 contractor to perform an asbestos abatement project without a license. Petitioner appealed and a  
14 contested case hearing was held on November 6, 2002. On December 16, 2002, the Hearing  
15 Officer issued a Proposed Order finding that Petitioner allowed a contractor to perform an asbestos  
16 abatement project without a license. The Proposed Order upheld the Department's assessment of a  
17 \$1,200 civil penalty.

18 II. COMMISSION ACTION REQUESTED

19 The Department requests that the Commission issue a Final Order upholding the Hearing  
20 Officer's Proposed Order.

21 III. HEARING OFFICER'S CONCLUSIONS

22 The Hearing Officer concluded that: (1) Petitioner Pegasus was an "owner or operator"  
23 under ORS 468A.715(1) and OAR 340-248-0110(2) such that it was required to ensure that only a  
24 DEQ-licensed contractor conduct any asbestos abatement project at the FedEx Terminal located at  
25 1411 East Airport Road in North Bend, Oregon; (2) The cutting and removal of the Terminal's  
26 cement asbestos board siding constituted an asbestos abatement project for which a DEQ asbestos  
27 abatement license was required; and (3) Pegasus was negligent in failing to require that a DEQ-

1 licensed contractor conduct the asbestos abatement project at the Terminal and is therefore liable  
2 for a civil penalty in the amount of \$1,200.

#### 3 IV. ARGUMENTS

4 **A.** Petitioner states that the Proposed Order “holds Pegasus to a duty of compliance  
5 with statutes for which Pegasus was not charged and enforcement rules which were not even  
6 written.” It is unclear what Petitioner is referring to with this statement. The Hearing Officer’s  
7 Proposed Order found that Petitioner violated the statutes and rules in effect at the time of the  
8 violation, stating “Clearly, Pegasus Corporation was an ‘owner or operator’ of the Terminal at  
9 the time of the alleged violation and could have determined that fact by reviewing the Oregon  
10 Revised Statutes.”

11 **B.** Petitioner also seems to suggest that it was unfairly singled out for enforcement by  
12 the Department and that the Port of Coos Bay, the City of North Bend, and the contractor should  
13 have been “charged” because they were most knowledgeable. First, it is not clear how penalties  
14 against other responsible parties would exonerate Petitioner because each person must comply  
15 with his or her own legal obligations. Regardless, the Department did assess penalties not only  
16 against Petitioner but also against the contractor who performed the asbestos abatement project.  
17 Second, the Hearing Officer concluded that Petitioner was responsible for the violations, finding  
18 “At the time of the removal of the CAB siding, Pegasus Corporation was aware that the Terminal  
19 may contain asbestos, but did not inquire further to determine definitively whether the remodel  
20 would disturb any asbestos-containing materials.”

21 Oregon statutes and rules hold the operator of a facility responsible for identifying  
22 asbestos in that facility and ensuring that only DEQ-licensed asbestos abatement contractors  
23 perform asbestos abatement projects in that facility. The operator of a facility is in the best  
24 position to identify whether the facility contains asbestos because the operator knows best where  
25 and when a project will occur and is generally the entity responsible for contracting with licensed  
26 asbestos abatement contractors to safely handle asbestos-containing material. Petitioner acted as  
27 the operator of the facility in question when it made arrangements for the performance of an



1 asbestos abatement project on the facility. However, Petitioner failed to sample suspect materials  
2 to determine whether asbestos was present in the facility, failed to conduct an asbestos survey of  
3 the facility, and failed to make itself aware of an existing asbestos survey that had already  
4 identified asbestos in facilities substantially identical to the facility in question. Subsequently,  
5 knowing asbestos might be present, Petitioner allowed an unlicensed contractor to cut cement  
6 asbestos board siding on the facility, rendering the asbestos-containing material friable and  
7 allowing harmful asbestos fibers to be released into the atmosphere.

8           Petitioner's Exceptions do not challenge any finding of fact, interpretation or  
9 conclusion of law on which the Hearing Officer's Proposed Order is based. For this reason, the  
10 Department requests that the Commission issue a Final Order upholding the Hearing Officer's  
11 Proposed Order.

12  
13           3/14/03  
14           Date

13             
14           Bryan Smith, Environmental Law Specialist

# CERTIFICATE OF MAILING

I hereby certify that I served Respondent's Brief

Case No. AQ/AB-WR-02-059

Served upon:

**FRANKLIN C HOOVER  
PEGASUS CORPORATION  
617 S SHASTA AVENUE  
EAGLE POINT OR 97524**

by mailing a true copy of the above by placing it in a sealed envelope, with postage prepaid, at the U.S. Post Office in Portland, Oregon on 3-14-03

Deborah Nesbitt  
Department of Environmental Quality

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**FRANKLIN C HOOVER  
PEGASUS CORPORATION  
617 S SHASTA AVENUE  
EAGLE POINT OR 97524**

From: Cindi Hoover [mailto:locomotionusa@charter.net]  
Sent: Thursday, February 27, 2003 5:41 PM  
To: OMEALY Mikell  
Cc: SMITH Bryan  
Subject: Case No. AQ/AB-WR-02-059

Mr. O'Mealy:

Your letter dated February 19, 2003 is acknowledged. As you may or may not be aware, I requested the Commission to give me approximately five (5) additional days to properly prepare a brief and specify those issues which I felt were inappropriately decided. My wife and I were out of the country between December 31, 2002 and February 4, 2003. The request is required by the rules. My request was essentially denied. So, what you have received is my feeble attempt to get something on file for the Commission to consider. In reality, I do not believe the Commission will consider what few concerns are listed. Since I believe the Commission will dismiss the Petition on the basis that it does not comply in form with the rules, I decided to go ahead and submit payment in full.

I did file a Petition, and I would appreciate it the Commission will consider what has been filed in an appropriate hearing. If the Commission really wants to hear this matter, please consider this email as my formal waiver of oral argument at any hearing which will require the presence of a Pegasus Corporation spokesman. Under the circumstances, I do not think it is in the best interest of Pegasus Corporation to expend another dime on trying to defend its position in this case. No one from Pegasus will appear personally at a hearing to argue the issues.

Sincerely,

Franklin C. Hoover

President, Pegasus Corporation



# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

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

February 19, 2003

Via Certified Mail

Franklin C. Hoover  
Pegasus Corporation  
617 S. Shasta Ave.  
Eagle Point, OR 97524

RE: Case No. AQ/AB-WR-02-059

Dear Mr. Hoover:

On January 15, 2003, the Environmental Quality Commission received your petition for review of the Hearing Officer's proposed order in the above referenced case. On February 14, 2003, the Commission received a document from you stating your objections to the proposed order, along with a \$1,200.00 check for payment in full of the proposed penalty.

Legally, this document could be considered your exceptions to the proposed order, along with the tender of payment in the expected event the Commission chooses to uphold the Hearing Officer's decision. Consequently, the Commission needs clarification from you on how you would like to proceed in this case. There are two options:

- (1) You may send a letter or email clarifying that you do not want to proceed with this petition and a hearing before the Commission. If you do this, the Commission will send you a response that officially dismisses the petition. You may send a letter to Mikell O'Mealy, on behalf of the Environmental Quality Commission, at 811 SW 6th Avenue, Portland, Oregon, 97204, or send an email to [omealy.mikell@deq.state.or.us](mailto:omealy.mikell@deq.state.or.us).
- (2) If you choose not to clarify your position in a letter or email, or if you state your desire to proceed with the petition, the Commission will hold a hearing at a future meeting to decide this case. If the Commission holds a hearing, you may choose to present oral arguments at the hearing, or you may choose not to appear or otherwise have the Corporation represented. The Department would still send a lay representative to the hearing, however. The Commission has made it clear in the past that it does not like to decide cases when the petitioner and Department have waived oral argument.

If you have questions, please call me at 503-229-5301 or 800-452-4011 ext. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy  
Assistant to the Commission

cc: Bryan Smith, Oregon DEQ

**U.S. Postal Service**  
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Here

Sent To  
**Franklin Hoover / Pegasus**  
 Street, Apt. No.; or PO Box No. **CO. P.**  
 City, State, ZIP+4

PS Form 3800, May 2000

See Reverse for Instructions.

**SENDER: COMPLETE THIS SECTION**

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**Franklin C. Hoover**  
**Pegasus Corporation**  
**617 S. Shasta Ave,**  
**Eagle Point, OR 97524**

2. Article Number

(Transfer from service label) **7000 1670 6009 9005 9933**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X **Cynthia Hoover**  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery

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# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

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

February 19, 2003

Via Certified Mail

Franklin C. Hoover  
Pegasus Corporation  
617 S. Shasta Ave.  
Eagle Point, OR 97524

RE: Case No. AQ/AB-WR-02-059

Dear Mr. Hoover:

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Legally, this document could be considered your exceptions to the proposed order, along with the tender of payment in the expected event the Commission chooses to uphold the Hearing Officer's decision. Consequently, the Commission needs clarification from you on how you would like to proceed in this case. There are two options:

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- (2) If you choose not to clarify your position in a letter or email, or if you state your desire to proceed with the petition, the Commission will hold a hearing at a future meeting to decide this case. If the Commission holds a hearing, you may choose to present oral arguments at the hearing, or you may choose not to appear or otherwise have the Corporation represented. The Department would still send a lay representative to the hearing, however. The Commission has made it clear in the past that it does not like to decide cases when the petitioner and Department have waived oral argument.

If you have questions, please call me at 503-229-5301 or 800-452-4011 ext. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy  
Assistant to the Commission

cc: Bryan Smith, Oregon DEQ

BEFORE THE HEARING OFFICER PANEL  
STATE OF OREGON  
for the  
ENVIRONMENTAL QUALITY COMMISSION

Received:  
February 14 2003  
-Michelle O'Malley

IN THE MATTER OF: ) PETITION FOR  
PEGASUS CORPORATION, ) COMMISSION REVIEW.  
an Oregon Corporation, )  
Respondent ) Hearing Officer Panel Case No. 102265  
Department Case No. AQ/AB-WR-02-059


PETITION OF PEGASUS CORPORATION

The Respondent, PEGASUS CORPORATION, requests that the Commission review the hearing officer's PROPOSED ORDER that was issued in this matter on the 16<sup>th</sup> day of December, 2002.

If the legislative findings with regard to the guarantee of protection of the public from asbestos hazards are the reasons for this enforcement action, then the Commission's enforcement branch has failed miserably in this case. Simply reading the findings of fact of the proposed order makes clear that everyone who had actual knowledge of the presence of asbestos and who was in a position to protect the public from asbestos contamination failed to comply with their obligation. It is important that the Commission remember that Pegasus Corporation is a "person" entitled to the protection of the legislative mandate. It seems unconscionable to allow the Port of Coos Bay, the City of North Bend, and the contractor to be left completely out of this enforcement case. Both the City of North Bend and the Port of Coos Bay had actual knowledge of the presence of asbestos. And, according to Exhibit R-6, which was apparently drafted by this Commission, there was a responsibility of the Contractor to determine whether or not asbestos was present.

In a convoluted fashion, the Opinion works its way through what existed at the time of the contract in an effort to pin responsibility on the person least likely to be in a position to protect the public from asbestos contamination. The opinion holds Pegasus to a duty of compliance with statutes for which Pegasus was not charged and enforcement rules which were not even written. Pegasus does not believe this Commission will do anything but honor the opinion of the hearing officer and affirm his order notwithstanding the fact that the persons most knowledgeable were not even charged. Consequently, please find enclosed our check in the amount of \$1,200.00 as payment in full. And, when you deposit this check, do so with the understanding that the underlying purpose of the protection of the public has been conveniently ignored. The Commission has achieved absolutely nothing by way of protecting the public through this action.

PEGASUS CORPORATION:



---

Franklin C. Hoover,  
President & General Manager



CERTIFICATE OF MAILING

I certify that on February 12, 2003, I served the foregoing by mailing in a sealed envelope, with first class postage prepaid, as noted below, a copy addressed as follows:

Bryan Smith  
Oregon DEQ  
811 S.W. 6<sup>th</sup> Ave.  
Portland, OR 97204

Jenine Camilleri  
Oregon DEQ  
811 S.W. 6<sup>th</sup> Ave.  
Portland, OR 97204

Mikell O'Mealy  
Assistant to the Commission  
Oregon DEQ  
811 S.W. 6<sup>th</sup> Ave.  
Portland, OR 97204

151



# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

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

January 17, 2003

Via Certified Mail

Franklin C. Hoover  
Pegasus Corporation  
617 S. Shasta Ave.  
Eagle Point, OR 97524

RE: Case No. AQ/AB-WR-02-059

Dear Mr. Hoover:

On January 15, 2003, the Environmental Quality Commission received your timely request for Commission review of the Proposed Order for the above referenced case.

The Proposed Order outlined appeal procedures, including filing of exceptions and briefs. The hearing decision and Oregon Administrative Rules (OAR 340-011-0132) state that you must file exceptions and brief within thirty days from the filing of your request for Commission review, or February 15, 2003. Your exceptions should specify the findings and conclusions that you object to in the Proposed Order and include alternative proposed findings. Once your exceptions have been received, a representative of the Department of Environmental Quality may file an answer brief within thirty days. I have enclosed a copy of the applicable administrative rules for your information.

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

After both parties file exceptions and briefs, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and I will notify you of the date and location. If you have any questions about this process, or need additional time to file exceptions and briefs, please call me at 503-229-5301 or 800-452-4011 ext. 5301 within the state of Oregon.

Sincerely,

Mikell O'Mealy  
Assistant to the Commission

cc: Bryan Smith, Oregon DEQ

## Oregon Administrative Rules 340-011-0132

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

(1) Commencement of Review by the Commission:

- (a) Copies of the hearing officer's Order will be served on each of the participants in accordance with OAR 340-011-0097. The hearing officer's Order will be the final order of the Commission unless within 30 days from the date of service, a participant or a member of the Commission files with the Commission and serves upon each participant a Petition for Commission Review. A proof of service should also be filed, but failure to file a proof of service will not be a ground for dismissal of the Petition.
- (b) The timely filing of a Petition is a jurisdictional requirement and cannot be waived.
- (c) The timely filing of a Petition will automatically stay the effect of the hearing officer's Order.
- (d) In any case where more than one participant timely serves and files a Petition, the first to file will be the Petitioner and the latter the Respondent.

(2) Contents of the Petition for Commission Review. A Petition must be in writing and need only state the participant's or a Commissioner's intent that the Commission review the hearing officer's Order.

(3) Procedures on Review:

- (a) Petitioner's Exceptions and Brief: Within 30 days from the filing of the Petition, the Petitioner must file with the Commission and serve upon each participant written exceptions, brief and proof of service. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the Petitioner relies. Matters not raised before the hearing officer will not be considered except when necessary to prevent manifest injustice.
- (b) Respondent's Brief: Each participant will have 30 days from the date of filing of the Petitioner's exceptions and brief, in which to file with the Commission and serve upon each participant an answering brief and proof of service. If multiple Petitions have been filed, the Respondent must also file exceptions as required in (3)(a) at this time.
- (c) Reply Brief: Each participant will have 20 days from the date of filing of a Respondent's brief, in which to file with the Commission and serve upon each participant a reply brief and proof of service.
- (d) Briefing on Commission Invoked Review: When one or more members of the Commission wish to review a hearing officer's Order, and no participant has timely filed a Petition, the Chairman will promptly notify the participants of the issue that the Commission desires the participants to brief. The Chairman will also establish the schedule for filing of briefs. The participants must limit their briefs to those issues. When the Commission wishes to review a hearing officer's Order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.
- (e) Extensions: The Chairman or the Director, may extend any of the time limits contained in this rule except for the filing of a Petition under subsection (1) of this rule. Each extension request must be in writing and be served upon each participant. Any request for an extension may be granted or denied in whole or in part.

## Oregon Administrative Rules 340-011-0132

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

(1) Commencement of Review by the Commission:

- (a) Copies of the hearing officer's Order will be served on each of the participants in accordance with OAR 340-011-0097. The hearing officer's Order will be the final order of the Commission unless within 30 days from the date of service, a participant or a member of the Commission files with the Commission and serves upon each participant a Petition for Commission Review. A proof of service should also be filed, but failure to file a proof of service will not be a ground for dismissal of the Petition.
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- (c) The timely filing of a Petition will automatically stay the effect of the hearing officer's Order.
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(2) Contents of the Petition for Commission Review. A Petition must be in writing and need only state the participant's or a Commissioner's intent that the Commission review the hearing officer's Order.

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- (a) Petitioner's Exceptions and Brief: Within 30 days from the filing of the Petition, the Petitioner must file with the Commission and serve upon each participant written exceptions, brief and proof of service. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the Petitioner relies. Matters not raised before the hearing officer will not be considered except when necessary to prevent manifest injustice.
- (b) Respondent's Brief: Each participant will have 30 days from the date of filing of the Petitioner's exceptions and brief, in which to file with the Commission and serve upon each participant an answering brief and proof of service. If multiple Petitions have been filed, the Respondent must also file exceptions as required in (3)(a) at this time.
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- (e) Extensions: The Chairman or the Director, may extend any of the time limits contained in this rule except for the filing of a Petition under subsection (1) of this rule. Each extension request must be in writing and be served upon each participant. Any request for an extension may be granted or denied in whole or in part.

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

Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.430 & ORS 183.435

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

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Sent To Franklin C. Hoover  
 Street, Apt. No., or PO Box No. Pegasus Corp.  
 City, State, ZIP+4 \_\_\_\_\_

PS Form 3800, May 2000- See Reverse for Instructions.

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1. Article Addressed to:  
Franklin C. Hoover  
Pegasus Corporation  
617 S. Shasta Ave.  
Eagle Point, OR 97524

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature Franklin C. Hoover  Addit. Addressee  
 B. Received by (Printed Name) FRANKLIN C. HOOPER C. Date of Delivery \_\_\_\_\_  
 D. Is delivery address different from item 1?  Yes  
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4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7000 1670 0009 9005 9940

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Stat. Auth.: ORS 183.335 & ORS 468.020

Stats. Implemented: ORS 183.430 & ORS 183.435

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

RECEIVED  
JAN 15 2003

BEFORE THE HEARING OFFICER PANEL  
STATE OF OREGON  
for the  
ENVIRONMENTAL QUALITY COMMISSION

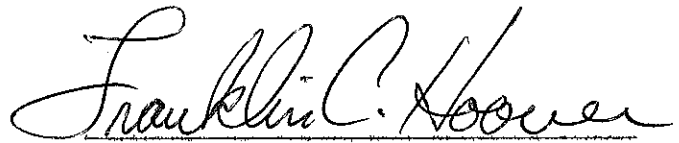
IN THE MATTER OF: )  
PEGASUS CORPORATION, )  
an Oregon Corporation, )  
Respondent )

PETITION FOR  
COMMISSION REVIEW.  
Hearing Officer Panel Case No. 102265  
Department Case No. AQ/AB-WR-02-059

PETITION FOR COMMISSION REVIEW

The Respondent, PEGASUS CORPORATION, requests that the Commission review the hearing officer's PROPOSED ORDER that was issued in this matter on the 16<sup>th</sup> day of December, 2002.

PEGASUS CORPORATION:



Franklin C. Hoover,  
President & General Manager



**CERTIFICATE OF SERVICE**

I certify that on January 13, 2003, I served the attached  
PETITION FOR COMMISSION REVIEW by mailing in a sealed  
envelope, with first class postage prepaid, a copy thereof  
addressed as follows:

ENVIRONMENTAL QUALITY COMMISSION  
C/O ASSISTANT TO THE DIRECTOR  
811 S.W. 6<sup>TH</sup> AVE.  
PORTLAND, OR 97204

BRYAN SMITH, ESQ.  
OREGON DEQ  
811 S.W. 6<sup>TH</sup> AVE.  
PORTLAND, OR 97204

JENINE CAMILLERI  
OREGON DEQ  
811 S.W. 6<sup>TH</sup> AVE.  
PORTLAND, OR 97204



Robert Pinkham

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

<b>In the Matter of</b>	)	<b>PROPOSED ORDER</b>
	)	
	)	
<b>PEGASUS CORPORATION, an Oregon</b>	)	
Corporation,	)	Hearing Officer Panel Case No. 102265
Respondent	)	Department Case No. AQ/AB-WR-02-059

**HISTORY OF THE CASE**

On May 20, 2002, the Department of Environmental Quality (DEQ) issued a Notice of Assessment of Civil Penalty citing Pegasus Corporation with a violation for allowing a contractor to perform an asbestos abatement project without a license. DEQ assessed a civil penalty of \$1,200.00 based upon the alleged violation. On or about July 1, 2002, Pegasus Corporation filed a written request with DEQ for a hearing.

DEQ referred the request to the Hearing Officer Panel on August 9, 2002. A hearing was held on November 6, 2002. Administrative Law Judge James A. Dreyer of the Hearing Officer Panel presided. Pegasus Corporation appeared by and through its president, Franklin C. Hoover. Mr. Hoover testified on behalf of Pegasus Corporation. Also testifying on behalf of Pegasus Corporation were Mike Teyler, Virgil Stemmerman, William Campo and Michael Collins. DEQ was represented by Bryan Smith, an authorized agency representative. Robert Hood, Martin Abts and Gary LeTellier testified on behalf of DEQ. The record was left open for additional legal argument until November 20, 2002. Memorandums from both DEQ and Pegasus Corporation were received and considered. The record was closed on November 20, 2002.

**EVIDENTIARY RULINGS**

DEQ's exhibits A-1 through A-11 were admitted into the record. Pegasus Corporation's exhibits R-1 through R-5 and R-7 through R-15 were also admitted into the record without objection. DEQ objected to the admission of Exhibit R-6 on the basis of relevance. Exhibit R-6, a section of Oregon Contractor's Reference Manual is admitted as relevant over DEQ's objection.

**ISSUES**

(1) Is Pegasus Corporation an "owner or operator" under 468A.715(1) and OAR 340-248-0110(2) such that it would be required to ensure that only licensed contractors remove cement asbestos board (CAB) siding from the FedEx Terminal located at 1411 East Airport Road in North Bend, Oregon.

*upheld @ \$1200*

RECEIVED  
DEC 16 2002

This hearing decision has been copied to: field person & his/her mngr, Anne, Les & staff the EQC, the DA, the Business Office, West Publishing, and LexusNexus. Let me know if anyone else needs a copy. Deb

(2) Did the removal of CAB siding from the FedEx Terminal constitute an asbestos abatement project in violation of ORS 468A.715(1) and OAR 340-248-0110(2) such that it is liable for a civil penalty, and, if so, in what amount?

### FINDINGS OF FACT

(1) On or about April 17, 2001, Pegasus Corporation, by and through its president, Franklin C. Hoover, leased the FedEx Terminal (the Terminal) located at 1411 East Airport Road in North Bend, Oregon, from the Oregon International Port of Coos Bay. (Exhibit A-4). Pegasus Corporation, in turn, then subleased the Terminal to Federal Express. On or about October 7, 2001, Pegasus Corporation hired Mike Collins of O'Neill's Overhead Doors & Continuous Gutters (O'Neill's) to remodel the Terminal.<sup>1</sup> (Exhibit R-7 & R-8). Virgil Stemmerman was then hired by O'Neill's as a subcontractor to assist in the remodel. (Test. of Hoover). Mr. Stemmerman was to enlarge the spaces of the existing doors and a window on the west side of the building so that larger doors could be installed to provide easier delivery of FedEx packages. (Exhibits R-7 & R-8). Prior to the beginning of the remodel, Mr. Hoover, Mike Collins, Mr. Stemmerman and a Federal Express representative toured the Terminal to discuss the remodel. (Test. of Hoover). During that meeting, the age of the building and that it may contain asbestos was discussed. Although Mr. Hoover reviewed both of the contractors' backgrounds for any complaints, he did not require them to hold DEQ asbestos abatement licenses.

(2) The Oregon International Port of Coos Bay (the Port) maintains many of the buildings in the vicinity of 1411 East Airport Road, including the Terminal. (Test. of Hood). Prior to the alleged violations in this case, the Port and the City of Coos Bay had knowledge that many of these World War II era buildings, including the Terminal, have nonfriable CAB siding. (Test. of Hood). The Terminal's CAB siding is an asbestos-containing material. (Exhibits A-7, Exhibits A-6, and Test. of Abts). Prior to beginning the remodeling work, Pegasus Corporation applied for and received a building permit from the City of Coos Bay. Will Campo, the city inspector, issued the permit under the misconception that the work to be performed was going to be done on a metal building in the vicinity. (Test. of Campo). Because of the misunderstanding regarding the building which was going to be remodeled, the city inspector never warned Pegasus Corporation of the presence of CAB siding. (Test. of Campo). In January 2002, Robert Hood, the Port's maintenance supervisor, saw Mr. Stemmerman and his construction crew at the Terminal. (Test. of Hood). Mr. Hood contacted Mr. Stemmerman and his crew and was informed of the remodeling work. (Test. of Teyler). Although Mr. Hood was aware of the Terminal's CAB siding, he did not warn Mr. Stemmerman or his employees of this fact. (Test. of Teyler).

(3) In January, 2002, Mr. Stemmerman removed more than three but less than 80 square feet of the Terminal's CAB siding. (Exhibit 7). Mr. Stemmerman cut and removed the CAB siding. (Exhibit A-7). The cutting of the nonfriable CAB siding rendered the asbestos in that siding friable and allowed asbestos fibers to be released into the environment. (Test. of Abts; Exhibit A-7). The removal of asbestos was not the primary objective of the job. (Exhibits R-7 &

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<sup>1</sup> The contract between Pegasus Corporation and O'Neill's notes that "[i]f asbestos abatement is required owner will incur all expenses. (Exhibits R-7 & R-8).

(2) Did the removal of CAB siding from the FedEx Terminal constitute an asbestos abatement project in violation of ORS 468A.715(1) and OAR 340-248-0110(2) such that it is liable for a civil penalty, and, if so, in what amount?

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R-8). At the time of the removal of the CAB siding, Pegasus Corporation was aware that the Terminal may contain asbestos, but did not inquire further to definitively determine whether the remodel would disturb any asbestos-containing materials. (Test. of Hoover). Instead, Pegasus Corporation believed the contractors would inform him if asbestos abatement arose. (Test. of Hoover). Mr. Stemmerman did not have a license issued by DEQ to conduct an asbestos abatement project. (Test. of Abts).

(4) On January 29, 2002, Martin Abts of the DEQ received a complaint from Robert Hood that the Terminal's CAB siding had been cut. (Test. of Hood). Martin Abts went to the Terminal and observed that the Terminal's CAB siding had been recently altered. Mr. Abts observed very small pieces of shattered CAB siding on the ground near the Terminal's enlarged doors. (Test. of Abts). Due to previous contacts with the Port regarding the buildings in the vicinity of 1411 East Airport Road, North Bend, Oregon, Mr. Abts knew that the CAB siding was asbestos-containing material. The next work day, Martin Abts contacted Mr. Stemmerman, who admitted to sawing and removing the Terminal's CAB siding. (Test. of Abts).

(5) On April 18, 2002, DEQ sent Pegasus Corporation, via Mr. Hoover, a Notice of Noncompliance outlining the observations and conversations that had occurred in January, and identified the January 2002, incident as Class I and/or Class II violation. (Exhibit A-9). At that time, DEQ's policy was to treat holders of a leasehold interest as "owners or operators" under ORS 468A.715(1). (Test. of Abts). The Notice informed Pegasus Corporation that the incident would be referred to DEQ's Office of Compliance and Enforcement with a recommendation to initiate a formal enforcement action. (Exhibit A-9).

(6) DEQ has a website and staff personnel which are available to inform individuals of asbestos hazards. Pegasus Corporation failed to contact DEQ or determine whether or not asbestos was present in the Terminal. (Test. of Abts). Pegasus knew or should have known of the presence of asbestos-containing materials in the Terminal and failed to use reasonable care and require that a DEQ licensed asbestos abatement contractor perform the remodel.

### CONCLUSIONS OF LAW

(1) Pegasus Corporation was an "owner or operator" under 468A.715(1) and OAR 340-248-0110(2) such that it was required to ensure that only DEQ licensed contractors conduct any asbestos abatement project at the FedEx Terminal located at 1411 East Airport Road in North Bend, Oregon.

(2) The cutting and removal the Terminal's CAB siding constituted an asbestos abatement project for which a DEQ asbestos abatement license was required.

(3) Pegasus Corporation was negligent in failing to require that a DEQ licensed contractor conduct the asbestos abatement project at the Terminal and is therefore liable for a civil penalty in the amount of \$1,200.00.

## OPINION

Pegasus Corporation contends that it was not the “owner or operator” of the Terminal such that it had to require only DEQ licensed asbestos abatement contractors to perform the removal of the CAB siding. Pegasus Corporation further argues that the removal of the CAB siding from the Terminal was not an asbestos abatement project for which a license was required. Pegasus Corporation contends that the CAB siding was not “friable” as that term was defined by OAR 340-248-0010(24) at the time of the alleged violation. Finally, Pegasus Corporation argues in the alternative that it used reasonable care in attempting to comply with Oregon’s statutes and rules during the Terminal’s remodel.

### 1. Statutory Obligations of an “Owner or Operator” of a Facility Containing Asbestos.

Oregon's DEQ is the regulatory agency charged with the duty of protecting Oregonians from the hazardous release of asbestos. As there is no known minimal level of exposure to asbestos fibers that guarantees the full protection of the public health, one of DEQ’s responsibilities is to regulate the handling of asbestos-containing materials.<sup>2</sup> To ensure the proper and safe abatement of asbestos hazards, Oregon has enacted rigid rules regarding an owner or operator’s use of contractors who are engaged in performing asbestos abatement projects.

Pursuant to ORS 468A.715(1):

Except as provided in subsection (2) of this section, an owner or operator of a facility containing asbestos shall require only licensed contractors to perform asbestos abatement projects.

ORS 468A.710(1) further explains:

Except as provided in ORS 468A.707(1)(c) and (3), after the Environmental Quality Commission adopts rules under ORS 468A.707 and 468A.745, no contractor shall work on an asbestos abatement project unless the contractor holds a license issued by the Department of Environmental Quality under ORS 468A.720.

Pegasus Corporation argues that it is not the “owner or operator” of the Terminal. Although the term “owner or operator” was not defined under 468A.700 *et seq.* or OAR 340-248-0010 *et seq.* at the time of the alleged violation<sup>3</sup>, the term was defined under ORS 465.200(19) of the Hazardous Waste And Hazardous Materials I chapter. ORS 465.200(19) states:

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<sup>2</sup> Oregon legislative findings. ORS 468A.705.

<sup>3</sup> On February 4, 2002, OAR 340-248-0010 was amended to include the following definition of “owner or operator”: “Owner or operator” means any person who owns, lease, 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.”

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'Owner or operator' means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. 'Owner or operator' does not include a person who, without participating in the management of a facility holds indicia of ownership primarily to protect a security interest in the facility.

Given the fact that the definition of "owner or operator" was provided in the ORS Hazardous Waste And Hazardous Materials I chapter, and, given the fact that asbestos falls within the definition of a "hazardous substance" as that term is defined under ORS 645.200(15), Pegasus Corporation had notice that as a lessor and lessee of the Terminal, any act committed in violation of ORS 468A.715(1) and OAR 340-248-0110(2) was done at it own peril. DEQ's policy of treating lessors as "owners or operators" was merely consistent with the definition provided for under ORS 465.200(15). Furthermore, the definition now found under OAR 340-248-0010(33) is in accord with the pre-existing definition under ORS 465.200(15) and with DEQ's policy at the time. Clearly, Pegasus Corporation was an "owner or operator" of the Terminal at the time of the alleged violation and could have determined that fact by reviewing the Oregon Revised Statutes.

## 2. Asbestos Abatement Projects.

ORS 468A.700(4) defines an asbestos abatement project as:

[A]ny demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any material with the potential of releasing asbestos fibers from asbestos-containing material into the air.

In January 2002, Mr. Stemmerman removed more than 3 square feet of siding from the Terminal located at 1411 East Airport Road in North Bend, Oregon. The Terminal's siding was asbestos-containing material. By sawing the asbestos-containing material, there was an actual release of asbestos fibers from the asbestos-containing material into the air. Mr. Stemmerman's removal of the Terminal's siding constitutes an asbestos abatement project under ORS 468A.700(4).

## 3. Asbestos Abatement Licensing and Exemptions.

The qualifications for a DEQ asbestos abatement license required under ORS 468A.710(1) are set forth in part under ORS 468A.720. ORS 468A.720 essentially requires a contractor to be trained in asbestos abatement and knowledgeable of the applicable state and federal rules and regulations governing asbestos abatement.

The Environmental Quality Commission adopted additional regulations under ORS 468A.707 and 468A.745 regarding the licensing requirements of contractors conducting asbestos



abatement projects. OAR 340-248-0110(3) states: “[e]ach contractor engaged in an asbestos abatement project must be licensed by the Department under the provisions of OAR 340-248-0120.”

There are two exemptions to the licensing requirement under OAR 340-248-0110(3). Pursuant to OAR 340-248-0250:

(1) Any person who conducts an asbestos abatement project shall comply with OAR 340-248-0260 and 340-248-0270(1) through (11). The following asbestos abatement projects are exempt from OAR 340-248-0260, 340-248-0270(1) through (11), and OAR 340-248-0100 through 340-248-0180:

\* \* \* \* \*

(c) Removal of less than three square feet or three linear feet of asbestos-containing material provided that the removal of asbestos is not the primary objective and methods of removal are in compliance with OAR 437 division 3 “Construction” (29 CFR 1926, 1101(g)). An asbestos abatement project shall not be subdivided into smaller sized units in order to qualify for this exemption.

\* \* \* \* \*

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

\* \* \* \* \*

(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 340-248-0110. This exemption shall end whenever the asbestos-containing material becomes friable and releases asbestos fibers into the environment.

Mr. Stemmerman removed more than 3 square feet of the Terminal’s asbestos-containing siding. The exemption under OAR 340-248-0250(1)(c) is therefore inapplicable. Pegasus Corporation, however, argues that the CAB siding was not friable as that term was defined under the rules applicable at the time of the alleged violation and presumably it is therefore exempt from the licensing requirements under OAR 340-248-0250(3)(b).

In January 2002, the term “Friable Asbestos Material” was defined as “any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.” OAR 340-248-0010(24).<sup>4</sup> Although the Terminal’s CAB siding was not friable prior to

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<sup>4</sup> In February 2002, the term “Friable asbestos-containing material” was redefined as “any asbestos-containing material that can be crumbled, pulverized or reduced to powder by hand pressure when dry. Friable

abatement projects. OAR 340-248-0110(3) states: “[e]ach contractor engaged in an asbestos abatement project must be licensed by the Department under the provisions of OAR 340-248-0120.”

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\* \* \* \* \*

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

\* \* \* \* \*

(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 340-248-0110. This exemption shall end whenever the asbestos-containing material becomes friable and releases asbestos fibers into the environment.

Mr. Stemmerman removed more than 3 square feet of the Terminal’s asbestos-containing siding. The exemption under OAR 340-248-0250(1)(c) is therefore inapplicable. Pegasus Corporation, however, argues that the CAB siding was not friable as that term was defined under the rules applicable at the time of the alleged violation and presumably it is therefore exempt from the licensing requirements under OAR 340-248-0250(3)(b).

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remodeling project, the exemption under OAR 340-248-0250(3)(b) is inapplicable because: 1) some of the CAB siding was shattered and reduced to very small pieces prior to its delivery to an authorized disposal site; and 2) the act of sawing the CAB siding rendered some of the asbestos siding friable as that term was defined under OAR 340-248-0010(24) at the time of the alleged violation and released asbestos fibers into the environment. (Test. of Abts; Exhibit A-7).

For the reasons stated above, Pegasus Corporation was required to ensure that only DEQ licensed contractors performed the asbestos abatement project at the Terminal.

#### 4. Assessment of Civil Penalty.

DEQ has properly assessed Pegasus Corporation a civil penalty of \$1,200.00 for a Class I violation under OAR 340-012-0050(1)(u). The base penalty for a minor magnitude Class I violation under OAR 340-012-0042(1)(a) is \$1,000.00. ORS 468.715(1) places an affirmative duty upon on the "owner or operator" to use only licensed contractors to perform an asbestos abatement project. Pegasus Corporation had an obligation to make sure that Mr. Stemmerman had a DEQ asbestos abatement license prior to going forward with the remodel. An additional \$200.00 was properly added onto the base penalty because Pegasus Corporation failed to use reasonable care in arranging for the removal of the CAB siding and therefore acted negligently. During the meeting which occurred prior to the remodel, the age of the Terminal and the possible presence of asbestos was discussed. Given these facts, Pegasus Corporation knew or should have known of the presence of asbestos. Pegasus Corporation, in exercising reasonable care, should have inquired further into the possible presence of asbestos-containing materials at the Terminal prior to the remodel given the potential hazards involved. Given the affirmative duty under ORS 468.715(1) and the known possibility of asbestos present in the Terminal, Pegasus Corporation could not simply rely on its contractors to alert it to an asbestos abatement issue. Pegasus Corporation should have hired DEQ licensed asbestos abatement contractors upon learning of the possible presence of asbestos in the Terminal, or at least determined whether or not asbestos was an existing hazard.

As the Terminal's "owner or operator," Pegasus Corporation knew or should have known of the presence of asbestos-containing material in the Terminal and therefore was negligent in failing to require that only DEQ licensed contractors perform the remodel. The assessment of a \$1,200.00 civil penalty is proper.

### **ORDER**

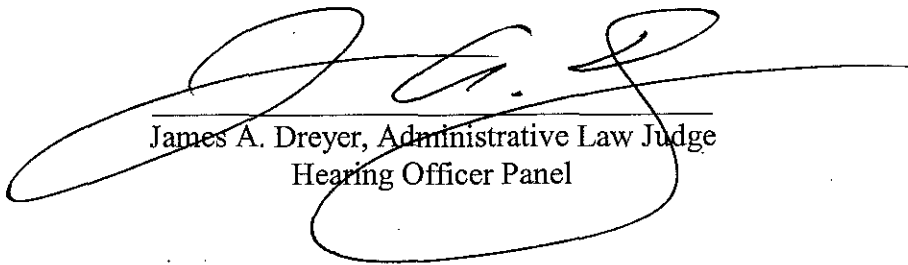
I recommend that the Environmental Quality Commission enter the following order:

(1) On or about January 2002, Pegasus Corporation allowed an unlicensed contractor to perform an asbestos abatement project at the FedEx Terminal located at 1411 East Airport Road

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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." OAR 340-248-0010(25)

in North Bend, Oregon, and is therefore subject to a civil penalty in the amount of \$1,200.



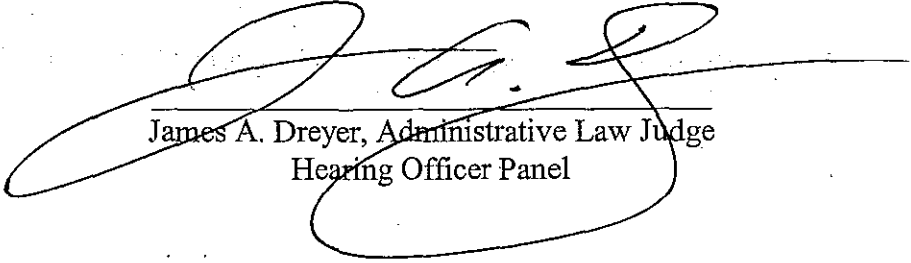
James A. Dreyer, Administrative Law Judge  
Hearing Officer Panel

**IF YOU DISAGREE WITH THIS ORDER**

This is the Proposed Order issued by the hearing officer. This Proposed Order will be the final order of the Commission unless, within 30 days from the date of service, a participant or a member of the Commission files with the Commission and serves upon each participant a Petition for Commission Review. A Petition must be in writing and need only state the participant's or a Commissioner's desire that the Commission review the hearing officer's Order. Within 30 days from the filing of the Petition, the Petitioner must file with the Commission and serve upon each participant written exceptions, brief and proof of service. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the Petitioner relies.

ISSUANCE AND MAILING DATE December 16, 2002

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James A. Dreyer, Administrative Law Judge  
Hearing Officer Panel

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ISSUANCE AND MAILING DATE

December 16, 2002

## CERTIFICATE OF SERVICE

I certify that on December 16, 2002, I served the attached Proposed Order by mailing in a sealed envelope, by certified mail or with first class postage prepaid, as noted below, a copy thereof addressed as follows:

CAL HOOVER  
PEGASUS CORPORATION  
617 S SHASTA AVE  
EAGLE POINT OR 97524

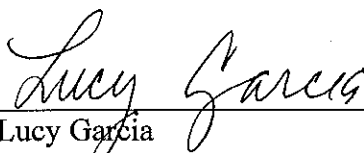
**BY CERTIFIED MAIL RECEIPT # 7001 1940 0000 5113 6356**

BRYAN SMITH  
OREGON DEQ  
811 SW 6TH AVE  
PORTLAND OR 97204

**BY FIRST CLASS MAIL**

JENINE CAMILLERI  
OREGON DEQ  
OFFICE OF COMPLIANCE AND ENFORCEMENT  
811 SW 6TH AVE  
PORTLAND OR 97204

**BY FIRST CLASS MAIL**

  
\_\_\_\_\_  
Lucy Garcia  
Administrative Specialist



# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Environmental Quality

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

May 20, 2002

CERTIFIED MAIL NO. 7001 1140 0002 3546 3955

Pegasus Corporation  
C/o Franklin C. Hoover  
2809 Sheridan Avenue  
North Bend, OR 97459

Re: Notice of Assessment of Civil Penalty  
No. AQ/AB-WR-02-059  
Coos County

On January 29, 2002, the Coos Bay Office of the Department of Environmental Quality (the Department) received a complaint of an illegal asbestos abatement project being conducted at the FedEx Terminal (the Facility), located at 1411 East Airport Road in North Bend, Oregon. The Facility is operated by the Pegasus Corporation (Pegasus). Martin Abts of the Department responded and inspected the Facility.

Mr. Abts determined that Virgil Stemmerman removed approximately fifty (50) square feet of cement asbestos board (CAB) during the recent installation of several bay doors at the Facility. Mr. Stemmerman is the sub-contractor of O'Neill's Overhead Doors, the contractor Pegasus hired to install the bay doors, and his removal of the CAB constitutes an asbestos abatement project.

On January 31, 2002, Mr. Abts spoke with Mr. Stemmerman, who confirmed that he performed this asbestos abatement project when he cut the CAB with a power saw during the week of January 21, 2002.

Oregon Revised Statute (ORS) 468A.715(1) and OAR 340-248-0110(2) require that an owner or operator of a building that contains asbestos shall ensure that any contractor engaged in an asbestos abatement project is licensed by the Department. Mr. Stemmerman does not have a license to conduct friable asbestos abatement projects.

Mr. Stemmerman produced asbestos-containing dust when he cut the CAB with a power saw, and his subsequent failure to properly package or label the CAB resulted in the accumulation of asbestos-containing waste material (ACWM), which is a violation of Oregon Administrative Rule (OAR) 340-248-0250(2). This accumulation of ACWM likely released asbestos fibers into the air and exposed workers, the public and the environment to asbestos.

Asbestos fibers are a respiratory hazard proven to cause lung cancer, mesothelioma and asbestosis. Asbestos is a danger to public health and a hazardous air contaminant for which there

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is no known safe level of exposure. To protect the public from asbestos exposure, the Department requires training and licensing for those who handle asbestos-containing material. Pegasus is liable for a civil penalty assessment because it failed to have a licensed asbestos abatement contractor perform an asbestos abatement project on a facility that it owns or operates.

In the enclosed Notice, I have assessed a civil penalty of \$1,200. The amount of the penalty was determined using the procedures set forth in Oregon Administrative Rule (OAR) 340-012-0045. The Department's findings and civil penalty determination are attached to the Notice as Exhibit 1.

Appeal procedures are outlined in Section IV of the Notice. If Pegasus fails to either pay or appeal the penalty within twenty (20) days, a Default Order will be entered against the company. Copies of referenced rules are enclosed.

If Pegasus wishes to discuss this matter, or believes there are mitigating factors which the Department might not have considered in assessing the civil penalty, the company may request an informal discussion by attaching the request to its appeal. Pegasus' request to discuss this matter with the Department will not waive the company's right to a contested case hearing.

I look forward to Pegasus' cooperation in complying with Oregon's environmental laws in the future. However, if any additional violations occur, Pegasus may be assessed additional civil penalties.

If Pegasus has any questions about this action, please contact Bryan Smith with the Department's Office of Compliance and Enforcement in Portland at (503) 229-5692 or toll-free at 1-800-452-4011, extension 5692.

Sincerely,



Stephanie Hallock  
Director

Enclosures

cc: Martin Abts, Coos Bay Office, DEQ  
John Becker, Medford Office, DEQ  
Kerri Nelson, Eugene Office, DEQ  
Air Quality Division, DEQ  
Oregon Department of Justice  
Kathy Johnson, U.S. Environmental Protection Agency, Seattle  
Environmental Quality Commission  
Coos County District Attorney



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

3 IN THE MATTER OF: ) NOTICE OF ASSESSMENT  
4 PEGASUS CORPORATION, ) OF CIVIL PENALTY  
an Oregon corporation, ) No. AQ/AB-ER-02-059  
5 Respondent. ) COOS COUNTY

6 I. AUTHORITY

7 This Notice of Assessment of Civil Penalty (Notice) is issued to Respondent, Pegasus  
8 Corporation, an Oregon corporation, by the Department of Environmental Quality (Department)  
9 pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS Chapter 183; and  
10 Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

11 II. VIOLATION

12 On or about January 21, 2002, Respondent allowed an unlicensed person to perform an  
13 asbestos abatement project on a facility it operated, in violation of ORS 468A.715(1) and OAR  
14 340-248-0110(2). Specifically, Respondent allowed a contractor, who was not licensed to  
15 perform asbestos abatement projects, to remove cement asbestos board (CAB) siding from its  
16 FedEx Terminal (the Facility), located at 1411 East Airport Road in North Bend, Oregon.  
17 According to OAR 340-012-0050(1)(u), this is a Class I violation, because the asbestos abatement  
18 project resulted in the potential for public exposure to asbestos or release of asbestos into the  
19 environment.

20 III. ASSESSMENT OF CIVIL PENALTIES

21 The Director imposes a civil penalty of \$1,200 for the violation cited in Section II. The  
22 findings and determination of Respondent's civil penalty pursuant to OAR 340-012-0045 are  
23 attached and incorporated as Exhibit No 1.  
24

25 ////

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IV. OPPORTUNITY FOR CONTESTED CASE HEARING

This Notice shall become final unless Respondent requests, in writing, a hearing before the Environmental Quality Commission. **The request must be received by the Department within twenty (20) days from the date Respondent receives this Notice, and must be accompanied by a written "Answer" to the allegations contained in this Notice.**

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

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

Send the request for hearing and Answer to: **Deborah Nesbit, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Following receipt of a request for hearing and an Answer, Respondent will be notified of the date, time and place of the hearing.

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

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

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

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1 V. OPPORTUNITY FOR INFORMAL DISCUSSION

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

5 VI. PAYMENT OF CIVIL PENALTY

6 The civil penalty is due and payable ten (10) days after the Order imposing the civil  
7 penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before  
8 that time. Respondent's check or money order in the amount of \$1,200 should be made payable  
9 to "State Treasurer, State of Oregon" and sent to the **Business Office, Department of**  
10 **Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

11  
12  
13 5-20-02  
Date

Stephanie Hallock  
Stephanie Hallock, Director

EXHIBIT 1

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

VIOLATION 1: Allowing a person other than a licensed asbestos abatement contractor to perform an asbestos abatement project, in violation of ORS 468A.715(1) and OAR 340-248-0110(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0050(1)(u), because the violation resulted in the potential for public exposure to asbestos or the release of asbestos into the environment.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0090(1)(d)(C), because the amount of asbestos-containing waste material (ACWM) removed was less than 80 linear feet.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  
$$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$

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

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

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant actions and receives a value of 0, because Respondent has no prior significant actions.

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 pursuant to OAR 340-012-0045(1)(c)(C)(i) because the violation existed for one day or less and did not recur.

"R" is the cause of the violation and receives a value of 2 pursuant to OAR 340-012-0045(1)(c)(D)(ii), because Respondent's conduct was negligent. Respondent failed to take reasonable care to avoid the foreseeable risk of hiring an unlicensed contractor to conduct an asbestos abatement project. Respondent failed to conduct an asbestos survey of the property, and consequently failed to hire a licensed asbestos abatement contractor.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of 0 pursuant to OAR 340-012-0045(1)(c)(E)(ii), because there is insufficient information upon which to base a finding.

"EB" is the approximate dollar sum of the economic benefit pursuant to OAR 340-012-0045(1)(c)(F) that the Respondent gained through noncompliance and receives a value of \$0, because there is insufficient information upon which to base a finding that Respondent benefited from the violation.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 0 + 2 + 0)] + \$0 \\ &= \$1,000 + (\$100 \times 2) + \$0 \\ &= \$1,000 + \$200 + \$0 \\ &= \$1,200 \end{aligned}$$

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: ) REQUEST FOR HEARING  
PEGASUS CORPORATION, ) BY RESPONDENT  
an Oregon Corporation, ) NO. AQ/AB-ER-02-059  
)  
Respondent ) COOS COUNTY

REQUEST FOR HEARING

Pursuant to paragraph IV of the written Notice of Assessment of Civil Penalty dated May 20, 2002, Pegasus Corporation, hereinafter referred to as Pegasus, requests a hearing before the Environmental Quality Commission for the purpose of contesting the allegations contained within the Notice of Assessment of Civil Penalty.

July 1, 2002

PEGASUS CORPORATION:



Franklin C. Hoover,  
President & General Manager

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: ) ANSWER AND AFFIRMATIVE  
PEGASUS CORPORATION, ) DEFENSES OF RESPONDENT  
an Oregon Corporation, ) NO. AQ/AB-ER-02-059  
)  
Respondent ) COOS COUNTY

ANSWER

For response to the Notice of Assessment of Civil Penalty, Pegasus Corporation, hereinafter referred to as Pegasus, asserts the following Answer:

I. AUTHORITY

1. Pegasus admits it is an Oregon corporation.
2. Pegasus denies that there is authority for the Department of Environmental Quality to issue a Notice of Assessment of Civil Penalty under ORS 468.126 through 468.140, ORS Chapter 183, or OAR chapter 340, Divisions 11 and 12 for the reason that Pegasus is not the owner or operator of a facility as contemplated in ORS 459A.715(1) and OAR 349-248-0110(2).

II. VIOLATION

Pegasus denies each of the allegations contained in paragraph II of the Notice of Assessment of Civil Penalty.

### III. ASSESSMENT OF CIVIL PENALTIES

Pegasus lacks sufficient information and knowledge to form a belief as to the truth of the assertions contained in paragraph III of the Notice of Assessment of Civil Penalty, and therefore denies all of the allegations.

### IV. CONCLUSION

Having fully answered, Pegasus requests a full and complete hearing; and, following a hearing, that no civil penalty be imposed against Pegasus.

### AFFIRMATIVE DEFENSES

#### I. IMPROPER PARTIES

Pegasus is not a proper party to this proceeding insofar as it is not an owner or operator of the facility on which the alleged "asbestos abatement project" took place. Pegasus asserts that the owner of the facility is the City of North Bend, Oregon and that the operator of the facility is the Oregon International Port of Coos Bay.

#### II. REASONABLE CARE

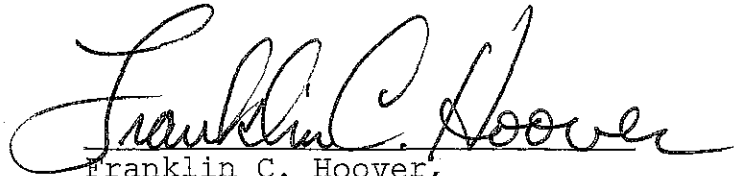
Pegasus does not admit it is a proper party to this proceeding, but assuming such is not the case, Pegasus asserts that it exercised reasonable, prudent and diligent care in its conduct to avoid any violation of the environmental quality laws of the state of Oregon.



Pegasus has filed simultaneously with this Answer its Statement of Facts and Argument in support of its Affirmative Defenses. To the extent necessary, the Statement of Facts is incorporated by reference in this Answer as though the same were attached. Pegasus has also filed simultaneously with this Answer its Request for Hearing and its Request for Informal Discussion. To the extent necessary, the two requests are incorporated by reference in this Answer as though the same were attached.

July 1, 2002

PEGASUS CORPORATION:

  
Franklin C. Hoover,  
President & General Manager

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: ) STATEMENT OF FACTS AND  
PEGASUS CORPORATION, ) ARGUMENT BY RESPONDENT  
an Oregon Corporation, ) NO. AQ/AB-ER-02-059  
)  
Respondent ) COOS COUNTY

STATEMENT OF FACTS AND ARGUMENT

At issue in this matter is whether Pegasus Corporation, hereinafter referred to as "Pegasus" is a proper party to these proceedings; and if so, should Pegasus be held responsible and liable for the irresponsible and improper misconduct of other persons over whom Pegasus exercised little or no authority to control or direct? Also at issue in this regard is whether Pegasus exhibited reasonable and prudent care when it did exercise what little authority it had with regard to the building in question?

PROPER PARTY

Pegasus contends it is not a proper party to these proceedings. The law and regulation used by the Department to assert a violation by Pegasus are found in ORS 468A 715(1) and OAR 340-248-0110(2). Contained in both the statute and the regulation are specifics or elements that must be present before a violation can occur and civil penalties imposed. The person

must be an "owner" or "operator" of a "facility containing asbestos" who contracts with an unlicensed contractor to "perform an asbestos abatement project".

The facility at issue is located at 1411 E. Airport Way, North Bend, Oregon, and is "owned" by the City of North Bend Oregon. The facility is in fact a part of the North Bend Municipal Airport and was built sometime during the Second World War. The siding material used on the exterior of the building is alleged by the Department to be cement asbestos board.

By way of an intergovernmental agreement dated August 19, 1998, a copy of which is attached and marked "Exhibit A", the Oregon International Port of Coos Bay became the "operator" of the North Bend Municipal Airport. The Oregon International Port of Coos Bay shall hereinafter be referred to as the "Port". While the agreement speaks for itself, it is clear from the document that the City of North Bend did not convey title to the Port, but rather authorized the Port to assume the "general management and operations of the Airport. . ." and the property of the Airport. (See paragraph (3)(a) of the agreement). The facility at issue is part of the airport real property under which the Port assumed responsibility for by the terms of the agreement.

On or about April 17, 2001, the Port executed a short-term lease agreement with Pegasus under which the Port leased to

Pegasus the facility at issue for a term of twenty-nine (29) months. A copy of the lease agreement is attached and marked "Exhibit B". The lease document gives Pegasus the option to extend the lease for up to twenty (20) years subsequent to the original term of the lease, which ends on July 31, 2003. The lease document also provides Pegasus with the authority to terminate the lease after giving the appropriate notice of sixty (60) days. Under the lease document, the Port is responsible for the structural integrity of the facility while Pegasus is responsible for maintenance of the roof and payment of utilities for the premises. (See paragraph 4 of the agreement.)

Paragraph 5(b) of the lease document provides that the tenant's "right to use said premises shall be subordinate to the right of the Landlord to regulate and control the premises for airport purposes." By virtue of this language, it is clear that the Port has the operational capacity to do whatever it wants with the facility if the Port deems it necessary to control the facility for airport purposes. On the date the lease document was executed by the Port and Pegasus, the facility was already under a sub-lease to Federal Express Corporation.

Presumably under the paragraph 5(b) of the lease agreement, the Port as the facility "operator" condemned a portion of the facility in issue sometime between September 11, 2001 and October 31, 2001. Attached hereto and marked "Exhibit C" is a

letter received by Pegasus from Federal Express. Prior to September 11, 2001, the facility in issue had a sliding door on the airport ramp side of the building. It also had street access on the opposite side of the building through three overhead doors.

On a daily basis, Federal Express would drive a large truck to its airplane after the airplane landed in order to empty the cargo contained in the airplane. The truck would then proceed to the ramp side sliding doors to unload its cargo within the confines of the building. The cargo would then be sorted and distributed to delivery vans, also within the confines of the building. Thereafter, the vans would depart using both the street side and the ramp side of the facility. In the evening, the opposite would occur. Cargo collected during the day would be sorted and loaded into the large truck from within the confines of the building, and the truck would then be driven to the aircraft. The airplane would be loaded with the day's cargo and then depart the airport. The notice by the Port, as the facility "operator", to lock up the ramp side sliding doors has never been provided to Pegasus by the Port. To this date, the Port has not notified Pegasus of its action and condemnation of the building. Pegasus did not become aware that building had been partially condemned until it received the letter marked Exhibit C. If Pegasus is indeed the operator of the facility,

would it not make sense for the Port to provide that notice to Pegasus? Pegasus did nothing to cause the facility in issue to be closed to Federal Express. The Port did, as the facility "operator". Had the Port not taken the unilateral action it did in the first instance, the necessity to correct a glaring problem for Federal Express would not have been necessary. The Port's conduct clearly manifests its position as that of the facility "operator", not Pegasus.

Pegasus is informed, and therefore believes, and thereon states as fact that the Port was directed by OSHA to conduct an asbestos survey of all of the buildings over which it managed on the airport. This directive necessarily included the facility at issue. The specific date of the OSHA directive to the Port is unknown, but Pegasus believes and therefore states as fact that the OSHA directive was received by the Port prior in time to the purported violation by Pegasus on January 21, 2002. Pegasus is further informed and therefore states as fact that the OSHA directive included a time limit specifying when the asbestos survey was to be completed, and that the time limit was exceeded by the Port. Pegasus is informed that the Port actually conducted an asbestos survey of one or more of the buildings it "operated", but decided to stop completion of the asbestos survey directed by OSHA because of financial constraints. Pegasus does not have a copy of the OSHA directive, but will ask

for a subpoena to obtain a copy for the purpose of presenting the same at the time of hearing.

Presumably, one reason OSHA directed the Port to conduct the asbestos survey was to make the Port aware and knowledgeable of which buildings it "operated" on the airport contained asbestos and which buildings did not contain asbestos. With this knowledge, the Port would be better situated to "operate" the properties on the airport, including the facility in question. With this knowledge, the Port could pass along the information to its tenants so the airport tenants would be aware of whether the building they were leasing contained asbestos.

Pegasus is informed, and therefore believes and thereon states that an asbestos survey was conducted on the facility in issue in March 2002. (See correspondence dated March 11, 2002, attached and marked "Exhibit D") It seems at least implicit that one reason for the OSHA directive to the Port to conduct an asbestos survey was to obtain information and knowledge about asbestos contained within or on the buildings it "operated" at the airport. It also seems obvious that the OSHA directive to the Port carried with it the obligation to pass the information it obtained from the survey along to persons who might be detrimentally affected if that information were to be withheld. What good is achieved by the OSHA directive to the Port if the Port does not pass the information along to persons who may be

affected? Nothing is accomplished if the Port sits on the information. Yet, that is precisely what the Port is doing.

First, the Port failed to complete the OSHA directive in a timely fashion. For whatever reason, the Port decided to stop the asbestos survey before it was completed. And, when the Port did cause an asbestos survey of the facility in issue to be completed in March 2002, it failed to notify Pegasus that the facility has siding comprised of cement asbestos board. As of this date, the Port has failed to provide Pegasus with the survey results. Does this failure of the Port to notify Pegasus mean that the siding does not contain asbestos? Can Pegasus assume, for the purpose of future knowledge, that there is not an asbestos issue with the facility since the Port has not provided such information following its survey? Or, may Pegasus assume the Port would provide asbestos information if the survey the Port caused to be conducted shows that there is in fact asbestos siding on the facility Pegasus leases from the Port? Pegasus does not know.

If the siding does not contain asbestos, then there is no asbestos abatement project. And, if there is no asbestos abatement project, there is no violation. Pegasus does know that it does not "operate" the facility in issue and most certainly does not own it. OSHA did not send a directive to Pegasus, a short-term lessee, to conduct a survey on the



facility in issue. OSHA specifically sent the directive to the Port because the Port is the facility "operator". Since Pegasus is not the "owner" or "operator" of the facility in issue, it is not a proper party to this proceeding. Additionally, since the Port has not provided Pegasus with its asbestos survey results, there is no proof that the siding on the facility in issue has asbestos. If there is no asbestos, there is no "asbestos abatement project", and therefore no violation.

#### REASONABLE CARE

Arguing in the alternative, Pegasus asserts that even if it is an "operator" within the meaning of the Oregon law and regulation, it did not violate the legal provisions specified in the Notice of Violation because it did not allow an unlicensed contractor to remove asbestos nor did it engage in an "asbestos abatement project".

After receiving the correspondence (Exhibit C) from Federal Express, Pegasus elected to explore the possibility of making the modifications requested by Federal Express. In this regard, Pegasus telephonically communicated with O'Neal's Overhead Doors & Continuous Gutters located in Coos Bay, Oregon, hereinafter referred to as "O'Neal's", to determine whether O'Neal's would be interested in providing a proposal for the overhead doors requested by Federal Express. Pegasus checked O'Neal's record with the Oregon contractor's licensing department before

actually contracting with the company. The check revealed that O'Neal's was a licensed general contractor with a history of no complaints. During the conversation, O'Neal's advised Pegasus that it did not do carpenter work, and that if any carpenter work was required, it would sub-contract to have that done. Pegasus told O'Neal's that the job would require carpenter work. At that point of the conversation, O'Neal's stated that a subcontractor it had used in the past would be asked to participate in the project. The sub-contractor's name was Virgil Stemmerman. Pegasus checked Virgil Stemmerman's record with the Oregon contractor's licensing department. That check revealed that Stemmerman was a general contractor with a history of no complaints.

Either during the telephone conversation with O'Neal's, or shortly thereafter, it was agreed that a representative from O'Neal's, a representative from Pegasus, a representative from Federal Express, and Mr. Stemmerman would meet at the facility to physically view its condition as well as determine what would be required to install the new doors. Additionally, the meeting and physical view of the premises was necessary before O'Neal's could make its proposal. The actual meeting occurred on a date prior in time to the date of the proposal that was submitted to Pegasus by O'Neal's.

At the time of the meeting, each and every aspect of the work requested by Federal Express was discussed, including the possibility of asbestos removal. During the meeting there seemed to be a general consensus that nearly all of the buildings on the airport were of World War II vintage, and that most contained asbestos. The Pegasus representative attending the meeting had no way of knowing whether the consensus regarding the asbestos was correct, but had no reason to believe otherwise.

Subsequent to the meeting at the facility, O'Neil's submitted a Proposal to Pegasus for its review. The complete proposal is included in two separate pages. They are attached and marked "Exhibit E" and "Exhibit F". Both documents were sent to Pegasus by facsimile transmission on the dates listed along the top of each exhibit. "Exhibit E" was sent on November 13, 2001. "Exhibit F" was sent on November 17, 2001. Both documents reflect a date of October 7, 2001. Pegasus believes the October 7 date is a typographical error, in that Pegasus did not find out about Port's condemnation of the facility and the resulting Federal Express problem until after October 31, 2001, the date of the Federal Express letter attached as "Exhibit C". Unfortunately, the first document has been distorted because of water. However, the two documents are identical except as follows: "Exhibit E", the first document generated, includes

the contract price of \$10,045.00 whereas the second document, "Exhibit F", does not included the contract price. "Exhibit E" does not specify electric doors. "Exhibit F" does specify electric doors. In actuality, the specification of electric doors was the result of Federal Express' review of the first proposal. Federal Express wanted the proposal to specify electric door lifts. Thereafter, the second proposal ("Exhibit F") was generated and submitted to Pegasus by O'Neal's.

What is most significant about the proposal is that each page contains identical language under the Exclusions section as follows: "If asbestos abatement is required owner will incur all expenses." The use of the word "if" by O'Neal's is especially important to Pegasus because it is used in a way that suggests that O'Neal's would determine whether asbestos abatement would be necessary. And, if asbestos abatement was necessary, Pegasus would have to pay extra for the retention of an appropriately licensed asbestos abatement contractor, which would be sub-contracted by O'Neal's.

The proposal does not contain any language that even remotely suggests that Pegasus was contracting with O'Neal's to engage in a asbestos abatement project. Indeed, the language suggests just the opposite is true. As a matter of fact, Pegasus did not retain the services of O'Neil's to engage in an asbestos abatement project. Pegasus contracted with O'Neil's to

install two electric doors on the facility in issue. It is clear from the language used in the proposal that Pegasus would be responsible for the extra expense of hiring a properly licensed asbestos abatement contractor "if" such was necessary. But, the same sentence places the responsibility for hiring a licensed asbestos contractor on O'Neil's, and not Pegasus. Pegasus asserts that the proposal's language accurately describes the intent of the parties particularly when it is pointed out that the language was chosen by O'Neil's after a discussion concerning the possibility of asbestos abatement at the meeting of all persons concerned. It was Pegasus' understanding that O'Neil's would first determine whether asbestos abatement was necessary and second, O'Neil's would subcontract with a properly licensed contractor to remove the asbestos if that was necessary. Pegasus fully expected to pay for any extra expenses associated with asbestos abatement should that become necessary. The intent of the parties cannot be reasonably contemplated in any other way than that which was understood by Pegasus without adding additional language to the proposal.

In a cover letter dated May 20, 2002, executed by Stephanie Hallock, it is stated: "On January 31, 2002, Mr. Abts spoke with Mr. Stemmerman, who confirms that he performed this asbestos abatement project when he cut the CAB with a power saw

during the week of January 21, 2002. A copy of the letter is attached and marked "Exhibit G". Again, it needs to be pointed out that Mr. Stemmerman was a participant at the meeting held on the premises of the facility in issue during which the general consensus with regard to asbestos was discussed. Mr. Stemmerman took part in the discussion. If Mr. Stemmerman in reality had reason to believe the consensus to be true and that the siding contained asbestos, then and in that event, he engaged in willful and intentional misconduct by cutting the siding with a skill saw. Since Pegasus did not contract with Mr. Stemmerman, but rather O'Neil's, how can it possible be said that Pegasus ". . . allowed a contractor, who was not licensed to perform asbestos abatement projects, to remove cement asbestos board (CAB) siding . . ." as alleged in the Notice of Assessment. The only way the Commission can conclude that the allegation is true is for it to place its stamp of approval on the concept that an owner or operator is responsible regardless of what steps a person may make to insure compliance with the law. Pegasus contends such was not the intent of the legislature when the law was passed, or of the Commission when it promulgated the regulation addressing the statute. Pegasus' view might be different if it had done nothing except execute a contract. But this is not the case. Pegasus checked the contractor and sub-contractor's license history. Pegasus participated in a meeting

during which the contractor and sub-contractor discussed the possibility of asbestos removal. The proposal, which Pegasus accepted, included a provision specifically addressing the issue of asbestos abatement. As such, Pegasus exercised reasonable and prudent care in the matter, and should not be held to the standard of an insurer against the intentional and willful misconduct of a person who Pegasus did not even contract with. It cannot be said that Pegasus could reasonably foresee that Mr. Stemmerman would intentionally and willfully violate the law by cutting into siding which he knew, or had reason to believe, contained asbestos. To view this set of facts as a violation intended by the legislature at the time the statute was passed is a stretch at best.

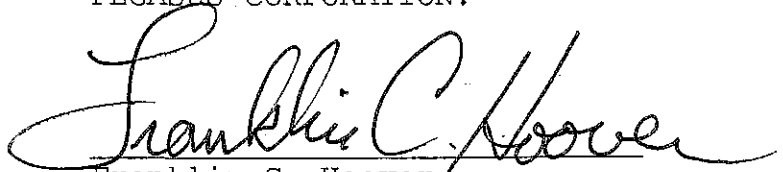
Pegasus approved the proposal after a final review by Federal Express, by payment of the contract price in full before the commencement of work. Thereafter, plans were drawn by the contractor and submitted to the North Bend, Oregon Building Department for approval. The building department on January 10, 2002, approved the plans and a building permit was issued on January 15, 2002. Finally, the actual construction was reviewed and approved by the building department on February 8, 2002. A copy of the building permit is attached and marked "Exhibit H".

In conclusion, Pegasus contends it cannot be held responsible under the facts of this case for the conduct of

others who engage in intention and willful misconduct. Pegasus cannot be held responsible for knowing whether the siding ultimately cut contained asbestos when the Port, as the operator, irresponsibly terminated its asbestos survey after being instructed to conduct such a survey by OSHA. Pegasus cannot be held responsible for having knowledge of asbestos when the Port withholds the survey results from it. Pegasus cannot be held responsible for a violation when it was a participant in a meeting during which the contractor and sub-contractor specifically discuss the possibility of asbestos abatement. Pegasus cannot be held responsible when the possibility of asbestos abatement is specifically addressed in the contractor's proposal. And, Pegasus cannot be held responsible for any violation since it is not now, nor has it ever been, the owner or operator of the facility in issue.

July 1, 2002

PEGASUS CORPORATION:



Franklin C. Hoover,  
President & General Manager



**INTERGOVERNMENTAL AGREEMENT  
CITY OF NORTH BEND AND OREGON INTERNATIONAL PORT OF COOS BAY**

This Intergovernmental Agreement is made by and between the CITY OF NORTH BEND, herein called City, and the OREGON INTERNATIONAL PORT OF COOS BAY, herein called Port, this 12<sup>th</sup> day of August, 1988, as follows:

(1) **Purpose:** The parties acknowledge that the current revenues of the North Bend Municipal Airport, which includes the Airport Industrial Park, (herein called Airport), are not sufficient to provide the additional funds necessary to meet the requirements of the Federal Aviation Administration (FAA) for maintaining commercial air service at the Airport. Also, the Airport serves an area of Southwestern Oregon which encompasses the Port district and beyond, and it is reasonable for the Port, as a regional entity, to take responsibility for and have authority for operation and management of the Airport. If the necessary additional funds can be made available from the Port to maintain commercial service, then it is the purpose of this Agreement to transfer the operation and management of the Airport to the Port under the terms and conditions of this Agreement, for the benefit and welfare of residents of the Port district, which includes residents of the City.

(2) **Serial Levy Funding as a Condition to the Agreement:** The parties agree that current Port revenues are not adequate to cover Airport operations. The Port agrees to place on the ballot for the November 1988 General Election a five-year serial levy within the Port District sufficient to raise approximately \$300,000 annually for Airport operations in addition to the existing Airport revenues. If the serial levy passes, this Agreement will take effect and will be operational for budget purposes on July 1, 1989. If the measure fails to pass, then this Agreement will be of no further force or effect.

(3) **Powers and Duties of the Port:** If this Agreement becomes operational on July 1, 1989, the Port will have the following powers and duties:

(a) The Port will assume and shall have during the life of this Agreement the general management of the property and operations of the Airport, subject to existing contract obligations of the Airport, including contract and regulatory obligations to the FAA. The "property" of the Airport as used in this Agreement includes all real property comprising the Airport. The "property" of the Airport also includes all equipment, supplies and other like personal property owned or held by the City at the Airport premises or used or intended for use in operation of the Airport, except the items described on Exhibit "A".

(b) The City shall assign to the Port all leases, rents, fees, charges and other revenues of the Airport and the Port shall receive the same and perform the duties of the City thereunder. The Port will assume and pay all salaries, wages, expenses, costs and other obligations of the Airport and will keep insured all

properties currently insured until such properties have been disposed of or replaced. Between the date of this Agreement and the date of transfer of management, the City may incur obligations for the Airport in the ordinary course of operations. Obligations outside the ordinary course of Airport operations during such period may be incurred by the City with the concurrence of the Port. All rents, fees, charges and other revenues of the Airport shall be used only for Airport purposes, but necessary management and administrative costs for the Airport may be retained by the Port as an Airport expense. The employees who are working for the City on June 30, 1999 will become employees of the Port. If the serial levy passes at the November General Election, the City will obtain the approval of the Port for any changes or additions to such employees until the change in employment occurs. Both parties will use their best efforts to arrange for a smooth transition of Airport employees.

(c) The City delegates to the Port the authority to adopt and enforce regulations, rates, fees and charges for the Airport. Until the Port shall adopt different regulations, rates, fees and charges, those in force and effect on June 30, 1999 will remain in force and effect until changed and may be enforced by the Port.

(d) Revenue financing of property and projects at the Airport may be authorized and carried out by the Port or by the City and Port jointly under the City's Charter authority.

(e) To the extent that it is necessary for the Port to provide fire, rescue or security services to the Airport to comply with FAA regulations for maintaining scheduled air service, the Port will contract with the City and pay the City's costs for such services from Airport revenues. As used in this paragraph, the City's costs shall be the actual direct costs (excluding overhead) of providing such services. This provision shall not prevent the Port from providing such services with Airport employees who have the required training or with a qualified third-party provider of such services.

(f) The Port will provide the City with annual Airport financial and operational reports, and will give consideration to City suggestions and comments.

(g) Any loans from other funds of the City to the Airport Operating Fund existing on July 1, 1999, will be repaid by the Port out of revenues generated by the Airport or out of the airport tax serial levy of the Port. The existing loans are described and the amounts thereof set forth in Exhibit B.

(4) Powers and Duties of the City: If this Agreement becomes effective, the City will have the following powers and duties relating to the Airport:

(a) If the Port's tax levy for Airport purposes is passed at the November 1999 election, then the City will consult and cooperate with the Port concerning the

transition to Port management on July 1, 1999 and concerning Airport operations in the intervening period between the election and July 1, 1999.

(b) The City will retain ownership of all Airport property, and prior approval by the City must be obtained for property disposition, pledges or encumbrances of property for revenue financing for periods in excess of twenty years, a change in the Airport name, or leases for periods in excess of twenty years. The City's prior approval must be obtained for any capital improvements requiring FAA financing, improvements costing more than \$500,000, and for demolition of structures except those which are obsolete, unsafe, or nonfunctional, or which have a fair market value less than \$50,000. The City's approval of the items mentioned in this subparagraph shall not be unreasonably withheld.

(c) To the extent that the Port may be unable legally to carry out any of the necessary functions in the management and operation of the Airport, the City will cooperate with the Port to assist in carrying out or enforcing such functions.

(d) The City shall transfer to the Port all funds in its Airport operating account on the date of transfer of management.

(e) Rentals paid by the City to the Port for Airport property used by the City for the City's sewage disposal facilities and City shops shall be based on fair market rentals for such property. If the City hereafter wants to use Airport properties not now being used by the City, the parties shall in good faith negotiate reasonable terms for such use.

(5) **Advisory Committee:** The Port shall appoint an advisory committee composed of people with knowledge, experience or interest in airport operations which shall consult with the Port regarding the operations and activities of the Port in managing the Airport. The committee shall consist of at least five persons of whom two shall be persons designated for such positions by the City.

(6) **Duration and Termination of the Agreement:** This Agreement shall continue until otherwise agreed by both parties. However, if the Port shall, for any reason, fail to maintain FAA certification for scheduled commercial air service at the Airport, then the City may give the Port notice of intent to terminate this Agreement, and if the Port should fail to reinstate such certification within 90 days after receipt of such notice, then the City may terminate this Agreement and assume the management of the Airport property and operations on the following July 1 or sooner if suitable financial arrangements are agreed by the parties.

(7) **Events on Termination:** At the termination of this Agreement, the Port shall transfer to the City all funds in its Airport operating account and assign all airport leases to the City, and the City shall assume and pay all obligations to the Airport incurred by the Port

In good faith and in the ordinary course of operating the Airport (including the obligations incurred in connection with leases on the Airport Industrial Park).

Executed by the Mayor on behalf of the City, and executed by the President on behalf of the Port as authorized by the City Council and Port Commission:

CITY OF NORTH BEND

OREGON INTERNATIONAL PORT OF COOS BAY

BY:



Mayor

BY:



President

## LEASE AGREEMENT

OREGON INTERNATIONAL PORT OF COOS BAY, herein called Landlord, leases the premises herein described to PEGASUS CORPORATION, herein called Tenant, on the following terms and conditions:

(1) **LEASED PREMISES:** The North one-half of Building No. 7, at the North Bend Municipal Airport, North Bend, Oregon. Tenant has possession under a previous lease. This new lease is made as a part of a settlement by Landlord, Tenant and City of North Bend of various claims between the parties.

(2) **TERM:** The term of this lease will begin February 1, 2001 and will end July 31, 2003. Tenant has the option to renew the lease for four additional terms of five years each by giving the Landlord written notice not later than the 61st day before the expiration of the preceding term.

(2a) **Option to Terminate Lease:** Tenant may terminate the lease at any time by giving Landlord not less than sixty days written notice.

(3) **RENTAL:** Tenant shall pay as rent for said premises \$508.27 on or before the first day of each month until June 1, 2001. Beginning June 1, 2001 and on June 1 of each three-year period thereafter, rent shall be increased or decreased by the percentage of increase or decrease of the U. S. City Average Consumer Price Index for All Urban Consumers during the previous three year period ending March 31.

(3a) Rent not paid when due will have added thereto 2% of the balance due, and on the expiration of each month that such balance remains delinquent there will be added an additional 2% of the total balance due.

(3b) The rent which Tenant pays for the premises shall be increased by \$450.00 during any month that said building is subleased for a purpose not specified in the original Airport Operator's Lease and Agreement, referenced in paragraph 17 of this Lease Agreement. For example, at the time this lease is executed, the premises are being subleased to Federal Express, and the premises are not being used for a purpose specified in the Airport Operator's Lease and Agreement referenced in paragraph 17 of this Lease Agreement. Therefore, at the time this lease is executed, the rent is \$958.27 (\$508.27 plus \$450.00).

(4) **MAINTENANCE AND UTILITIES:** Landlord will be responsible for the structural integrity of the North one-half of Building No. 7, but will have no other maintenance responsibilities for said building, Tenant will maintain the roof and pay for all utility charges for said premises.

(5) **USE OF PREMISES:** The premises may be used for any legitimate business purpose with the exception of selling aviation fuel, subject to FAA standards and appropriate airport standards.

1  
"EXHIBIT B"

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(5a) Tenant assumes the risk of any loss or damage occasioned by theft, accident, fire or other hazard to property stored on the premises; and the Landlord shall not be held liable for any such loss or damage from any cause and Landlord shall in no way be responsible for the safety of said premises.

(5b) It is a condition of this lease that the premises not be used in a manner which could interfere with the operation of aircraft at the North Bend Municipal Airport; and Tenant's right to use said premises shall be subordinate to the right of the Landlord to regulate and control the premise for airport purposes, including the right to control lighting and electronic signals that might interfere with the operation of aircraft.

(6) **COMPLIANCE WITH LAWS:** The Tenant agrees to comply with all rules, regulations and laws which are now in effect or which may hereafter be enacted during the term of this lease by any municipal, county, state or federal authority having jurisdiction over said premises. This lease is specifically subject to the terms and conditions of Ordinance No. 138 of the Oregon International Port of Coos Bay and the rules and regulations adopted under the provisions of such ordinance.

(7) **RESPONSIBILITY FOR PREMISES AND INDEMNITY:** Tenant shall be responsible for all conditions and activities on said premises; and Tenant agrees to indemnify, defend and hold the Landlord harmless from any claim, liability, damage or legal action caused by acts or omissions of the Tenant, its agents, employees, lessees or assigns, or anyone upon or using the premises herein described, or which may be caused by any condition of the property or premises herein leased.

(8) **LIABILITY INSURANCE:** Tenant shall procure and maintain public liability insurance covering the condition, use, business and activities on said premises, including the obligation to indemnify, defend and hold the Landlord harmless from injury or damage; and copies of such insurance policies shall be filed with the Landlord. Such liability insurance shall have limits which are not lower than those provided in the Oregon Tort Claims Act as now contained in ORS Chapter 30 and as it may hereafter amended. This provision is intended to protect only the Landlord and not third parties.

(9) **WAIVER OF SUBROGATION:** Neither party will be liable to the other for any claim, damage or loss which is caused by any peril which is or could have been covered by fire insurance with extended coverage, whether or not such insurance is in force; and any rights of subrogation of insurance carriers are waived.

(10) **DESTRUCTION OF PREMISES:** If any portion of the leased premises shall become unusable by reason of fire, accident or other destruction, then the Landlord may restore such premises or provide alternative premises of substantially the same quality and quantity; and in such event, there shall be a partial abatement of rent based on the percentage of loss of use of premises, facilities and privileges. If the Landlord does not notify the Tenant within 30 days of its decision to make such restoration or supply alternative premises within 120 days from the date of such destruction, then this

lease shall be terminated.

**(11) LANDLORD'S REMEDIES:** In the event of default by the Tenant of any provision of this lease, the Landlord may exercise any remedy permitted by law. The right to possession for a failure to pay rent shall be governed by state law.

**(11a)** In addition to any other remedy, if there is a default in the payment of rent, Landlord shall have a lien upon all of the fixtures and personal property in or upon the leased premises, and said lien shall attach to said property at the time of such default. Whenever said lien shall attach, the Landlord shall have the right to immediate possession of said property; and, after thirty days written notice thereof to the Tenant, the Landlord may sell said property or the Tenant's interest therein at public or private sale and apply the proceeds thereof to the payment of such rent and deliver the excess, after payment of all costs and expenses of said sale, to the Tenant.

**(11b)** If there is a breach by the Tenant of any provision of this lease, other than for the payment of rent, the Landlord may give written notice to the Tenant that if such provision shall not be complied with or remedied within the period of thirty days from such notice, then this lease agreement shall be terminated and the Landlord shall have the right to immediate possession of said premises, and any possession thereafter by the Tenant shall be deemed a holding by force.

**(12) REMOVAL OF PROPERTY AND FIXTURES:** Upon the termination of this lease, if the Tenant shall not be in default of any of the terms of this lease, then Tenant may remove all personal property and fixtures owned or installed by the Tenant so long as such removal will not deface or injure any part or portion of the premises; but such right of removal shall not extend to any partitions or portions of the structure or other fixtures permanently affixed to the structure or premises.

**(13) ASSIGNMENT:** This lease shall not be sold or assigned either voluntarily or by operation of law, and neither the premises nor any portion thereof shall be sub-leased without the prior written consent of the Landlord, but such consent shall not be withheld unreasonably. The premises are currently subject to a sublease to Federal Express. No additional consents shall be required for any renewal of the sublease by Federal Express.

**(14) WAIVER:** Failure of the Landlord to insist on the strict performance of any of the terms of this lease shall not be construed as a waiver of the Landlord's right to thereafter strictly enforce any such term. The Landlord shall not be estopped to enforce any of the provisions of this lease agreement by reason of acts and conduct on the part of any officer or employee of the Landlord, and there shall be no waiver of any of the Landlord's rights under this lease agreement except by an express act of the Port Commission made by a motion or resolution duly passed at a regular or special meeting.

**(15) ATTORNEY'S FEES:** If legal proceedings are commenced by either party to

enforce any provision of this lease or right provided by law, then there shall be allowed to the prevailing party such sum as the court may adjudge reasonable as attorney's fees in such legal proceeding, the trial thereof, or on any appeal of such proceeding.

**(16) COVENANT FOR NONDISCRIMINATION:** To the extent that the Tenant shall provide any activity, service or facility at, or relating to, the North Bend Municipal Airport, the Tenant and Tenant's representatives, successors in interest and assigns, as a part of the consideration hereof, hereby covenant and agree, as a covenant running with the premises, that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

**(16a)** In the event of breach of any of the above nondiscrimination covenants, the Landlord shall have the right to terminate the lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

**(17) RESCISSION OF PREVIOUS LEASE:** The Airport Operator's Lease and Agreement executed in April, 1993 by Tenant and City of North Bend is hereby deemed terminated and of no further binding force or effect.

**(18) MAILING ADDRESSES AND NOTICES:** The parties shall keep each other informed of their current mailing addresses, but until notice of change, the following addresses may be used for purposes of giving notice under the terms of this lease:

LANDLORD'S MAILING ADDRESS:

TENANTS MAILING ADDRESS:

P.O. Box 1215  
Coos Bay, OR 97420

Executed on behalf of the Landlord by its General Manager this 17<sup>th</sup> day of April, 2001, and executed on behalf of the Tenant by its President this 17 day of April, 2001.

Oregon International Port of Coos Bay

Pegasus Corporation

By: Allen E. [Signature]  
General Manager

By: Franklin C. Hoover  
President





**VIA FEDEX OVERNIGHT LETTER**

October 31, 2001

Mr. Cal Hoover  
Pegasus Corporation  
c/o Local Motion  
Rogue Valley Mall # 2025  
1600 North Riverside Avenue  
Medford, OR 97501

RE: FEDEX CITY STATION, 1411 EAST AIRPORT WAY, NORTH BEND, OR

Dear Mr. Hoover:

I am writing to you in regards to the above referenced facility that FedEx leases. Following the terrorist attacks on September 11, 2001, at the direction of the FAA, the North Bend Municipal Airport directed FedEx to lock and cease using the approximate 40' sliding door opening on the east side of the building facing the ramp. This has significantly impacted the North Bend, OR operation, since delivery vans can no longer enter/exit the building on the east and are now restricted to ingress/egress on the west side of the building in three narrow overhead doors.

The above described situation is tantamount to a condemnation taking defined in Section 15(a) of the Sublease Agreement dated February 17, 1994 between Federal Express Corporation ("FedEx") and Pegasus Corporation. This provision of the lease provides FedEx the opportunity to terminate the Sublease. FedEx would like to avoid termination if we can develop a mutually acceptable solution.

FedEx has reconfigured the sort rollers within the building and determined that if two of the three overhead doors on the western side of the building are enlarged to 12' or 14' wide openings, that acceptable vehicle ingress/egress can be achieved. I have circled the two doors that need to be widened on the enclosed floorplan. Additionally, the 8'10" center door has a wooden plank that transitions the gap between the exterior surface grade and the finished floor elevation of the building. This board is deteriorating and needs to be replaced with a permanent concrete sloped transition.

Please contact me after you have had an opportunity to review the enclosed drawing and consider the requested overhead door improvements that will allow FedEx to remain

"EXHIBIT C"

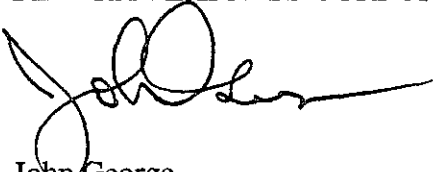
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Mr. Cal Hoover  
October 31, 2001  
Page 2

acceptably operational within the building. These improvements are needed as soon as possible to minimize the operational impact to FedEx.

Sincerely,

FEDERAL EXPRESS CORPORATION

A handwritten signature in black ink, appearing to read "John George", written over the typed name.

John George  
Real Estate Advisor  
901-434-9179

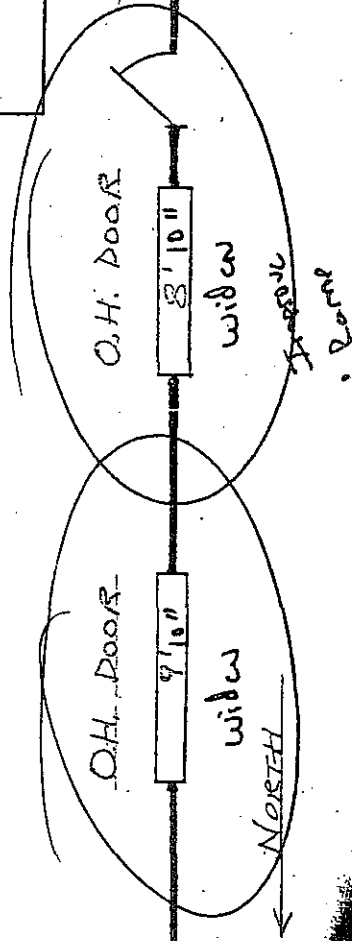
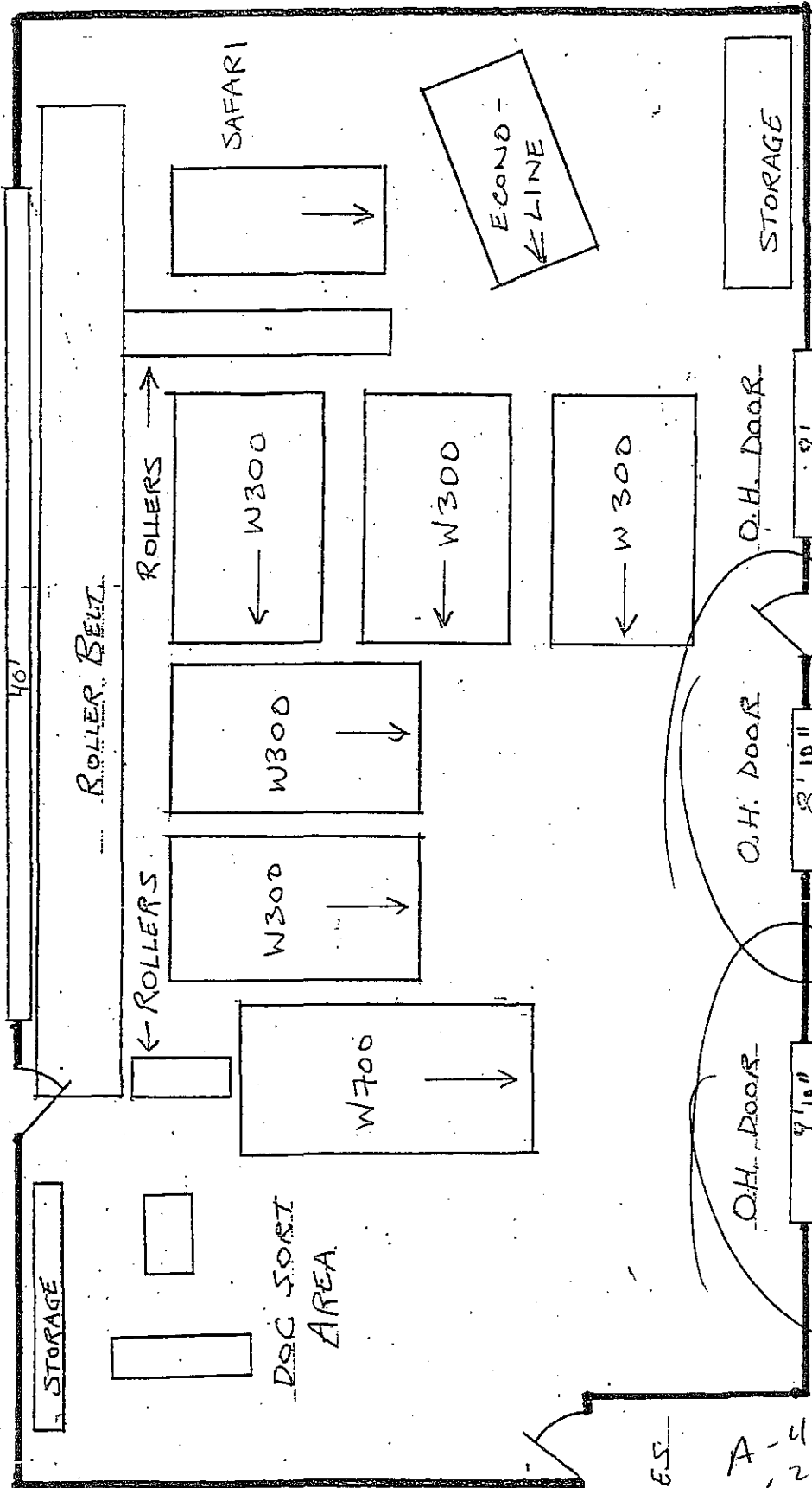
enclosure

A A-4  
Page 25 of 32

QTHA - 6,25/01

AIRPORT

SLIDING DOORS  
LOCKED BY FAA



OFFICES

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**ROBERT L. THOMAS**

Attorney at Law

Mail: P O Box 567, North Bend, OR 97459

Office: 1935 Union, North Bend, Oregon

Telephone (541) 756-5138

Fax (541) 756-7958

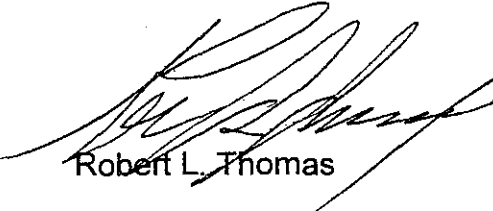
E-mail: rithomas@harborside.com

March 11, 2002

Roger Gould  
Attorney at Law  
P O Box 29  
Coos Bay OR 97420

RE: Pegasus Leased Property at the Airport

During an asbestos inspection at the Airport, a storage room in the FedEx building at the Airport was opened, and it was discovered that it was a Pegasus storage area. For your information, I enclose a copy of the report of this incident to the Airport Manager. There is enclosed the keys to the new lock on the storage room. We apologize for this mistake.



Robert L. Thomas

cc: Airport Manager

"EXHIBIT D"

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O'Neill's Overhead Doors Phone: 541-269-5143  
& Fax: 541-269-2486  
Continuous Gutters

CCB# 130601

Quotation

TO: Pegasus Corporation

ATT, CAL & Cindy  
Hoover

Quotation #:1000  
Date:10/07/01  
Customer ID:1411 air port

Coos Bay, OR 97420

- Concerning the building modifications at 1411 AIRPORT WAY, North Bend OR,
- Enlarge two doors on west side of building and install 12x12 model 2400 ribbed steel doors. Remove window on south west side to install rolling steel door, install small concrete apron for trucks to enter building one door only.
- Secure west side sliding door, installing post at intervals along door .
- Install roller systems so that delivery trucks can unload from street side
- All said work to be done for 10,045.00 Ten Thousand Forty Five Dollars

Exclusions

- No painting
- If rollers are to be purchased it would be at the cost of the owner
- No electrical work
- If asbestos abatement is needed owner will incur all expenses

One half due upon start and ~~final~~ at time of completion of job

Thank You Mike Collins

- This job to be done in a timely manner

- To accept this quotation, sign here and return:

"EXHIBIT E"

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Page 28 of 32  
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**O'Neill's Overhead Doors** Phone: 541-269-5143  
& Fax: 541-269-2486  
**Continuous Gutters**

CCB# 130601

**Quotation**

**TO: Pegasus Corporation**

**ATT, CAL & Cindy  
Hoover**

Quotation #:1000  
Date:10/07/01  
Customer ID:1411 air port

**Coos Bay, OR 97420**

- **Concerning the building modifications at 1411 AIRPORT WAY, North Bend OR,**
- **Enlarge two doors on west side of building and install 12x12 model 2400 ribbed steel doors. Remove window on south west side to install rolling steel door, install small concrete apron for trucks to enter building one door only.**
- **Secure west side sliding door, installing post at intervals along door .**
- **With concrete anchor bolts and steel angle brackets**
- **Install roller systems so that delivery trucks can unload from street side**
- **Install two electric garage door openers**

**Exclusions**

- **No painting**
- **If rollers are to be purchase it would be at the cost of the owner**
- **No electrical work**
- **If asbestos abatement is required owner will incur all expenses**

**One half due upon start and final due at time of completion of job.**

**Thank You Mike Collins**

- **This job to be done in a timely manner**
- **To accept this quotation, sign here and return:**

**"EXHIBIT F"**

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# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Environmental Quality

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

May 20, 2002

CERTIFIED MAIL NO. 7001 1140 0002 3546 3955

Pegasus Corporation  
C/o Franklin C. Hoover  
2809 Sheridan Avenue  
North Bend, OR 97459

Re: Notice of Assessment of Civil Penalty  
No. AQ/AB-WR-02-059  
Coos County

On January 29, 2002, the Coos Bay Office of the Department of Environmental Quality (the Department) received a complaint of an illegal asbestos abatement project being conducted at the FedEx Terminal (the Facility), located at 1411 East Airport Road in North Bend, Oregon. The Facility is operated by the Pegasus Corporation (Pegasus). Martin Abts of the Department responded and inspected the Facility.

Mr. Abts determined that Virgil Stemmerman removed approximately fifty (50) square feet of cement asbestos board (CAB) during the recent installation of several bay doors at the Facility. Mr. Stemmerman is the sub-contractor of O'Neill's Overhead Doors, the contractor Pegasus hired to install the bay doors, and his removal of the CAB constitutes an asbestos abatement project.

On January 31, 2002, Mr. Abts spoke with Mr. Stemmerman, who confirmed that he performed this asbestos abatement project when he cut the CAB with a power saw during the week of January 21, 2002.

Oregon Revised Statute (ORS) 468A.715(1) and OAR 340-248-0110(2) require that an owner or operator of a building that contains asbestos shall ensure that any contractor engaged in an asbestos abatement project is licensed by the Department. Mr. Stemmerman does not have a license to conduct friable asbestos abatement projects.

Mr. Stemmerman produced asbestos-containing dust when he cut the CAB with a power saw, and his subsequent failure to properly package or label the CAB resulted in the accumulation of asbestos-containing waste material (ACWM), which is a violation of Oregon Administrative Rule (OAR) 340-248-0250(2). This accumulation of ACWM likely released asbestos fibers into the air and exposed workers, the public and the environment to asbestos.

Asbestos fibers are a respiratory hazard proven to cause lung cancer, mesothelioma and asbestosis. Asbestos is a danger to public health and a hazardous air contaminant for which there

"EXHIBIT G"

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is no known safe level of exposure. To protect the public from asbestos exposure, the Department requires training and licensing for those who handle asbestos-containing material. Pegasus is liable for a civil penalty assessment because it failed to have a licensed asbestos abatement contractor perform an asbestos abatement project on a facility that it owns or operates.

In the enclosed Notice, I have assessed a civil penalty of \$1,200. The amount of the penalty was determined using the procedures set forth in Oregon Administrative Rule (OAR) 340-012-0045. The Department's findings and civil penalty determination are attached to the Notice as Exhibit 1.

Appeal procedures are outlined in Section IV of the Notice. If Pegasus fails to either pay or appeal the penalty within twenty (20) days, a Default Order will be entered against the company. Copies of referenced rules are enclosed.

If Pegasus wishes to discuss this matter, or believes there are mitigating factors which the Department might not have considered in assessing the civil penalty, the company may request an informal discussion by attaching the request to its appeal. Pegasus' request to discuss this matter with the Department will not waive the company's right to a contested case hearing.

I look forward to Pegasus' cooperation in complying with Oregon's environmental laws in the future. However, if any additional violations occur, Pegasus may be assessed additional civil penalties.

If Pegasus has any questions about this action, please contact Bryan Smith with the Department's Office of Compliance and Enforcement in Portland at (503) 229-5692 or toll-free at 1-800-452-4011, extension 5692.

Sincerely,



Stephanie Hallock  
Director

Enclosures

- cc: Martin Abts, Coos Bay Office, DEQ  
John Becker, Medford Office, DEQ  
Kerri Nelson, Eugene Office, DEQ  
Air Quality Division, DEQ  
Oregon Department of Justice  
Kathy Johnson, U.S. Environmental Protection Agency, Seattle  
Environmental Quality Commission  
Coos County District Attorney

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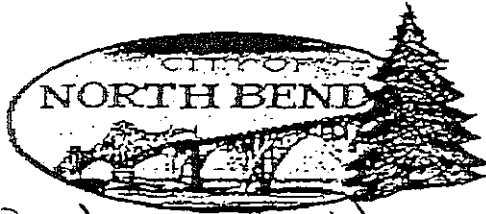


**Received**  
1-2-02 VF

# BUILDING PERMIT

BUILDING/PLANNING DEPARTMENT, PO BOX B, 835 CALIFORNIA AV., NORTH BEND, OR 97459  
INSPECTIONS: 541-756-8510 OR 756-8525 FAX: 541-756-8544

PERMIT NO. 8005



ISSUED BY: WC

DATE: 1-15-02

APPLICANT: COMPLETE ALL NUMBERED LINES. SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL AND PLUMBING AND MAY BE OBTAINED THROUGH THE STATE BUILDING CODE OFFICE AT 541-396-4686.

1. C2/ Cindy Hoover 1411 Airport way  
OWNER MAIL ADDRESS PHONE
2. Orviel Overhead Door 269-1036  
CONTRACTOR & LIC NO. MAIL ADDRESS PHONE
3. Virgil (290-2891) cell  
ARCHITECT & LIC NO. MAIL ADDRESS PHONE

4. JOB LOCATION: 1411 Airport way
5. LEGAL: TOWNSHIP/RANGE: \_\_\_\_\_ LOT: \_\_\_\_\_ BLOCK: \_\_\_\_\_
6. SUBDIVISION OR BUILDING NAME: \_\_\_\_\_ ZONE: \_\_\_\_\_
7.  RES  COMM  NEW STRUCTURE  ADDITION  ALTER/REMODEL  REPAIR  DEMO  SIGN  OTHER
8. DESCRIBE WORK: enlarge overhead doors
9. VALUATION OF WORK: LABOR & MATERIALS: \$4500.00 SQUARE FEET: \_\_\_\_\_

**OFFICE USE ONLY**

**DEPARTMENT APPROVALS**

**STRUCTURAL INSPECTIONS**

**PERMIT FEES**

Item	Date	Approved	Item	Date	Approved	Item	Fee
Zoning	<u>N/A WC</u>		Foundation			STRUCTURAL	<u>50.50</u>
Flood			Slab/Under flr			PLAN CHECK (non refundable)	<u>32.83</u>
Tsunami			Frame			FL&S	
Fire Dept			Insulation			SEWER HOOK-UP	
WWTP			Lath/Gypsum			MFH SITE	
Soil Report			Curb Cut			MFH STATE ADMIN	
Other:			Other:			MECHANICAL	
Other:			FINAL	<u>2/8/02</u>	<u>WC</u>	STATE MECH SURCH (7%)	

Comments:	MFH SURCHARGE (7%)	
	STATE STRUCT SURCH (7%)	<u>3.54</u>
PAID BY: CASH	CHECK NO. <u>#1399</u>	TOTAL AMOUNT <u>\$86.87</u>

**OFFICE USE ONLY**

Const. Type:	Occ. Group/Div:
Bldg sz:	No. of stories:
No. of dwell units:	Use zone:

I certify that I've read & examined both sides of this application & know the same to be true & correct. All provisions of laws & ordinances governing this work will be complied with whether specified herein or not. The right of entry is given to the building official or his authorized representative to inspect, pursuant to the applicable state & city codes. The granting of a permit doesn't presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or performance of construction.

10. Virgil Stammann  
PRINT owner name or representative

PERMIT AUTHORIZED WHEN PROPERLY VALIDATED WITH SIGNATURE IN THIS SPACE.  
Virgil Stammann 1-10-02 A

"EXHIBIT H"



# Oregon

John A. Kitzhaber, M.D., Governor

## HEARING OFFICER PANEL

1905 Lana Avenue NE  
Salem OR 97314  
Telephone: (503) 945-5547  
FAX: (503) 945-5304  
TTY: (503) 945-5001

## NOTICE OF HEARING

Date Mailed: September 25, 2002

PEGASUS CORPORATION  
CAL HOOVER  
617 S SHASTA AVE  
EAGLE POINT OR 97524

BRYAN SMITH  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
811 SW 6TH AVE  
PORTLAND OR 97204

RE: *In the Matter of Pegasus Corporation*  
For the Oregon Department of Environmental Quality  
Hearing Officer Panel Case No. 102265  
Agency Case No. AQ/AB-WR-02-059

**A hearing has been set in the above-entitled matter before the Hearing Officer Panel.**

**Hearing Date: November 5, 2002      Hearing Time: 9:00 a.m.**

**Location: Department of Environmental Quality  
340 N Front Street  
Coos Bay OR 97420**

The Hearing Officer Panel is an impartial tribunal, and is independent of the agency for whom the hearing is held. Your case has been assigned to Administrative Law Judge Teresa Hogan, an employee of the Hearing Officer Panel.

A written request for a reset of the hearing must be submitted at least 7 days prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

**If you are hearing impaired or need a language interpreter at the hearing, immediately notify the Hearing Officer Panel at (503) 945-5547 or TDD at (503) 945-5001. The Hearing Officer Panel can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.**

Please notify the Hearing Officer Panel at (503) 945-5547 immediately if you change your address or telephone number at any time prior to a final decision in this matter.

**CERTIFIED MAIL RECEIPT #7099 3400 0015 7214 2990**

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page 1 of 9

DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS

IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

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

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

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page 2 of 9

support of its action. You will then have an opportunity to present evidence to oppose DEQ's evidence. Finally, DEQ and you will have an opportunity to rebut any evidence.

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

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

There are four kinds of evidence:

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

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

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

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

13. Record. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the hearings officer. A copy of the tape is available

upon payment of a minimal amount, as established by DEQ. A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.

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

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

**DREYER James A \* Jay**

---

**From:** DREYER James A \* Jay  
**Sent:** Tuesday, October 29, 2002 4:38 PM  
**To:** 'locomotionusa@charter.net'; 'Smith.Bryan@DEQ.State.OR.US'  
**Cc:** REDDING Ann C  
**Subject:** In the matter of Pegasus Corporation; In the matter of Virgil Stemerman

Pegasus Corporation  
Cal Hoover  
617 S. Shasta Ave.  
Eagle Point, OR 97524

Bryan Smith  
DEQ  
811 SW 6th Ave  
Portland, OR 97204

Virgil Stemerman  
3055 Edwards Mill Road  
Coos Bay, OR 97420  
Fax - (541) 269-7734

RE: Cases AQ/AB-WR-02-037; AQ/AB-WR-02-059

Dear Mr. Hoover, Mr. Smith, and Mr. Stemerman:

Mr. Stemerman has informed me that he has no objection to the switching of the hearing dates in the above referenced cases. In The Matter Of Virgil Stemerman shall therefore be heard at 9:00 a.m. on November 5, 2002, and In The Matter Of Pegasus Corporation shall be heard at 9:00 a.m. on November 6, 2002. Both hearings will be conducted at the DEQ office, 340 N. Front Street, Coos Bay, OR 97420. This e-mail shall serve as a Revised Notice of Hearing, no further notices will be sent. Mr. Stemerman shall receive a copy of this e-mail by fax.

Sincerely,

James A. Dreyer  
Administrative Law Judge

Bryan Smith, DEQ representative, and Cal Hoover, representative for Pegasus Corporation, Respondent, stipulate to the following facts in the matter of AQ/AB-WR-02-059, Hearing Officer Panel Case No. 102265:

- ① The FedEx building located at 1411 East Airport Way in North Bend OR does contain asbestos in its siding.
- ② The asbestos in the FedEx building's siding is non-friable.
- ③ ~~Virgil~~ Virgil Stemmerman cut the siding on the FedEx building in early January, 2002.
- ④ Mr. Stemmerman's cutting of the siding rendered the asbestos in the siding friable, causing a release of asbestos fibers.
- ⑤ The quantity of asbestos that was disturbed was less than 80 square feet but more than 3 square feet.
- ⑥ Pegasus is the lessee of the FedEx building.

Franklin Hoover  
11/5/02

Bryan Smith  
11/5/02

(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 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 individuals, estates, trusts, corporations, associations, firms, partnerships, joint stock companies, municipal corporations, political sub-divisions, the state and any agencies 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.

(38) "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) 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.

(39) "Structural member" means any load-supporting member of a facility, such as beams and load-supporting walls; or any non-supporting member, such as ceilings and non-load-supporting walls.

(40) "Survey" means to conduct a detailed inspection of a building, structure, or facility for the presence of asbestos-containing material. The survey must be conducted by an accredited inspector and include sampling of materials suspected to contain asbestos, analysis of those samples to determine asbestos content, and evaluation of the materials in order to assess their condition.





# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Environmental Quality

Western Region Coos Bay Office

340 N Front Street

Coos Bay, OR 97420

(541) 269-2721

FAX (541) 269-7984

Cal & Cindy Hoover  
617 S. Shasta Ave.  
Eagle Point, OR 97524

April 18, 2002

Re: AQ/SW-Coos County  
Asbestos  
NOTICE OF NONCOMPLIANCE  
ENF-AQ/SW-WR/CB-02-045

On January 29, 2002, the Coos Bay Office of the Department of Environmental Quality (Department) received a report of an illegal asbestos abatement project conducted at the FedEx Terminal located at 1411 East Airport Road, in North Bend. My inspection on January 29, 2002 determined the recent installation of several bay doors disturbed approximately 50ft<sup>2</sup> of Cement Asbestos Board (CAB).

My investigation has determined you hired the contractors responsible for improperly handling asbestos containing materials. As the person controlling the property, you are responsible for allowing this asbestos violation to occur.

Cement Asbestos Board, sometimes referred as Trancite, is a nonfriable form of asbestos-containing material. However, when this type of material is shattered or subjected to sanding, grinding, sawing, abrading or has the potential to release asbestos fibers, it becomes a friable form of asbestos containing material. Only a licensed and certified asbestos abatement company can remove friable asbestos-containing material. In addition, the Department requires written notification for all commercial asbestos abatement projects prior to removing any asbestos materials. The Department has no record of any such notification for this site.

This letter is to serve as a Notice of Noncompliance for violation of the following Oregon Administrative Rules (OAR's):

- 1.) **OAR 340-248-0270(3) Remove all asbestos-containing materials before any activity begins that would break up, dislodge or disturb the materials.**
- 2.) **OAR 340-248-0270(4) Upon discovery of asbestos materials found during demolition (or any activity that may cause a visible emission) 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.**
- 3) **OAR 340-248-0270(5) Asbestos-containing materials must be adequately wetted when they are being removed.**
- 4) **OAR 340-248-0270(11) None of the operations in section (1) through (4) of this rule may cause any visible emissions.**

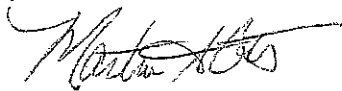
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- 5) **OAR 340-248-0110(2) An owner or operator of a facility may not allow any persons other than those employees of the facility owner or operator who are appropriately certified or a licensed asbestos abatement contractor to perform an asbestos abatement project in or on that facility.**
- 6) **OAR 340-248-0250(3) Any person who removes non-friable asbestos-containing material not exempted under OAR 349-248-0250(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.**

These are Class I and Class II violations and are considered to be significant violations of Oregon environmental law. Therefore, we are referring this violation to the Department's Office of Compliance and Enforcement with a recommendation to initiate a formal enforcement action. A formal enforcement action may include a civil penalty assessment for each day of violation.

Please call me at 269-2721, ext. 22, if you have any questions concerning this Notice.


Sincerely,



Martin Abts  
NRS 3

cc: AQ Medford  
OCE, Bryan Smith  
Port of Coos Bay

RECEIVED  
APR 22 2002

OFFICE OF COMPLIANCE  
AND ENFORCEMENT  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
  
DEQ-DCI

AL 3008

(Fed Ex Subject)

**LEASE AGREEMENT**

**OREGON INTERNATIONAL PORT OF COOS BAY**, herein called Landlord, leases the premises herein described to **PEGASUS CORPORATION**, herein called Tenant, on the following terms and conditions:

**(1) LEASED PREMISES:** The North one-half of Building No. 7, at the North Bend Municipal Airport, North Bend, Oregon. Tenant has possession under a previous lease. This new lease is made as a part of a settlement by Landlord, Tenant and City of North Bend of various claims between the parties.

**(2) TERM:** The term of this lease will begin February 1, 2001 and will end July 31, 2003. Tenant has the option to renew the lease for four additional terms of five years each by giving the Landlord written notice not later than the 61st day before the expiration of the preceding term.

**(2a) Option to Terminate Lease:** Tenant may terminate the lease at any time by giving Landlord not less than sixty days written notice.

**(3) RENTAL:** Tenant shall pay as rent for said premises \$508.27 on or before the first day of each month until June 1, 2001. Beginning June 1, 2001 and on June 1 of each three-year period thereafter, rent shall be increased or decreased by the percentage of increase or decrease of the U. S. City Average Consumer Price Index for All Urban Consumers during the previous three year period ending March 31.

**(3a)** Rent not paid when due will have added thereto 2% of the balance due, and on the expiration of each month that such balance remains delinquent there will be added an additional 2% of the total balance due.

**(3b)** The rent which Tenant pays for the premises shall be increased by \$450.00 during any month that said building is subleased for a purpose not specified in the original Airport Operator's Lease and Agreement, referenced in paragraph 17 of this Lease Agreement. For example, at the time this lease is executed, the premises are being subleased to Federal Express, and the premises are not being used for a purpose specified in the Airport Operator's Lease and Agreement referenced in paragraph 17 of this Lease Agreement. Therefore, at the time this lease is executed, the rent is \$958.27 (\$508.27 plus \$450.00).

**(4) MAINTENANCE AND UTILITIES:** Landlord will be responsible for the structural integrity of the North one-half of Building No. 7, but will have no other maintenance responsibilities for said building, Tenant will maintain the roof and pay for all utility charges for said premises.

**(5) USE OF PREMISES:** The premises may be used for any legitimate business purpose with the exception of selling aviation fuel, subject to FAA standards and appropriate airport standards.



(5a) Tenant assumes the risk of any loss or damage occasioned by theft, accident, fire or other hazard to property stored on the premises; and the Landlord shall not be held liable for any such loss or damage from any cause and Landlord shall in no way be responsible for the safety of said premises.

(5b) It is a condition of this lease that the premises not be used in a manner which could interfere with the operation of aircraft at the North Bend Municipal Airport; and Tenant's right to use said premises shall be subordinate to the right of the Landlord to regulate and control the premise for airport purposes, including the right to control lighting and electronic signals that might interfere with the operation of aircraft.

(6) **COMPLIANCE WITH LAWS:** The Tenant agrees to comply with all rules, regulations and laws which are now in effect or which may hereafter be enacted during the term of this lease by any municipal, county, state or federal authority having jurisdiction over said premises. This lease is specifically subject to the terms and conditions of Ordinance No. 138 of the Oregon International Port of Coos Bay and the rules and regulations adopted under the provisions of such ordinance.

(7) **RESPONSIBILITY FOR PREMISES AND INDEMNITY:** Tenant shall be responsible for all conditions and activities on said premises; and Tenant agrees to indemnify, defend and hold the Landlord harmless from any claim, liability, damage or legal action caused by acts or omissions of the Tenant, its agents, employees, lessees or assigns, or anyone upon or using the premises herein described, or which may be caused by any condition of the property or premises herein leased.

(8) **LIABILITY INSURANCE:** Tenant shall procure and maintain public liability insurance covering the condition, use, business and activities on said premises, including the obligation to indemnify, defend and hold the Landlord harmless from injury or damage; and copies of such insurance policies shall be filed with the Landlord. Such liability insurance shall have limits which are not lower than those provided in the Oregon Tort Claims Act as now contained in ORS Chapter 30 and as it may hereafter amended. This provision is intended to protect only the Landlord and not third parties.

(9) **WAIVER OF SUBROGATION:** Neither party will be liable to the other for any claim, damage or loss which is caused by any peril which is or could have been covered by fire insurance with extended coverage, whether or not such insurance is in force; and any rights of subrogation of insurance carriers are waived.

(10) **DESTRUCTION OF PREMISES:** If any portion of the leased premises shall become unusable by reason of fire, accident or other destruction, then the Landlord may restore such premises or provide alternative premises of substantially the same quality and quantity; and in such event, there shall be a partial abatement of rent based on the percentage of loss of use of premises, facilities and privileges. If the Landlord does not notify the Tenant within 30 days of its decision to make such restoration or supply alternative premises within 120 days from the date of such destruction, then this

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Page 2 of 4



lease shall be terminated.

**(11) LANDLORD'S REMEDIES:** In the event of default by the Tenant of any provision of this lease, the Landlord may exercise any remedy permitted by law. The right to possession for a failure to pay rent shall be governed by state law.

**(11a)** In addition to any other remedy, if there is a default in the payment of rent, Landlord shall have a lien upon all of the fixtures and personal property in or upon the leased premises, and said lien shall attach to said property at the time of such default. Whenever said lien shall attach, the Landlord shall have the right to immediate possession of said property; and, after thirty days written notice thereof to the Tenant, the Landlord may sell said property or the Tenant's interest therein at public or private sale and apply the proceeds thereof to the payment of such rent and deliver the excess, after payment of all costs and expenses of said sale, to the Tenant.

**(11b)** If there is a breach by the Tenant of any provision of this lease, other than for the payment of rent, the Landlord may give written notice to the Tenant that if such provision shall not be complied with or remedied within the period of thirty days from such notice, then this lease agreement shall be terminated and the Landlord shall have the right to immediate possession of said premises, and any possession thereafter by the Tenant shall be deemed a holding by force.

**(12) REMOVAL OF PROPERTY AND FIXTURES:** Upon the termination of this lease, if the Tenant shall not be in default of any of the terms of this lease, then Tenant may remove all personal property and fixtures owned or installed by the Tenant so long as such removal will not deface or injure any part or portion of the premises; but such right of removal shall not extend to any partitions or portions of the structure or other fixtures permanently affixed to the structure or premises.

**(13) ASSIGNMENT:** This lease shall not be sold or assigned either voluntarily or by operation of law, and neither the premises nor any portion thereof shall be subleased without the prior written consent of the Landlord, but such consent shall not be withheld unreasonably. The premises are currently subject to a sublease to Federal Express. No additional consents shall be required for any renewal of the sublease by Federal Express.

**(14) WAIVER:** Failure of the Landlord to insist on the strict performance of any of the terms of this lease shall not be construed as a waiver of the Landlord's right to thereafter strictly enforce any such term. The Landlord shall not be estopped to enforce any of the provisions of this lease agreement by reason of acts and conduct on the part of any officer or employee of the Landlord, and there shall be no waiver of any of the Landlord's rights under this lease agreement except by an express act of the Port Commission made by a motion or resolution duly passed at a regular or special meeting.

**(15) ATTORNEY'S FEES:** If legal proceedings are commenced by either party to



APR-02-02 TUE 12:16

enforce any provision of this lease or right provided by law, then there shall be allowed to the prevailing party such sum as the court may adjudge reasonable as attorney's fees in such legal proceeding, the trial thereof, or on any appeal of such proceeding.

**(16) COVENANT FOR NONDISCRIMINATION:** To the extent that the Tenant shall provide any activity, service or facility at, or relating to, the North Bend Municipal Airport, the Tenant and Tenant's representatives, successors in interest and assigns, as a part of the consideration hereof, hereby covenant and agree, as a covenant running with the premises, that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

**(16a)** In the event of breach of any of the above nondiscrimination covenants, the Landlord shall have the right to terminate the lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

**(17) RESCISSION OF PREVIOUS LEASE:** The Airport Operator's Lease and Agreement executed in April, 1993 by Tenant and City of North Bend is hereby deemed terminated and of no further binding force or effect.

**(18) MAILING ADDRESSES AND NOTICES:** The parties shall keep each other informed of their current mailing addresses, but until notice of change, the following addresses may be used for purposes of giving notice under the terms of this lease:

LANDLORD'S MAILING ADDRESS;

TENANTS MAILING ADDRESS:

P.O. Box 1215  
Coos Bay, OR 97420

*2809 Sheridan  
North Bend, Or 97457*

Executed on behalf of the Landlord by its General Manager this 17<sup>th</sup> day of April, 2001, and executed on behalf of the Tenant by its President this 17 day of April, 2001.

Oregon International Port of Coos Bay

Pegasus Corporation

By: *Allen E. [Signature]*  
General Manager

By: *Franklin C. Hoover*  
President

6.3 General Standards for all Permittees and Lessees - All permits and leases shall be subject to the following:

6.3.1 Required Licenses and Permits - The operator, aircraft pilot, and all personnel and employees shall be competent and shall hold all current valid certificates, permits, licenses or other authorizations required by the FAA and State law. Such permits or certificates shall be presented to the Airport Manager upon request.

6.3.2 Permit or Lease Not Transferable - No permit or lease shall be conveyed or transferred without the prior written consent of the Port Commission, which consent shall not be unreasonably withheld. Any sublease or transferee must meet all of the requirements of the permit or lease, and these rules.

6.3.3 Construction of Improvements - No structure or improvements at the Airport shall be constructed, altered or removed without the prior written approval of the Airport Manager. The Port may require a performance bond to guarantee the satisfactory completion of any construction. The plans for any building constructed at the Airport shall be approved by the Port, and shall comply with State and local laws, codes and regulations pertaining to their construction.

6.3.4 Limit to Assigned Area - An operator shall carry on operations strictly within the area assigned by the Airport Manager, and the operations shall not interfere with the lawful activities of other persons using the Airport. The operator shall not use any common use areas except as authorized by these rules or the Airport Manager.

6.3.5 Required Space and Staffing - Unless otherwise agreed, all operations shall be conducted on one area of sufficient size to accommodate all services for which the operator is licensed, allowing for future growth. The location and minimum size of leased areas of operations shall be set by the Port, consistent with these rules and the Airport Master Plan.

Except when offering T-Hangars or inside hangar aircraft storage only, each operator shall provide and maintain a staffed business office open to the public during the normal business day and other facilities required by these rules and the operator's permit or lease. Only one office shall be required of each operator, without regard to the number of operations conducted at the Airport. No operator shall use the office, area or other facilities of any other operator without the consent of that operator.

INITIAL DOCUMENT APPROVED: \_\_\_\_\_  
REVISED: \_\_\_\_\_  
REVISION APPROVED: \_\_\_\_\_

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14-11





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R-2





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R-1

# Oregon

## Contractor's Reference Manual

Prepared by



For the  
**Construction Contractors Board**

**Third Edition**

- Require service practices that maximize recycling of CFCs and HCFCs during servicing and disposal of air-conditioning and refrigeration equipment.
- Prohibit venting of refrigerants to the atmosphere while maintaining, servicing, repairing, or disposing of air conditioning or refrigeration equipment.
- Require certification of service technicians. EPA has developed four levels of certification ranging from servicing of small appliances to servicing of all types of equipment.
- Require contractor and reclaimer certification as well as certification for recovery and recycling equipment.
- Restrict the sale of refrigerant to certified technicians.
- Require the repair of substantial leaks in air-conditioning and refrigeration equipment with a charge greater than 50 pounds. Require detailed record keeping on the quantity of refrigerant added to equipment containing more than 50 pounds of charge.
- Establish safe disposal requirements. These include special procedures on the removal of refrigerants from goods that enter the waste stream with the charge intact, such as home refrigerators and room air conditioners.

## 2. Certification and Protection from Liability

Contractors are liable for violations to the Clean Air Act. Civil penalties of up to \$25,000 per day per violation can be assessed to contractors who do not comply with the regulations listed above.

## D. Asbestos

Asbestos was used in more than 3,000 building materials in the past because it is extremely strong and flexible. Asbestos materials are able to withstand heat, chemical, and electrical exposure. Asbestos fibers are a known cancer-causing agent. They also pose a significant health threat to building occupants, employees, the public, and environment. Contractors must use caution and follow proper handling techniques when working with or around asbestos containing materials.

### 1. Contractor Liability

Contractors are liable for failure to follow federal and state regulations and procedures and can be subject to civil penalties of up to \$10,000 per day per violation for failing to follow the regulations. An inspection by an EPA-certified inspector prior to any remodeling, renovation, restoration, or demolition of commercial buildings is required. The DEQ must also license contractors and employees who handle asbestos. Contractors and

employees must follow procedures established in DEQ regulations when removing, handling or disposing of asbestos. These regulations help prevent asbestos fiber release and exposure.

OR-OSHA regulations governing asbestos promote employee safety and cover provisions such as safe work practices, employee exposure limits, labeling, employee training, protective clothing and respirators, medical surveillance, monitoring and record keeping.

## 2. Federal and State Regulations

The following regulations apply when dealing with asbestos:

- Asbestos Hazard Emergency Response Act (AHERA)
- Clean Air Act Amendments of 1990 (asbestos handling requirements)
- ORS 468A-700 through 760 — Oregon law regulating asbestos abatement projects and enforced by DEQ
- OAR 340-248-0010 through 0280 — Oregon's standards and procedures for asbestos abatement projects and asbestos disposal — enforced by DEQ, and Oregon's asbestos licensing and certification requirements for firms conducting asbestos abatement
- OAR 437 Division 3 – Construction, Subdivision D, Rule 1926.58 — OR-OSHA asbestos standards for the construction industry — enforced by OR-OSHA
- EPA and OR-OSHA require an asbestos survey be performed before any remodeling or demolition work

## 3. Identifying Asbestos-Containing Substances

Contractors are responsible for determining whether a substance contains asbestos. More than 3,000 known building materials contained asbestos in the past. Since asbestos fibers are too small to see, the only way to positively identify them is to have the material analyzed by a testing laboratory.

A sample list of materials that may contain asbestos is shown in Figure 9-1. This list does not include every product and material that may contain asbestos. More than 3,000 building products contain asbestos. Always have the material tested.

**Figure 9-1. Sample List of Materials that May Contain Asbestos**

Acoustical ceiling tile  
Jointing material  
Adhesives  
Millboard sheet  
Asbestos-protected metal roofing  
Paint  
Air-duct cement  
Patching tape compounds  
Balcony canopies  
Planks for platforms in building under construction  
Base (mastic or paper) for floor covering  
Plaster  
Caulks and Putties  
Prefabricated housing components  
Cement Asbestos board (Transite)  
Pressed or molded thermal insulation  
Clapboard  
Protective walls  
Corrugated sheets  
Rain gutters  
Corrugated tiles for roofs  
Roof and driveway coatings  
Cushion material  
Electric switch boxes  
Saturated paper for cooling tower fills  
Fire walls  
Solar-heat reflecting surfaces  
Flashing cement  
Spray-applied insulation and fireproofing  
Flat sheet  
Spray-applied insulation and fireproofing  
Flat sheet  
Spray-applied textured or acoustical ceilings  
Flooring tiles and composition floors such as Terrazzo (asbestos-asphalt, asbestos-vinyl)  
Stains and varnishes  
Furnace cement  
Stucco  
Grout  
Thermal systems insulation for piping  
Handles and fire doors  
Vibration joints that insulate buildings against vibrations (aluminum-asbestos)  
Hot air ducts or paper duct linings for hot air service  
Vinyl sheet flooring and vinyl wall coverings  
Insulation in chemistry and physics laboratories  
Wallboard  
Interior walls  
Roofing felt and shingles (asphalt or tar saturated)



#### **4. Two Types of Asbestos-Containing Materials in Floor Covering Products**

***Friable*** asbestos-containing materials will easily release fibers when crushed. An example of a friable flooring material is the felt-like backing on sheet vinyl. Only DEQ licensed asbestos abatement contractors and certified asbestos workers can remove and dispose of friable asbestos-containing materials.

***Non-friable*** asbestos-containing materials have a binder that holds the asbestos fibers within a solid matrix (form) and will not allow asbestos fibers to release easily, unless mishandled, damaged, or in badly worn or weathered condition. An example of a non-friable flooring material is vinyl floor tile. You do not need to be a DEQ licensed asbestos abatement contractor or a certified asbestos worker to perform non-friable asbestos removal. However, the non-friable materials must remain in non-friable condition (predominantly whole pieces) during the removal and disposal process. In addition, a non-friable project notification and fee are required to be submitted to DEQ five days prior to the start date of the project.

Flooring products, such as mastic, that are fully enclosed with a petroleum-based binder and are not hard, dry, and brittle are exempt from certain rules. These exemptions end whenever the materials are burned, shattered, crumbled, or reduced to dust. In addition, maintenance and comparable activities limited to handling less than three square or three linear feet of asbestos-containing material, provided the removal is part of a needed repair, may be exempt from some rules. Contact DEQ for further information.

#### **5. Other Asbestos-Containing Materials**

Roofing material, Demolition wastes, and siding may contain asbestos. Guidance of how to manage these materials is available at the DEQ Web site:  
[www.deq.state.or.us/aq/asbestos/index.htm](http://www.deq.state.or.us/aq/asbestos/index.htm)

#### **6. DEQ Worker Certification**

An organization that is DEQ accredited must certify all contractors working with asbestos. Certification courses last four days. See Appendix A, page 9-63, for information on worker training, certification, trainer accreditation, and providers.

#### **7. DEQ Licensing**

the DEQ must license all contractors performing abatement of asbestos containing materials. Contractors must employ certified asbestos employees. Contractors must be licensed with DEQ. Worker certification is not sufficient. See Appendix A, page 9-63 for information on licensing.

## **8. Prior DEQ Notification of Asbestos Abatement**

Contractors are required to notify DEQ prior to handling, removing, or enclosing asbestos. Notification fees ranging from \$35 – \$2,500 must accompany the notice of intent. See Appendix A, page 9-63, for information on notification.

## **9. Required Work Practices and Procedures**

Contractors are required to follow specific asbestos-related work practices and procedures to prevent asbestos from becoming airborne. These DEQ regulations are separate from those required by OR-OSHA. Contractors are liable for failure to follow these work practices.

## **10. Asbestos Disposal and Record Keeping**

Disposal methods must be consistent with regulatory requirements. DEQ regulations cover all of the following activities:

- Required methods of containing asbestos waste.
- Specific procedures for hauling waste.
- Disposal in a landfill authorized to accept asbestos waste.
- Formal record keeping of asbestos waste disposal.

## **11. Projects Exempt From DEQ Regulations**

Some projects may be exempt from DEQ regulations but the employee safety regulations of OR-OSHA will still apply. See Appendix A, page 9-63, for information on who to contact to determine if a project is exempt.

## **E. Lead (not lead-based paint)**

Lead was a common component in construction and therefore in demolition debris. In building construction, lead was frequently used in roofs, tank linings, electrical conduits, plumbing soft solder, lead pipes, galvanized pipes with lead solder, interior/exterior painted wood, siding window frames, plaster, and paints.

### **1. Federal and State Regulations**

CFR Chapter 29 Part 1926.62 regulates lead exposure for employers and employees engaged in construction work.

OR-OSHA upholds the federal regulations.

The federal OSHA developed standards for workers who handle materials containing lead. These cover safe work practices, worker exposure limits, labeling, employee training, protective clothing and respirators, medical surveillance, monitoring, and record keeping.

**O'Neill's Overhead Doors & Continuous Gutters**

**Phone: 541-269-5143**

**Fax: 541-269-2486**

**CCB# 130601**

**Quotation**

**TO: Pegasus Corporation**

**ATT, CAL & Cindy Hoover**

Quotation #:1000

Date:10/07/01

Customer ID:1411 air port

**Coos Bay, OR 97420**

- **Concerning the building modifications at 1411 AIRPORT WAY, North Bend OR,**
- **Enlarge two doors on west side of building and install 12x12 model 2400 ribbed steel doors. Remove window on south west side to install rolling steel door, install small concrete apron for trucks to enter building one door only.**
- **Secure west side sliding door, installing post at intervals along door .**
- **With concrete anchor bolts and steel angle brackets**
- **Install roller systems so that delivery trucks can unload from street side**
- **Install two electric garage door openers**

**Exclusions**

- **No painting**
- **If rollers are to be purchase it would be at the cost of the owner**
- **No electrical work**
- **If asbestos abatement is required owner will incur all expenses**

**One half due upon start and final due at time of completion of job**

**Thank You Mike Collins**

- **This job to be done in a timely manner**
- **To accept this quotation, sign here and return:**

R-7  
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**O'Neill's Overhead Doors & Continuous Gutters**

Phone: 541-269-5143  
Fax: 541-269-2486

CCB# 130601

**Quotation**

**TO: Pegasus Corporation**

**ATT, CAL & Cindy Hoover**

Quotation #:1000  
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- Secure west side sliding door, installing post at intervals along door .
- Install roller systems so that delivery trucks can unload from street side
- All said work to be done for 10,045.00 Ten Thousand Forty Five Dollars

**Exclusions**

- No painting
- If rollers are to be purchased it shall be at the cost of the owner
- No electrical work
- If asbestos abatement is required owner will incur all expenses

One half due upon start and ~~final~~ at time of completion of job

Thank You Mike Collins

- This job to be done in a timely manner

• To accept this quotation, sign here and return:

R-8  
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**INTERGOVERNMENTAL AGREEMENT  
CITY OF NORTH BEND AND OREGON INTERNATIONAL PORT OF COOS BAY**

This Intergovernmental Agreement is made by and between the CITY OF NORTH BEND, herein called City, and the OREGON INTERNATIONAL PORT OF COOS BAY, herein called Port, this 12<sup>th</sup> day of August, 1998, as follows:

**(1) Purpose:** The parties acknowledge that the current revenues of the North Bend Municipal Airport, which includes the Airport Industrial Park, (herein called Airport), are not sufficient to provide the additional funds necessary to meet the requirements of the Federal Aviation Administration (FAA) for maintaining commercial air service at the Airport. Also, the Airport serves an area of Southwestern Oregon which encompasses the Port district and beyond, and it is reasonable for the Port, as a regional entity, to take responsibility for and have authority for operation and management of the Airport. If the necessary additional funds can be made available from the Port to maintain commercial service, then it is the purpose of this Agreement to transfer the operation and management of the Airport to the Port under the terms and conditions of this Agreement, for the benefit and welfare of residents of the Port district, which includes residents of the City.

**(2) Serial Levy Funding as a Condition to the Agreement:** The parties agree that current Port revenues are not adequate to cover Airport operations. The Port agrees to place on the ballot for the November 1998 General Election a five-year serial levy within the Port District sufficient to raise approximately \$300,000 annually for Airport operations in addition to the existing Airport revenues. If the serial levy passes, this Agreement will take effect and will be operational for budget purposes on July 1, 1999. If the measure fails to pass, then this Agreement will be of no further force or effect.

**(3) Powers and Duties of the Port:** If this Agreement becomes operational on July 1, 1999, the Port will have the following powers and duties:

(a) The Port will assume and shall have during the life of this Agreement the general management of the property and operations of the Airport, subject to existing contract obligations of the Airport, including contract and regulatory obligations to the FAA. The "property" of the Airport as used in this Agreement includes all real property comprising the Airport. The "property" of the Airport also includes all equipment, supplies and other like personal property owned or held by the City at the Airport premises or used or intended for use in operation of the Airport, except the items described on Exhibit "A".

(b) The City shall assign to the Port all leases, rents, fees, charges and other revenues of the Airport and the Port shall receive the same and perform the duties of the City thereunder. The Port will assume and pay all salaries, wages, expenses, costs and other obligations of the Airport and will keep insured all

properties currently insured until such properties have been disposed of or replaced. Between the date of this Agreement and the date of transfer of management, the City may incur obligations for the Airport in the ordinary course of operations. Obligations outside the ordinary course of Airport operations during such period may be incurred by the City with the concurrence of the Port. All rents, fees, charges and other revenues of the Airport shall be used only for Airport purposes, but necessary management and administrative costs for the Airport may be retained by the Port as an Airport expense. The employees who are working for the City on June 30, 1999 will become employees of the Port. If the serial levy passes at the November General Election, the City will obtain the approval of the Port for any changes or additions to such employees until the change in employment occurs. Both parties will use their best efforts to arrange for a smooth transition of Airport employees.

(c) The City delegates to the Port the authority to adopt and enforce regulations, rates, fees and charges for the Airport. Until the Port shall adopt different regulations, rates, fees and charges, those in force and effect on June 30, 1999 will remain in force and effect until changed and may be enforced by the Port.

(d) Revenue financing of property and projects at the Airport may be authorized and carried out by the Port or by the City and Port jointly under the City's Charter authority.

(e) To the extent that it is necessary for the Port to provide fire, rescue or security services to the Airport to comply with FAA regulations for maintaining scheduled air service, the Port will contract with the City and pay the City's costs for such services from Airport revenues. As used in this paragraph, the City's costs shall be the actual direct costs (excluding overhead) of providing such services. This provision shall not prevent the Port from providing such services with Airport employees who have the required training or with a qualified third-party provider of such services.

(f) The Port will provide the City with annual Airport financial and operational reports, and will give consideration to City suggestions and comments.

(g) Any loans from other funds of the City to the Airport Operating Fund existing on July 1, 1999, will be repaid by the Port out of revenues generated by the Airport or out of the airport tax serial levy of the Port. The existing loans are described and the amounts thereof set forth in Exhibit B.

(4) Powers and Duties of the City: If this Agreement becomes effective, the City will have the following powers and duties relating to the Airport:

(a) If the Port's tax levy for Airport purposes is passed at the November 1999 election, then the City will consult and cooperate with the Port concerning the

transition to Port management on July 1, 1999 and concerning Airport operations in the intervening period between the election and July 1, 1999.

(b) The City will retain ownership of all Airport property, and prior approval by the City must be obtained for property disposition, pledges or encumbrances of property for revenue financing for periods in excess of twenty years, a change in the Airport name, or leases for periods in excess of twenty years. The City's prior approval must be obtained for any capital improvements requiring FAA financing, improvements costing more than \$500,000, and for demolition of structures except those which are obsolete, unsafe, or nonfunctional, or which have a fair market value less than \$50,000. The City's approval of the items mentioned in this subparagraph shall not be unreasonably withheld.

(c) To the extent that the Port may be unable legally to carry out any of the necessary functions in the management and operation of the Airport, the City will cooperate with the Port to assist in carrying out or enforcing such functions.

(d) The City shall transfer to the Port all funds in its Airport operating account on the date of transfer of management.

(e) Rentals paid by the City to the Port for Airport property used by the City for the City's sewage disposal facilities and City shops shall be based on fair market rentals for such property. If the City hereafter wants to use Airport properties not now being used by the City, the parties shall in good faith negotiate reasonable terms for such use.

(5) **Advisory Committee:** The Port shall appoint an advisory committee composed of people with knowledge, experience or interest in airport operations which shall consult with the Port regarding the operations and activities of the Port in managing the Airport. The committee shall consist of at least five persons of whom two shall be persons designated for such positions by the City.

(6) **Duration and Termination of the Agreement:** This Agreement shall continue until otherwise agreed by both parties. However, if the Port shall, for any reason, fail to maintain FAA certification for scheduled commercial air service at the Airport, then the City may give the Port notice of intent to terminate this Agreement, and if the Port should fail to reinstate such certification within 90 days after receipt of such notice, then the City may terminate this Agreement and assume the management of the Airport property and operations on the following July 1 or sooner if suitable financial arrangements are agreed by the parties.

(7) **Events on Termination:** At the termination of this Agreement, the Port shall transfer to the City all funds in its Airport operating account and assign all airport leases to the City, and the City shall assume and pay all obligations to the Airport incurred by the Port

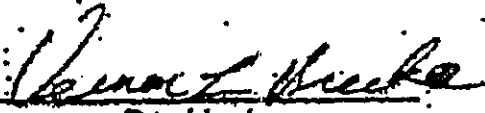
in good faith and in the ordinary course of operating the Airport (including the obligations incurred in connection with leases on the Airport Industrial Park).

Executed by the Mayor on behalf of the City, and executed by the President on behalf of the Port as authorized by the City Council and Port Commission:

CITY OF NORTH BEND

OREGON INTERNATIONAL PORT OF  
GOOS BAY

BY:   
Mayor

BY:   
President





**VIA FEDEX OVERNIGHT LETTER**

October 31, 2001

Mr. Cal Hoover  
Pegasus Corporation  
c/o Local Motion  
Rogue Valley Mall # 2025  
1600 North Riverside Avenue  
Medford, OR 97501

RE: FEDEX CITY STATION, 1411 EAST AIRPORT WAY, NORTH BEND, OR

Dear Mr. Hoover:

I am writing to you in regards to the above referenced facility that FedEx leases. Following the terrorist attacks on September 11, 2001, at the direction of the FAA, the North Bend Municipal Airport directed FedEx to lock and cease using the approximate 40' sliding door opening on the east side of the building facing the ramp. This has significantly impacted the North Bend, OR operation, since delivery vans can no longer enter/exit the building on the east and are now restricted to ingress/egress on the west side of the building in three narrow overhead doors.

The above described situation is tantamount to a condemnation taking defined in Section 15(a) of the Sublease Agreement dated February 17, 1994 between Federal Express Corporation ("FedEx") and Pegasus Corporation. This provision of the lease provides FedEx the opportunity to terminate the Sublease. FedEx would like to avoid termination if we can develop a mutually acceptable solution.

FedEx has reconfigured the sort rollers within the building and determined that if two of the three overhead doors on the western side of the building are enlarged to 12' or 14' wide openings, that acceptable vehicle ingress/egress can be achieved. I have circled the two doors that need to be widened on the enclosed floorplan. Additionally, the 8'10" center door has a wooden plank that transitions the gap between the exterior surface grade and the finished floor elevation of the building. This board is deteriorating and needs to be replaced with a permanent concrete sloped transition.

Please contact me after you have had an opportunity to review the enclosed drawing and consider the requested overhead door improvements that will allow FedEx to remain

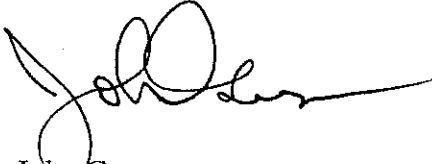
R-10  
Page 1 of 3 A

Mr. Cal Hoover  
October 31, 2001  
Page 2

acceptably operational within the building. These improvements are needed as soon as possible to minimize the operational impact to FedEx.

Sincerely,

FEDERAL EXPRESS CORPORATION



John George  
Real Estate Advisor  
901-434-9179

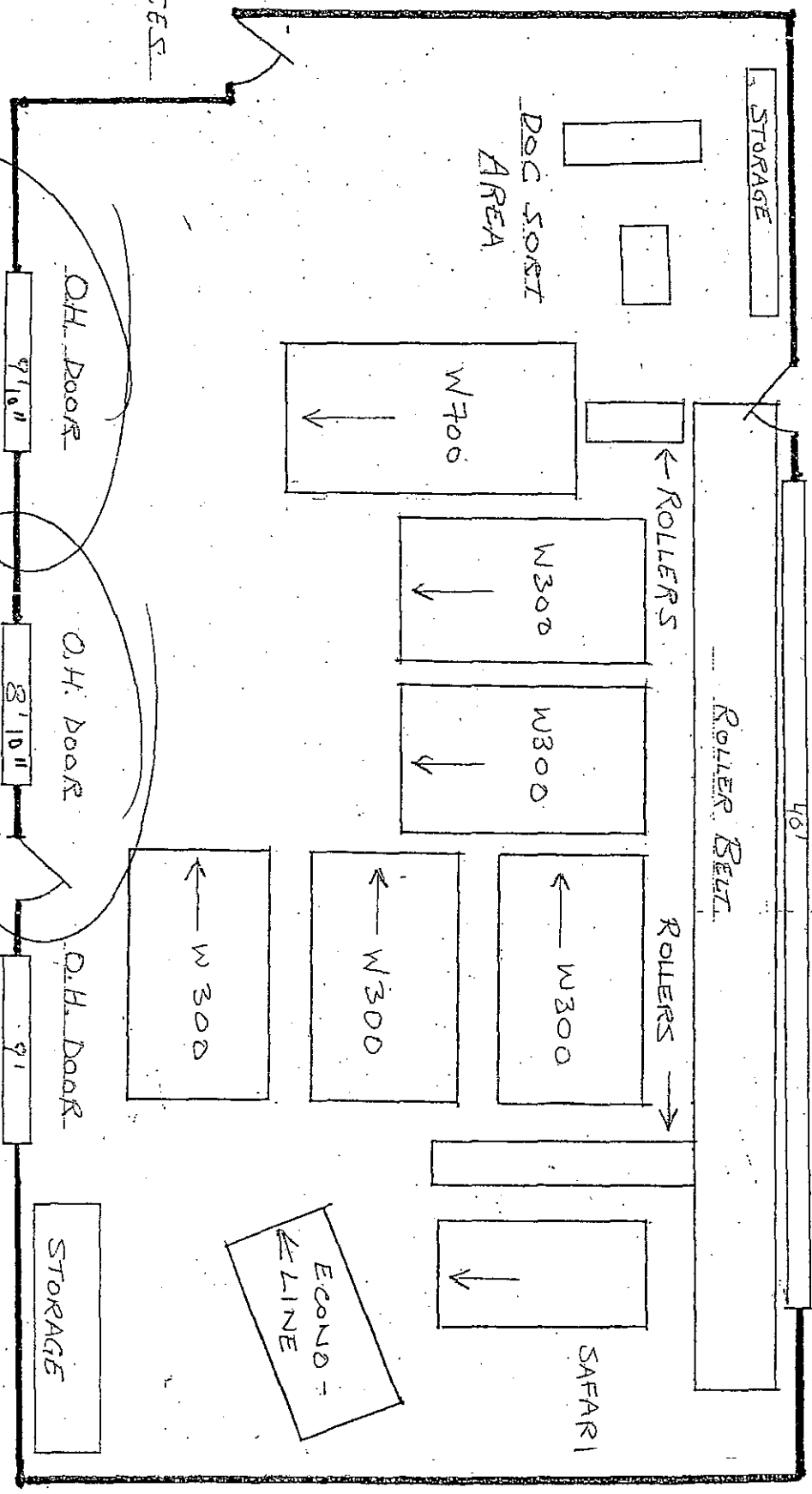
enclosure

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R-10  
Page 2 of 3

OTHA - 9/25/01

AIRPORT  
SLIDING DOORS  
LOCKED BY FAA



COPY

**KOOS Environmental Services, Inc**

P.O. Box 4068  
Coos Bay, OR 97420  
Ph. (541)266-0511 Fax (541)266-8721  
e-mail: koosenv@harborside.com

INVOICE

Vendor No.	P.O. Number	Terms	Invoice Date	Invoice No.
		Net 30	02-19-02	KES -747

Port of Coos Bay  
Bob Hood, Maintenance Supervisor  
PO Box 1215  
Coos Bay, OR 97420

PH: (541)  
FX: (541)

Job No.	QTY	DESCRIPTION	Unit Price	TOTAL
K250	1	Asbestos release cleanup of: Federal Express Building 2348 Colorado North Bend, OR 97459	1525.60	
		Disposal	450.00	

DATE \_\_\_\_\_  
ACCT# \_\_\_\_\_  
PROJECT# \_\_\_\_\_  
SIGNATURE \_\_\_\_\_

*ms jsl 2/28/02*

Invoice Total \$ 1975.60

*7152-00-8  
Asbestos Abatement -  
(Pass thru)*

R-11  
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Valley Environmental Services, Inc.

8885 SW Canyon Road, Suite 210A, Portland, Oregon 97225 • (503) 693-6677 Office • (503) 297-5854 Fax

COPY

Invoice

BILL TO

Coos Bay/North Bend Airport  
2348 Colorado  
N. Bend, OR 97459

DATE INVOICE #  
2/22/2002 02-144

PROJECT		P.O. NO.	TERMS	DUE DATE
020123 Fed Ex		Verbal	Net 30	3/24/2002
QUANTITY	DESCRIPTION	SERVICED	RATE	AMOUNT
	For Services Provided in Connection with Fed Ex - Air Quality Project:	1/31/2002		
1	Industrial Hygienist, Indoor Air Quality Investigation. (Reg./Hrs)		45.00	45.00
8	Samples - Bulk Wipes		25.00	200.00
3	Driving Time		27.50	82.50
			<b>Total</b>	<b>\$327.50</b>

PLEASE NOTE OUR NEW MAILING ADDRESS:

VES, Inc.  
8885 SW Canyon Road  
Suite 210A  
Portland, OR 97225

*Enviro testing -  
PASS MAIL  
7152-00-8*

If you have questions regarding this invoice please contact our office at (503) 693-6677.

R-12  
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March 6, 2002

Invoice #3040

## INVOICE

O'Neills Garage Doors  
2906 Fruitdale Drive  
Coos Bay, OR 97420

Reimbursement for Environmental Charges - Fed Ex. Bldg. At North Bend Airport  
(Copies of invoices attached)

**Total Due this Invoice: \$2,303.10**

**Due and Payable Upon Receipt**

R-13  
A

125 Central Ave., Suite 300 / P.O. Box 1215 / Coos Bay, Oregon 97420-0311 / Phone: 541-267-7678 / Fax: 541-269-1475

State of Oregon  
Representative  
Offices:

Tokyo, Japan  
Phone: 81 35 275-9321  
Fax: 81 35 275-9325

Seoul, Korea  
Phone: 82 2 753-1349, 1439  
Fax: 82 2 753-5154

Taipei, Taiwan, R.O.C.  
Phone: 886 2 723-2310, 2311  
Fax: 886 2 723-2312



**received**  
1-2-02 VF

# BUILDING PERMIT

BUILDING/PLANNING DEPARTMENT, PO BOX B, 835 CALIFORNIA AV., NORTH BEND, OR 97459  
INSPECTIONS: 541-756-8510 OR 756-8525 FAX: 541-756-8544

PERMIT NO. 8005



ISSUED BY: WC

DATE: 1-15-02

APPLICANT: COMPLETE ALL NUMBERED LINES. SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL AND PLUMBING AND MAY BE OBTAINED THROUGH THE STATE BUILDING CODE OFFICE AT 541-396-4686.

1. C2 & Cindy Hauer 1411 Airport way  
OWNER MAIL ADDRESS PHONE
2. Orviel Overhead Door 269-1036  
CONTRACTOR & LIC NO. MAIL ADDRESS PHONE
3. Orviel (290-2891) cell  
ARCHITECT & LIC NO. MAIL ADDRESS PHONE

4. JOB LOCATION: 1411 Airport way

5. LEGAL: TOWNSHIP/RANGE: \_\_\_\_\_ LOT: \_\_\_\_\_ BLOCK: \_\_\_\_\_

6. SUBDIVISION OR BUILDING NAME: \_\_\_\_\_ ZONE: \_\_\_\_\_

7.  RES  COMM  NEW STRUCTURE  ADDITION  ALTER/REMODEL  REPAIR  DEMO  SIGN  OTHER

8. DESCRIBE WORK: entire overhead doors

9. VALUATION OF WORK: LABOR & MATERIALS: \$4500.00 SQUARE FEET: \_\_\_\_\_

**OFFICE USE ONLY**

DEPARTMENT APPROVALS			STRUCTURAL INSPECTIONS			PERMIT FEES		
Item	Date	Approved	Item	Date	Approved	Item	Fee	
Zoning	<u>N/A WC</u>		Foundation			STRUCTURAL	<u>50.50</u>	
Flood			Slab/Under flr			PLAN CHECK (non refundable)	<u>32.83</u>	
Tsunami			Frame			FL&S		
Fire Dept			Insulation			SEWER HOOK-UP		
WWTP			Lath/Gypsum			MFH SITE		
Soil Report			Curb Cut			MFH STATE ADMIN		
Other:			Other:			MECHANICAL		
Other:			FINAL	<u>2/8/02</u>	<u>[Signature]</u>	STATE MECH SURCH (7%)		
Comments:						MFH SURCHARGE (7%)		
							STATE STRUCT SURCH (7%)	<u>354</u>
PAID BY: CASH			CHECK NO. <u>#1399</u>			TOTAL AMOUNT		<u>\$ 86.87</u>

I certify that I've read & examined both sides of this application & know the same to be true & correct. All provisions of laws & ordinances governing this work will be complied with whether specified herein or not. The right of entry is given to the building official or his authorized representative to inspect, pursuant to the applicable state & city codes. The granting of a permit doesn't presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or performance of construction.

10. Orviel Stemmer  
PRINT owner name or representative

**OFFICE USE ONLY**

Const. Type:	Occ. Group/Div:
Bldg sz:	No. of stories:
No. of dwell units:	Use zone:

PERMIT AUTHORIZED WHEN PROPERLY VALIDATED WITH SIGNATURE IN THIS SPACE.

Orviel Stemmer 1-10-02

R-14  
A

O'Neills Overhead Doors & Continuous Gutters

# Invoice

P.O. Box 809  
Coos Bay, OR 97420

Date	Invoice #
4/19/2002	11073

<b>Bill To</b>
Pegues Air Cal Hoover 617 S. Shasta ave Eagle Point, OR 97524

<b>Ship To</b>

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
			4/19/2002			

Quantity	Item Code	Description	Price Each	Amount
1	Misc	roller system	1,049.00	1,049.00
1	Misc	labor	350.00	350.00
1	Misc	remove heater	75.00	75.00

*pd CK 5009*  
Thank you  
*Rue*

**Total** \$1,474.00

R-15 A



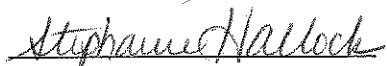
**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON**

In the Matter of	)	
	)	Final Contested
Pegasus Corporation,	)	Case Hearing Order
an Oregon corporation,	)	
	)	
Petitioner	)	No. AQ/AB-WR-02-059

On May 8, 2003, the Environmental Quality Commission considered the appeal of Pegasus Corporation to the Proposed Order issued by Hearing Officer James A. Dreyer on December 16, 2002, and incorporated herein as Attachment A. The Commission considered the exceptions and brief submitted by the Petitioner and the Response submitted on behalf of the Department of Environmental Quality. The Commission also heard oral argument presented by Bryan Smith, Environmental Law Specialist on behalf of the Department. Pegasus Corporation waived oral argument.

The Commission affirms the Order of the Hearing Officer in all respects and incorporates by reference the Order herein.

Dated this 14<sup>th</sup> day of May, 2003.

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

Notice of Appeal Rights

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

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

**In the Matter of** ) **PROPOSED ORDER**  
 )  
 )  
**PEGASUS CORPORATION**, an Oregon )  
**Corporation,** ) **Hearing Officer Panel Case No. 102265**  
**Respondent** ) **Department Case No. AQ/AB-WR-02-059**

**HISTORY OF THE CASE**

On May 20, 2002, the Department of Environmental Quality (DEQ) issued a Notice of Assessment of Civil Penalty citing Pegasus Corporation with a violation for allowing a contractor to perform an asbestos abatement project without a license. DEQ assessed a civil penalty of \$1,200.00 based upon the alleged violation. On or about July 1, 2002, Pegasus Corporation filed a written request with DEQ for a hearing.

DEQ referred the request to the Hearing Officer Panel on August 9, 2002. A hearing was held on November 6, 2002. Administrative Law Judge James A. Dreyer of the Hearing Officer Panel presided. Pegasus Corporation appeared by and through its president, Franklin C. Hoover. Mr. Hoover testified on behalf of Pegasus Corporation. Also testifying on behalf of Pegasus Corporation were Mike Teyler, Virgil Stemmerman, William Campo and Michael Collins. DEQ was represented by Bryan Smith, an authorized agency representative. Robert Hood, Martin Abts and Gary LeTellier testified on behalf of DEQ. The record was left open for additional legal argument until November 20, 2002. Memorandums from both DEQ and Pegasus Corporation were received and considered. The record was closed on November 20, 2002.

**EVIDENTIARY RULINGS**

DEQ's exhibits A-1 through A-11 were admitted into the record. Pegasus Corporation's exhibits R-1 through R-5 and R-7 through R-15 were also admitted into the record without objection. DEQ objected to the admission of Exhibit R-6 on the basis of relevance. Exhibit R-6, a section of Oregon Contractor's Reference Manual is admitted as relevant over DEQ's objection.

**ISSUES**

(1) Is Pegasus Corporation an "owner or operator" under 468A.715(1) and OAR 340-248-0110(2) such that it would be required to ensure that only licensed contractors remove cement asbestos board (CAB) siding from the FedEx Terminal located at 1411 East Airport Road in North Bend, Oregon.

RECEIVED  
DEC 16 2002

This hearing decision has been copied to: field person & his/her mngr, Anne, Les & staff the EQC, the DA, the Business Office, West Publishing, and LexusNexus. Let me know if anyone else needs a copy. Deb

(2) Did the removal of CAB siding from the FedEx Terminal constitute an asbestos abatement project in violation of ORS 468A.715(1) and OAR 340-248-0110(2) such that it is liable for a civil penalty, and, if so, in what amount?

### FINDINGS OF FACT

(1) On or about April 17, 2001, Pegasus Corporation, by and through its president, Franklin C. Hoover, leased the FedEx Terminal (the Terminal) located at 1411 East Airport Road in North Bend, Oregon, from the Oregon International Port of Coos Bay. (Exhibit A-4). Pegasus Corporation, in turn, then subleased the Terminal to Federal Express. On or about October 7, 2001, Pegasus Corporation hired Mike Collins of O'Neill's Overhead Doors & Continuous Gutters (O'Neill's) to remodel the Terminal.<sup>1</sup> (Exhibit R-7 & R-8). Virgil Stemmerman was then hired by O'Neill's as a subcontractor to assist in the remodel. (Test. of Hoover). Mr. Stemmerman was to enlarge the spaces of the existing doors and a window on the west side of the building so that larger doors could be installed to provide easier delivery of FedEx packages. (Exhibits R-7 & R-8). Prior to the beginning of the remodel, Mr. Hoover, Mike Collins, Mr. Stemmerman and a Federal Express representative toured the Terminal to discuss the remodel. (Test. of Hoover). During that meeting, the age of the building and that it may contain asbestos was discussed. Although Mr. Hoover reviewed both of the contractors' backgrounds for any complaints, he did not require them to hold DEQ asbestos abatement licenses.

(2) The Oregon International Port of Coos Bay (the Port) maintains many of the buildings in the vicinity of 1411 East Airport Road, including the Terminal. (Test. of Hood). Prior to the alleged violations in this case, the Port and the City of Coos Bay had knowledge that many of these World War II era buildings, including the Terminal, have nonfriable CAB siding. (Test. of Hood). The Terminal's CAB siding is an asbestos-containing material. (Exhibits A-7, Exhibits A-6, and Test. of Abts). Prior to beginning the remodeling work, Pegasus Corporation applied for and received a building permit from the City of Coos Bay. Will Campo, the city inspector, issued the permit under the misconception that the work to be performed was going to be done on a metal building in the vicinity. (Test. of Campo). Because of the misunderstanding regarding the building which was going to be remodeled, the city inspector never warned Pegasus Corporation of the presence of CAB siding. (Test. of Campo). In January 2002, Robert Hood, the Port's maintenance supervisor, saw Mr. Stemmerman and his construction crew at the Terminal. (Test. of Hood). Mr. Hood contacted Mr. Stemmerman and his crew and was informed of the remodeling work. (Test. of Teyler). Although Mr. Hood was aware of the Terminal's CAB siding, he did not warn Mr. Stemmerman or his employees of this fact. (Test. of Teyler).

(3) In January, 2002, Mr. Stemmerman removed more than three but less than 80 square feet of the Terminal's CAB siding. (Exhibit 7). Mr. Stemmerman cut and removed the CAB siding. (Exhibit A-7). The cutting of the nonfriable CAB siding rendered the asbestos in that siding friable and allowed asbestos fibers to be released into the environment. (Test. of Abts; Exhibit A-7). The removal of asbestos was not the primary objective of the job. (Exhibits R-7 &

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<sup>1</sup> The contract between Pegasus Corporation and O'Neill's notes that "[i]f asbestos abatement is required owner will incur all expenses. (Exhibits R-7 & R-8).

R-8). At the time of the removal of the CAB siding, Pegasus Corporation was aware that the Terminal may contain asbestos, but did not inquire further to definitively determine whether the remodel would disturb any asbestos-containing materials. (Test. of Hoover). Instead, Pegasus Corporation believed the contractors would inform him if asbestos abatement arose. (Test. of Hoover). Mr. Stemmerman did not have a license issued by DEQ to conduct an asbestos abatement project. (Test. of Abts).

(4) On January 29, 2002, Martin Abts of the DEQ received a complaint from Robert Hood that the Terminal's CAB siding had been cut. (Test. of Hood). Martin Abts went to the Terminal and observed that the Terminal's CAB siding had been recently altered. Mr. Abts observed very small pieces of shattered CAB siding on the ground near the Terminal's enlarged doors. (Test. of Abts). Due to previous contacts with the Port regarding the buildings in the vicinity of 1411 East Airport Road, North Bend, Oregon, Mr. Abts knew that the CAB siding was asbestos-containing material. The next work day, Martin Abts contacted Mr. Stemmerman, who admitted to sawing and removing the Terminal's CAB siding. (Test. of Abts).

(5) On April 18, 2002, DEQ sent Pegasus Corporation, via Mr. Hoover, a Notice of Noncompliance outlining the observations and conversations that had occurred in January, and identified the January 2002, incident as Class I and/or Class II violation. (Exhibit A-9). At that time, DEQ's policy was to treat holders of a leasehold interest as "owners or operators" under ORS 468A.715(1). (Test. of Abts). The Notice informed Pegasus Corporation that the incident would be referred to DEQ's Office of Compliance and Enforcement with a recommendation to initiate a formal enforcement action. (Exhibit A-9).

(6) DEQ has a website and staff personnel which are available to inform individuals of asbestos hazards. Pegasus Corporation failed to contact DEQ or determine whether or not asbestos was present in the Terminal. (Test. of Abts). Pegasus knew or should have known of the presence of asbestos-containing materials in the Terminal and failed to use reasonable care and require that a DEQ licensed asbestos abatement contractor perform the remodel.

### CONCLUSIONS OF LAW

(1) Pegasus Corporation was an "owner or operator" under 468A.715(1) and OAR 340-248-0110(2) such that it was required to ensure that only DEQ licensed contractors conduct any asbestos abatement project at the FedEx Terminal located at 1411 East Airport Road in North Bend, Oregon.

(2) The cutting and removal the Terminal's CAB siding constituted an asbestos abatement project for which a DEQ asbestos abatement license was required.

(3) Pegasus Corporation was negligent in failing to require that a DEQ licensed contractor conduct the asbestos abatement project at the Terminal and is therefore liable for a civil penalty in the amount of \$1,200.00.

## OPINION

Pegasus Corporation contends that it was not the “owner or operator” of the Terminal such that it had to require only DEQ licensed asbestos abatement contractors to perform the removal of the CAB siding. Pegasus Corporation further argues that the removal of the CAB siding from the Terminal was not an asbestos abatement project for which a license was required. Pegasus Corporation contends that the CAB siding was not “friable” as that term was defined by OAR 340-248-0010(24) at the time of the alleged violation. Finally, Pegasus Corporation argues in the alternative that it used reasonable care in attempting to comply with Oregon’s statutes and rules during the Terminal’s remodel.

### 1. Statutory Obligations of an “Owner or Operator” of a Facility Containing Asbestos.

Oregon's DEQ is the regulatory agency charged with the duty of protecting Oregonians from the hazardous release of asbestos. As there is no known minimal level of exposure to asbestos fibers that guarantees the full protection of the public health, one of DEQ’s responsibilities is to regulate the handling of asbestos-containing materials.<sup>2</sup> To ensure the proper and safe abatement of asbestos hazards, Oregon has enacted rigid rules regarding an owner or operator’s use of contractors who are engaged in performing asbestos abatement projects.

Pursuant to ORS 468A.715(1):

Except as provided in subsection (2) of this section, an owner or operator of a facility containing asbestos shall require only licensed contractors to perform asbestos abatement projects.

ORS 468A.710(1) further explains:

Except as provided in ORS 468A.707(1)(c) and (3), after the Environmental Quality Commission adopts rules under ORS 468A.707 and 468A.745, no contractor shall work on an asbestos abatement project unless the contractor holds a license issued by the Department of Environmental Quality under ORS 468A.720.

Pegasus Corporation argues that it is not the “owner or operator” of the Terminal. Although the term “owner or operator” was not defined under 468A.700 *et seq.* or OAR 340-248-0010 *et seq.* at the time of the alleged violation<sup>3</sup>, the term was defined under ORS 465.200(19) of the Hazardous Waste And Hazardous Materials I chapter. ORS 465.200(19) states:

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<sup>2</sup> Oregon legislative findings. ORS 468A.705.

<sup>3</sup> On February 4, 2002, OAR 340-248-0010 was amended to include the following definition of “owner or operator”: “‘Owner or operator’ means any person who owns, lease, 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.”

'Owner or operator' means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. 'Owner or operator' does not include a person who, without participating in the management of a facility holds indicia of ownership primarily to protect a security interest in the facility.

Given the fact that the definition of "owner or operator" was provided in the ORS Hazardous Waste And Hazardous Materials I chapter, and, given the fact that asbestos falls within the definition of a "hazardous substance" as that term is defined under ORS 645.200(15), Pegasus Corporation had notice that as a lessor and lessee of the Terminal, any act committed in violation of ORS 468A.715(1) and OAR 340-248-0110(2) was done at it own peril. DEQ's policy of treating lessors as "owners or operators" was merely consistent with the definition provided for under ORS 465.200(15). Furthermore, the definition now found under OAR 340-248-0010(33) is in accord with the pre-existing definition under ORS 465.200(15) and with DEQ's policy at the time. Clearly, Pegasus Corporation was an "owner or operator" of the Terminal at the time of the alleged violation and could have determined that fact by reviewing the Oregon Revised Statutes.

## 2. Asbestos Abatement Projects.

ORS 468A.700(4) defines an asbestos abatement project as:

[A]ny demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any material with the potential of releasing asbestos fibers from asbestos-containing material into the air.

In January 2002, Mr. Stemmerman removed more than 3 square feet of siding from the Terminal located at 1411 East Airport Road in North Bend, Oregon. The Terminal's siding was asbestos-containing material. By sawing the asbestos-containing material, there was an actual release of asbestos fibers from the asbestos-containing material into the air. Mr. Stemmerman's removal of the Terminal's siding constitutes an asbestos abatement project under ORS 468A.700(4).

## 3. Asbestos Abatement Licensing and Exemptions.

The qualifications for a DEQ asbestos abatement license required under ORS 468A.710(1) are set forth in part under ORS 468A.720. ORS 468A.720 essentially requires a contractor to be trained in asbestos abatement and knowledgeable of the applicable state and federal rules and regulations governing asbestos abatement.

The Environmental Quality Commission adopted additional regulations under ORS 468A.707 and 468A.745 regarding the licensing requirements of contractors conducting asbestos

abatement projects. OAR 340-248-0110(3) states: “[e]ach contractor engaged in an asbestos abatement project must be licensed by the Department under the provisions of OAR 340-248-0120.”

There are two exemptions to the licensing requirement under OAR 340-248-0110(3). Pursuant to OAR 340-248-0250:

(1) Any person who conducts an asbestos abatement project shall comply with OAR 340-248-0260 and 340-248-0270(1) through (11). The following asbestos abatement projects are exempt from OAR 340-248-0260, 340-248-0270(1) through (11), and OAR 340-248-0100 through 340-248-0180:

\* \* \* \* \*

(c) Removal of less than three square feet or three linear feet of asbestos-containing material provided that the removal of asbestos is not the primary objective and methods of removal are in compliance with OAR 437 division 3 “Construction” (29 CFR 1926, 1101(g)). An asbestos abatement project shall not be subdivided into smaller sized units in order to qualify for this exemption.

\* \* \* \* \*

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

\* \* \* \* \*

(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 340-248-0110. This exemption shall end whenever the asbestos-containing material becomes friable and releases asbestos fibers into the environment.

Mr. Stemmerman removed more than 3 square feet of the Terminal’s asbestos-containing siding. The exemption under OAR 340-248-0250(1)(c) is therefore inapplicable. Pegasus Corporation, however, argues that the CAB siding was not friable as that term was defined under the rules applicable at the time of the alleged violation and presumably it is therefore exempt from the licensing requirements under OAR 340-248-0250(3)(b).

In January 2002, the term “Friable Asbestos Material” was defined as “any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.” OAR 340-248-0010(24).<sup>4</sup> Although the Terminal’s CAB siding was not friable prior to

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<sup>4</sup> In February 2002, the term “Friable asbestos-containing material” was redefined as “any asbestos-containing material that can be crumbled, pulverized or reduced to powder by hand pressure when dry. Friable

remodeling project, the exemption under OAR 340-248-0250(3)(b) is inapplicable because: 1) some of the CAB siding was shattered and reduced to very small pieces prior to its delivery to an authorized disposal site; and 2) the act of sawing the CAB siding rendered some of the asbestos siding friable as that term was defined under OAR 340-248-0010(24) at the time of the alleged violation and released asbestos fibers into the environment. (Test. of Abts; Exhibit A-7).

For the reasons stated above, Pegasus Corporation was required to ensure that only DEQ licensed contractors performed the asbestos abatement project at the Terminal.

#### 4. Assessment of Civil Penalty.

DEQ has properly assessed Pegasus Corporation a civil penalty of \$1,200.00 for a Class I violation under OAR 340-012-0050(1)(u). The base penalty for a minor magnitude Class I violation under OAR 340-012-0042(1)(a) is \$1,000.00. ORS 468.715(1) places an affirmative duty upon on the "owner or operator" to use only licensed contractors to perform an asbestos abatement project. Pegasus Corporation had an obligation to make sure that Mr. Stemmerman had a DEQ asbestos abatement license prior to going forward with the remodel. An additional \$200.00 was properly added onto the base penalty because Pegasus Corporation failed to use reasonable care in arranging for the removal of the CAB siding and therefore acted negligently. During the meeting which occurred prior to the remodel, the age of the Terminal and the possible presence of asbestos was discussed. Given these facts, Pegasus Corporation knew or should have known of the presence of asbestos. Pegasus Corporation, in exercising reasonable care, should have inquired further into the possible presence of asbestos-containing materials at the Terminal prior to the remodel given the potential hazards involved. Given the affirmative duty under ORS 468.715(1) and the known possibility of asbestos present in the Terminal, Pegasus Corporation could not simply rely on its contractors to alert it to an asbestos abatement issue. Pegasus Corporation should have hired DEQ licensed asbestos abatement contractors upon learning of the possible presence of asbestos in the Terminal, or at least determined whether or not asbestos was an existing hazard.

As the Terminal's "owner or operator," Pegasus Corporation knew or should have known of the presence of asbestos-containing material in the Terminal and therefore was negligent in failing to require that only DEQ licensed contractors perform the remodel. The assessment of a \$1,200.00 civil penalty is proper.

### ORDER

I recommend that the Environmental Quality Commission enter the following order:

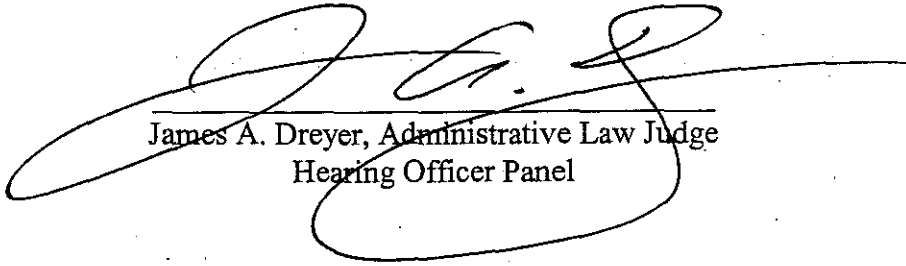
(1) On or about January 2002, Pegasus Corporation allowed an unlicensed contractor to perform an asbestos abatement project at the FedEx Terminal located at 1411 East Airport Road

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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." OAR 340-248-0010(25)



in North Bend, Oregon, and is therefore subject to a civil penalty in the amount of \$1,200.



James A. Dreyer, Administrative Law Judge  
Hearing Officer Panel

**IF YOU DISAGREE WITH THIS ORDER**

This is the Proposed Order issued by the hearing officer. This Proposed Order will be the final order of the Commission unless, within 30 days from the date of service, a participant or a member of the Commission files with the Commission and serves upon each participant a Petition for Commission Review. A Petition must be in writing and need only state the participant's or a Commissioner's desire that the Commission review the hearing officer's Order. Within 30 days from the filing of the Petition, the Petitioner must file with the Commission and serve upon each participant written exceptions, brief and proof of service. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the Petitioner relies.

ISSUANCE AND MAILING DATE December 16, 2002

## CERTIFICATE OF SERVICE

I certify that on December 16, 2002, I served the attached Proposed Order by mailing in a sealed envelope, by certified mail or with first class postage prepaid, as noted below, a copy thereof addressed as follows:

CAL HOOVER  
PEGASUS CORPORATION  
617 S SHASTA AVE  
EAGLE POINT OR 97524

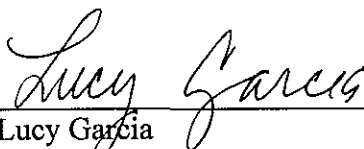
**BY CERTIFIED MAIL RECEIPT # 7001 1940 0000 5113 6356**

BRYAN SMITH  
OREGON DEQ  
811 SW 6TH AVE  
PORTLAND OR 97204

**BY FIRST CLASS MAIL**

JENINE CAMILLERI  
OREGON DEQ  
OFFICE OF COMPLIANCE AND ENFORCEMENT  
811 SW 6TH AVE  
PORTLAND OR 97204

**BY FIRST CLASS MAIL**

  
\_\_\_\_\_  
Lucy Garcia  
Administrative Specialist

State of Oregon  
Department of Environmental Quality

Memorandum

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**Date:** April 17, 2003  
**To:** Environmental Quality Commission  
**From:** Anne R. Price, Administrator, Office of Compliance and Enforcement  
**Subject:** Agenda Item D, Discussion Item: Enforcement Rule Development Update  
May 8, 2003 EQC Meeting

We have been hard at work on developing revisions to DEQ's enforcement rules and guidance. Our discussion on May 8<sup>th</sup> will provide you with a process update on what has occurred since June 2002, when we last talked. I'll also provide a substantive update on the key issues or changes that currently are being proposed for the Division 12 Enforcement Rules and for the Enforcement Guidance document.

As preparation for this discussion, I have attached summaries from the first two Advisory Group meetings, which will provide you with an excellent idea of the issues and concerns of this very diverse group.

Between now and our discussion with you in May we are wrapping up an all-staff comment cycle on a draft version of the rules and will be meeting several times with our rulemaking team. Approximately two weeks before your May meeting, I will forward to you the most up-to-date materials to target our discussion on a few key items, which may include:

- the Notice of Noncompliance and referral processes;
- the penalty matrices;
- issues of potential for harm versus actual harm; and
- highlights of the major rule and guidance changes proposed.

As always, I am looking forward to our discussion. If there is anything that you know of in advance that you would like to make sure we come prepared to discuss, please do not hesitate to contact me (503-229-6585) to let me know. Thank you!

**DIVISION 12 ADVISORY GROUP**  
**Final Minutes from Meeting #1 – February 26, 2003**

**Present:** Roger Dilts (ACWA)  
Sarah Doll (Oregon Environmental Council)  
Jeff Dresser (Association of Oregon Industries)  
Don Haagensen (attorney for regulated industry)  
Karen King (City of Pendleton)  
Rhett Lawrence (OSPIRG)  
Cliff Olson (Oregon Petroleum Marketers Association)  
Linda Schoffman (Oregon Remodelers Association)  
Robert vanCreveld, R.S. (Edgewater Environmental)  
Bob Westcott (Wesco Parts Cleaners)  
Robert Koster (LRAPA, auxiliary member)  
Dan Opalski (U.S. EPA, auxiliary member)  
Anne Price (DEQ – Chair)  
Jane Hickman (DEQ – coordinator, author of Minutes)

**Absent:** Richard Angstrom (Oregon Concrete & Aggregate Producers Association)  
Rich Barrett (regulated industry)  
Bob Emrick (Oregon Refuse & Recyclers Association)

**Charge for the advisory group (Stephanie Hallock, DEQ Director)**

- Equitable, consistent and understandable enforcement is a top agency priority.
- Questions that need to be addressed include:
  - Are civil penalties large enough for egregious violations?
  - Are penalties for smaller, less sophisticated violators higher than necessary to achieve deterrence?
- Don't need to redesign rules, but some fine-tuning is needed; group may want to build on the work already done by the internal rulemaking team over the past year.
- Identify where issues need to be addressed – e.g., in the regulations, in guidance, with TA programs. Director Hallock wants to make sure to capture the input of this Group, even if it doesn't relate to the Division 12 rules themselves.

**Goals of Advisory Group Members**

Each Advisory Group member mentioned the top reasons they wanted to participate in or the main interests that brought them to this Group.

- The enforcement process must be understandable and out in the open so the public can evaluate whether DEQ is doing its job. (Sarah Doll)
- Achieve appropriate balance between assisting with compliance and achieving deterrence. (Sarah Doll)

- Make sure LRAPA's enforcement rules are consistent with DEQ's. (Robert Koster)
- Rules should allow flexibility for regulated community to adopt innovative, creative ways to comply. (Roger Dilts)
- Realize that consistency does not necessarily mean beating everybody up equally. (Roger Dilts)
- Tailor civil penalties so big violators are deterred but small violators are not overly penalized. (Rhett Lawrence)
- Enforcement process should allow for early interaction with violator and allow for avoidance of formal enforcement. (Robert vanCreveld)
- DEQ should not show favoritism toward larger violators. (Robert vanCreveld)
- Businesses should be given a chance to come into compliance before going to formal enforcement, especially where the law at issue can be interpreted in more than one way. (Don Haagensen)
- Self-reporting policy should be more broadly communicated and more user-friendly to small and medium-size businesses that may be intimidated by the complexity of the policy. (Don Haagensen)
- In view of the large number and complexity of regulations that businesses and municipalities must comply with, offer businesses and municipalities TA to help them understand regulations and what they need to do to comply. (Bob Westcott, Linda Schoffman, Cliff Olson, Karen King)
- Businesses that violate intentionally should be subject to consistent formal enforcement so that the playing field is level. (Bob Westcott)
- Since some businesses make environmental compliance investments based on what are the Class I violations, violation classifications and penalty matrices should reflect environmental significance, so that businesses invest more in pollution prevention and controls rather than in avoiding violations that might be considered "paperwork" violations. (Jeff Dresser)
- Regulations must give DEQ discretion to assess penalties and not prohibit assessments, in order to avoid issues with EPA delegation of program enforcement. (Dan Opalski)

### **Overview of Enforcement Process and Penalty Assessment (Anne Price)**

Anne gave a fairly brief overview of the enforcement and penalty assessment process using handouts mailed to the Group and found under Tabs 5 – 7, primarily.

- The regions and program managers decide where agency should use its enforcement resources (who should be inspected and when).
- Oregon statutes prescribe what elements DEQ's penalty assessment must contain. Some components, such as economic benefit, are also required to meet EPA expectations for enforcement of programs that have been delegated to DEQ to enforce. See Tab 2.
- The Guidance Manual informs inspectors how to implement Division 12 rules and states who will get what level of enforcement. See Tab 4.

- The Guidance Manual provides template language for Notices of Noncompliance in order to promote consistency among regions.
- The violation classifications in Division 12 should mirror program rules (can't create new violations in Division 12) and should reflect the environmental impact of the violation in general without regard to the facts of the specific case. Similar violations should be treated with the same level of severity. See Tab 3.
- General and selected environmental magnitudes are determined by applying the facts of the specific case.
- Penalty matrices list the base penalty for each violation and may be the most appropriate place to differentiate between types of violators and the level of deterrence that is appropriate.
- DEQ has a draft Multi-Day Penalty policy. EPA believes DEQ should issue more multi-day penalties to achieve deterrence for repeated or continuous violations.
- The Guidance Manual will be revised to include the Agency's approach to repeat violators and the escalating level of formal enforcement received (e.g., penalize for more violations if repeat violator than if a first time violator).

#### **Update on Internal Rulemaking Team's Work (Anne Price)**

The rulemaking team (RMT) members represent perspective of regional offices (which implement the rules) and headquarters (where policies and rules are developed). Rulemaking team has had numerous meetings over the past year and has been on hiatus for a several months pending input from the advisory group and agency staff statewide. The RMT group and this advisory group are also charged with reviewing proposed amendments to Division 11, the rules that govern rulemaking and contested case hearing procedures. Given Division 11's limited scope, advisory group may decide not to spend much time, if any, on those rules.

The Project Plan (at tab 1 in the binder) shows what issues the RMT has tried to address over the past year. Program managers have made initial proposals regarding penalty matrices and have made recommendations for amendments to improve consistency. Agency staff statewide will be reviewing the RMT's proposed amendments at the same time as the advisory group. Given budget cutbacks and resource issues statewide, consistency issues may not always be easily resolved, particularly when the issues involve degree of initial oversight through inspections and complaint response across the different programs.

The RMT has discussed the issue of who should be sent to formal enforcement. Ultimately this information will be reflected in a revised Guidance Manual. Anne is working on the best way to capture this information for presentation to the Advisory Group at later meetings.

We hope to put proposed rules out for public comment around June 2003 and seek EQC adoption around August.

## **DEQ Expectations for Advisory Group**

Do our best to gather as much input as possible to address the issues of equity, understandability and consistency in the process and in implementation. Make sure stakeholder input is fully considered in the development of the Division 12 rules. No written report or product is necessary from the Group. No need for Group consensus. DEQ staff will identify issues raised during the Advisory Group process for the EQC at time of adoption and discuss how and where those issues have been addressed (e.g., whether in Division 12, the Guidance Manual, policy, etc.).

## **Discussion about How to Tackle the Charge of the Group**

In the group discussion the following additional issues were mentioned:

- NONs are often perceived by the recipient as significant as a formal enforcement action, even though the Department does not treat the NON as a formal enforcement action. (Don Haagensen)
- Inform violators in the NON (or otherwise) what information DEQ needs to calculate an accurate penalty rather than waiting until after penalty assessment to get such information from a respondent. This would allow respondents the opportunity to provide that information prior to penalty calculation. (Don Haagensen)
- Obtain more information relevant to penalty calculation before assessing penalty to avoid need to reduce penalties in settlement, thereby increasing agency credibility and achieving better deterrence. (Bob Westcott)

In an effort to bunch the issues discussed and raised by the Group as being of interest to them, Anne presented six main categories: (1) penalty matrices; (2) NON process; (3) violation classifications; (4) training/education; (5) enforcement guidance – who goes forward to formal enforcement; and (6) policies – supplemental environmental projects, multi-day penalties and self disclosure.

As a means of getting through the issues, the Group discussed starting with the current draft rule. DEQ will provide annotations to the changes to give some background as to what is proposed to be changed and why. The next meeting will start with a discussion of Issue 1, the matrix approach, in particular, and other key rulemaking changes as time allows.

Issues 2, 5 and 6 the Group felt were important to address collectively. They will be addressed in the third and fourth meetings. Issue 4 may be too big for this group, but we should capture any ideas related to necessary training and helpful education on enforcement processes or issues for people both internal and external to DEQ. Issue 3 may get discussed from the perspective of comparing like violations across the programs to ensure that they are being classified similarly, but the Group will not go into the specific violations of a given program. DEQ is glad to receive any specific comments on the classifications from any Group member.

### **Handouts Distributed at Meeting**

- 1) DEQ Strategic Priorities (pamphlet)
- 2) The Compliance Continuum

### **Action Items**

Anne will send a redline version of Division 12 showing amendments proposed by the rulemaking team and her staff (Office of Compliance and Enforcement) early in the week of March 3. She will provide a summary of those changes and their purpose to expedite review by advisory group members. She will also provide a “clean” copy of the proposed Division 12 amendments without the redlining for ease of reading. She will suggest which portions of the rules the members may want to focus on, given the goals expressed.

### **Future Meetings**

The next meeting will be on March 12, 2003, 1:00 – 4:00 p.m., DEQ Headquarters, 811 S.W. 6<sup>th</sup> Avenue, Portland, Conference Room 3A. We will review portions of the draft rules in detail. Detailed agenda to follow.

At the third meeting, we will begin discussion of some of the Enforcement Guidance issues, such as ways to improve Notices of Noncompliance.



**DIVISION 12 ADVISORY GROUP**  
**Minutes from Meeting #2 – March 12, 2003**

**Present:** Roger Dilts (ACWA)  
Sarah Doll (Oregon Environmental Council)  
Jeff Dresser (Association of Oregon Industries)  
Don Haagensen (attorney for regulated industry)  
Karen King (City of Pendleton)  
Rhett Lawrence (OSPIRG)  
Cliff Olson (Oregon Petroleum Marketers Association)  
Robert vanCreveld, R.S. (Edgewater Environmental)  
Bob Westcott (Wesco Parts Cleaners)  
Richard Angstrom (Oregon Concrete & Aggregate Producers Association)  
Rich Barrett (regulated industry)  
Bob Emrick (Oregon Refuse & Recyclers Association)

Robert Koster (LRAPA, auxiliary member)  
Dan Opalski (U.S. EPA, auxiliary member)  
Anne Price (DEQ – Chair)  
Jane Hickman (DEQ – lead staff, coordinator, author of Minutes)  
John Ruscigno (DEQ – Air Quality Manager for Western Region, member of DEQ rulemaking team)

**Absent:** Linda Schoffman (Oregon Remodelers Association)

**Review of Minutes from 2/26/03 Meeting**

Minutes from the first meeting were approved with a few clarifications and will be distributed in final form to the Advisory Group.

**Goals of Advisory Group Members**

Three members were unable to attend the first meeting, so they introduced themselves to the Group and, in a discussion earlier in the day, identified the following as the top reasons they wanted to participate in or the main interests that brought them to this Group:

- Agency's top goal should be compliance rather than enforcement. (Richard Angstrom; Rich Barrett)
- Train staff better so TA will be more effective. (Bob Emrick)
- Inspect facilities more regularly to head off compliance issues. (Bob Emrick)
- Regulated facilities with environmental managers are motivated to come into compliance more by receiving a NON than by paying a penalty. (Rich Barrett)
- Make our enforcement policies more consistent with other state agencies. (Richard Angstrom)

- Agency should not focus efforts to deter on negligent violators; these people should be given more education and training. Focus deterrence efforts on violators who engage in risk assessment and then consciously decide to violate. (Richard Angstrom)
- In deciding whether to pursue formal enforcement, take into account the aggravating and mitigating factors agency now uses only when calculating civil penalty. (Bob Emrick)
- More sophisticated, bigger violators should have larger penalties. (Rich Barrett)
- Don't write rules around the "weakest link" or for the minority of bad players because the rules will be unduly complex and hard for the majority, who intend to comply, to do so. (Rich Barrett)
- Identify what philosophy we will use in each phase of enforcement – maybe a philosophy of compliance during the informal phase and a philosophy of deterrence for intentional violations. (Richard Angstrom)

### **General Comments Regarding Process**

Some members stated there wasn't enough time between the first two meetings to allow for review of materials and to get meaningful input from constituents. The agency provided a lot of materials for members to review prior to this meeting and less than one week before the meeting. Some members did not have enough time to thoroughly review the materials. Given this, some of the Group expressed concern about the remaining meetings and whether we need to spread them out or add another meeting on at the end. We will stick with the scheduled date for the next meeting (April 2nd) and will discuss at that meeting the possibility of delaying some meetings, or adding meetings. [See the cover letter to the 3<sup>rd</sup> meeting.] DEQ will try to get materials to members sooner before meetings to give more time for review.

### **General Structure of Division 12 Enforcement Rules**

In the first section of Division 12, section 340-012-0026(2) ("Policy") it states that "The Department endeavors by conference, conciliation and persuasion to solicit compliance." This language is adopted almost verbatim from statute, ORS 468.090(1), which states, "If it [the Department] finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation."

Members discussed the meaning of these words and whether they serve as a condition precedent before the Department can take formal enforcement action. Don Haagensen stated that, if read in context in the statute, the statement only applies to how the Department handles written complaints regarding alleged violations and not to the general enforcement program. The Department does not have a written policy on how it interprets this policy directive. The terms "conference, conciliation and persuasion" may mean different things to different people, but generally they refer to the Department's

efforts to provide technical assistance, educate or otherwise work with facilities prior to proceeding with formal enforcement.

Richard Angstrom asked why mental state is used merely to aggravate a penalty when it should be the prime determinant of whether a violation is referred for penalty and also to determine the base penalty. Anne pointed out that there are a number of places in the process from compliance to enforcement where these factors could be considered. As a group we will discuss how best to incorporate these factors into the guidance in determining whether a violation is referred and into the penalty assessment process after referral for formal enforcement.

### **The Difference Between Classification and Magnitude**

The internal rulemaking team has identified classification as the place to identify the importance of a violation, based on its potential environmental impact or its importance to the integrity of a program. Classification is based on general category of violation and is not fact-specific. This is to create differentiation between the violations themselves. The general and selected magnitudes are the how the agency applies the facts of the specific case and determines the severity of the violation by assessing the specific environmental impact of a given violation.

Some members noted that the proposed rules blur the distinction between classification and magnitude. Some agreed that the potential for environmental harm should be addressed only in the classifications and actual environmental harm should be considered when determining magnitude. Some members viewed classifications and magnitudes as “double-counting” potential environmental impact.

The selected magnitudes consider the *potential* for environmental harm as a surrogate for actual harm in instances where they agency does not have data on what happened in a particular instance. To eliminate all consideration of potential for harm in magnitudes could defeat one purpose of selected magnitudes as surrogate findings for when the agency does not have sampling data to prove what the impact of a violation was but it does have evidence on the quantity of the pollutant or some other reasonable indicia of environmental impact. Frequently the Department does not learn of a violation until after the fact and it is too late to quantify the impact of the violation with sampling data; or the agency does not have the resources to collect the data. However, the agency has developed selected magnitudes based on its experience (e.g., if an emission is a certain percentage above the opacity limit, it is highly likely to have a certain environmental impact).

Some members support the continued use of selected magnitudes as a way for the agency to make a reasonable prediction that some pollutant emissions or discharges are likely to have a long-term health impact without having to prove it (i.e., shouldn't need “dead bodies” to find a major environmental magnitude; should be able to just look at quantity of emissions). In addition, the selected magnitudes offer the regulated community certainty and consistency.

One idea that garnered fairly widespread support in the Group was to have the selected magnitudes serve as a rebuttable presumption which shifts the burden to a respondent to present evidence showing why some other factor should outweigh that relied upon by the agency in its finding of selected magnitude. This approach may favor respondents who have the resources to rebut the Agency's presumption. The Agency will evaluate the impact of this suggestion on the administrative process, on the Agency's burden of proof and on equity to the respondent.

If we primarily consider actual environmental harm, then some facilities that are fortunate enough to be located on a high-volume water body or in a non-sensitive airshed are going to get smaller civil penalties, for essentially the same violation, than a facility on a smaller stream or in a nonattainment airshed. Members felt that the agency needs to be able to make distinctions in actual environmental impact even if some facilities will receive what appear to be high or low penalties when compared to other similar violators.

Richard Angstrom stated that some of the factors used in calculating the penalties seem punitive in nature rather than being for deterrence. He doesn't feel negligent violators respond to deterrence measures because they don't conduct a conscious risk assessment before violating. If certain factors or components are meant to be punitive rather than achieve deterrence, we should identify them as such. If we are trying to achieve equity, the proposed penalty structure does not do that, at least not based on the impact outcome. Richard also thought that the amount of harm is being double-counted and that magnitude and classification could be collapsed into one factor. He stated that Judges consider the harm done, the mental state of the violator and the amount gained by the violator; and maybe we should consider the respondent's likelihood of recidivism.

Anne requested that Group members review the selected magnitudes and suggest where they should be "tightened up" to most accurately reflect actual environmental impacts. In light of today's discussion, the Department will consider limiting consideration of potential environmental harm in determining magnitudes; identifying when we do and in those cases use the selected magnitude as a rebuttable presumption.

### **Penalty Matrices**

We handed out an annotated version of the proposed penalty matrices that explains in simpler terms to whom the different matrices will apply. The matrices should be reviewed in context with 340-012-0160. That section allows the Director to raise the violation up into the next highest matrix in order to achieve specific deterrence. Factors the Director will consider include the violator's past compliance history, the likelihood of repeating the violation, and others. Once a violator is assigned to a higher matrix in a given case, if that violator repeats the violation, the next civil penalty will initially be assigned to the higher matrix applied in the earlier case. One member asked why the Director can't similarly move a violator down to a lower matrix if it is found the assigned matrix is higher than necessary to achieve deterrence. The Department will consider this as an option.

Roger Dilts asked if EPA would approve of a penalty matrix that is based on the size of permitted flow. Dan Opalski stated that in order to keep delegation of programs from EPA, DEQ needs to have the ability to assess a minimum penalty of \$10,000 per day per violation. It is possible DEQ could achieve that amount by assessing economic benefit; it doesn't all have to come from the base penalty. Thus, as long as that \$10,000 per day penalty is possible, EPA is less likely to be concerned with the matrix divisions themselves.

We have raised the base penalties for the \$10,000 matrix, added a \$7,500 matrix and eliminated the \$500 matrix. Don Haagensen stresses that the Department needs to articulate its policy reasons for changing the matrix structure and for raising the penalties under the current matrices: For example: Do we have evidence that egregious violators have not been getting big enough penalties? Why do we think the existing matrices haven't been working? Did we make these changes in response to concerns raised by EPA?

Anne explained that one of our goals was to make the penalties in each matrix proportionate to each other. The current matrices contain different ratios between the violation type and the base penalty amount. We propose to identify with greater specificity who is assigned to each matrix in order to achieve equity and specific deterrence. We agreed to take a number of cases where we have issued penalties and apply the proposed penalty structure and see how those penalties would turn out under the proposed rules as compared to the current rules. We will have these comparison cases ready for the fourth Advisory Group meeting.

### **Proposed Classifications**

Some members asked if the Department has done a cross-program review for consistency in classifications (i.e., like violations similarly classified). We have done so, but not since there have been further revisions. We will do another comparison prior to the release of the document for public comment.

Don Haagensen pointed out that we propose to eliminate Class III violations in the hazardous waste program. He feels we should make an effort to identify some violations that would qualify as Class III, since it seems that Class I includes the major violations and Class II is the default for all others.

## Other Comments

These other comments or questions were raised at the meeting. The responses below are an effort to capture the discussion that took place after the comment or question was raised.

- Need to escalate civil penalties if repeat violators to create greater deterrence.
- Comment: All the mental state factors spread throughout the rule are confusing; can we narrow the number of terms used? Response: Unfortunately, this version reflects our best attempt at limiting the terms, because many of the different terms are used in program-specific statutes and can't be changed without a statutory change.
- Comment: Seem odd that we try to be so objective throughout the process, but then at the end there is the discretionary ability to pay process. Response: The consistency effort is to do our best to make sure that similar violations, with similar facts are treated similarly in the penalty assessment. The agency has made the decision not to incorporate a party's ability to pay into the determination of the initial penalty. The ability to pay process itself uses detailed information (e.g., tax returns, etc.) provided by the respondent to determine whether the respondent can pay the initial penalty, whether they can only pay a reduced amount or whether they can pay the full or reduced penalty amount over time. The process is fairly specific, using economic models provided by EPA.
- Comment: This whole penalty calculation process seems like DEQ is both the judge and the jury; it seems un-American. Response: This is a standard administrative process. We are all more familiar with the criminal system that we see on television. In the administrative process, the agency does put forth the initial notice with the civil penalty calculation included using facts gathered from the inspection and from other interactions with the party. However, after the notice the respondent's due process rights begin. They have the ability to appeal the notice, to meet informally with the Department to achieve settlement, to proceed to a hearing before a third party administrative law judge (not a DEQ employee) for consideration of their case (at which time the Department has the burden of proof to prove each and every element of the violation), and can still appeal to the Environmental Quality Commission and the Court of Appeals after that if they still disagree with the outcome.
- Comment: I'm concerned that one person (i.e., the Environmental Law Specialist (ELS)) seems to make all the decisions and that person may be inconsistent or biased. Response: The ELS is the lead staff person on a given case. However, the documents the ELS drafts are developed in close conjunction with the original inspector for the case and must be supported by the evidence which the Department believes it has to prove its case. In addition, every notice goes through a thorough review by the inspector, the regional manager, the regional administrator, the Senior Policy Analyst in the Office of Compliance and Enforcement (OCE), the OCE Administrator and the Director – all of whom are reviewing the documents, not only for accuracy, but for consistency with prior actions.

- Comment: Why are there more classifications in this version? Response: The Programs were asked to review their existing program implementation rules (e.g., hazardous waste management requirements) and make sure that the requirements in the rules are clearly covered by applicable violation language in Division 12. The result of this review may have expanded the number of violations in some of the following ways: by breaking a prior violation into two parts to make each violation clearer; by adding specific violation language for those instances that have historically been captured under the default violation classification and for which it makes sense to separate them out for transparency; and new regulatory programs (or components of programs) have been added since the last version of Division 12 (e.g., ballast water) and the violations related to those programs need to be articulated in Division 12.
- Comment: Under the definition of “prior significant action” we shouldn’t say that the violation will become final as an operation of law once paid. Response: The Department will review that section to make sure the language matches our intent.

### **Handouts Distributed at Meeting**

- 1) Annotated version of proposed matrices in Division 12
- 2) A sample formal enforcement action (consisting of cover letter; notice of violation and assessment of civil penalty; and penalty calculation determinations)

### **Action Items**

- The Department will consider limiting consideration of potential environmental harm in determining magnitudes; identifying when we do and in those cases use the selected magnitude as a rebuttable presumption.
- The Department will prepare a chart showing the shifts that have occurred for parties due to the matrix changes. We will run some existing cases through the proposed penalty structure to show how outcomes may differ.
- The Department will explore giving the Director the discretion to lower a violation down a matrix level rather than just being able to move a violation up a level to achieve deterrence.
- The Department will do another cross-program review for consistency in classifications prior to the release of the document for public comment.

### **Next Advisory Group Meeting**

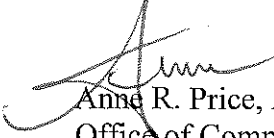
The next meeting is Wednesday, April 2, 2003, 1:00 p.m. to 4:00 p.m., Room 3A. We will focus on the Guidance Manual, which tells staff when a violation should be referred for formal enforcement and sets forth Letter of Deficiency language. We also will discuss the Notice of Noncompliance (proposed to be renamed Letter of Deficiency) process.

State of Oregon  
Department of Environmental Quality

Memorandum

**To:** Environmental Quality Commission

**Date:** May 2, 2003

**From:**   
Anne R. Price, Administrator  
Office of Compliance and Enforcement

**Subject:** Agenda Item D: May 8<sup>th</sup> Division 12 Discussion Item

During our discussion on the 8<sup>th</sup>, in addition to anything you would like to address, I would like to discuss the following items:

- A summary of Advisory Group issues and concerns to date
- Violation classifications and the relationship to guidance and magnitudes
- A draft revised NON process (See attachment A)
- Revised rulemaking schedule

I look forward to seeing you all again! As always, feel free to call me at (503) 229-6585, if you have any questions or comments before our meeting on the 8th.





**Attachment A**

**Draft Revised Notice of Noncompliance Process – 4/28/03**

	<b>Warning Letter</b>	<b>Warning Letter with Opportunity to Correct</b>	<b>Pre-Enforcement Notice</b>
<b>Use when?</b>	<ul style="list-style-type: none"> <li>• Violations found, but not going to refer.</li> </ul>	<ul style="list-style-type: none"> <li>• Violations found, but not going to refer unless remain uncorrected.</li> <li>• If uncorrected, then send pre-enforcement notice.</li> </ul>	<ul style="list-style-type: none"> <li>• Violations found result in immediate referral for formal enforcement <b>OR</b></li> <li>• Repeated warning letters sent</li> </ul>
<b>Content</b>	<ul style="list-style-type: none"> <li>• Explain violation in a TA context</li> <li>• Explain why compliance is important and what the goal of compliance is</li> <li>• Explain what party needs to do to be in compliance</li> <li>• Identify who they need to call with questions</li> <li>• Explain consequences of further non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Explain violation</li> <li>• Explain why compliance is important and what the goal of compliance is</li> <li>• Provide clear direction as to what needs to be corrected and by when, and what documentation is needed</li> <li>• Identify who they need to call with questions</li> <li>• Explain what happens if they don't correct</li> </ul>	<ul style="list-style-type: none"> <li>• Explain violation</li> <li>• Explain why compliance is important and what the goal of compliance is</li> <li>• Explain what is needed in order to be in compliance</li> <li>• Ask for any information needed to complete referral or to verify violations</li> <li>• Give clear deadlines</li> <li>• Explain that formal enforcement is forthcoming</li> <li>• Identify who they need to call with questions</li> </ul>

- All letters would be numbered and tracked.
- We will explore ways to allow self reporting without needing to send a warning letter.
- In the future, we will evaluate expanding to include field NONs and tickets, based on an assessment of the Underground Storage Tanks Program pilot.

*Handwritten in back  
pocket.*

State of Oregon  
Department of Environmental Quality

Memorandum

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**To:** Environmental Quality Commission **Date:** April 18, 2003  
**From:** Mikell O'Mealy  
**Subject:** Item E: Informational Item: Presentation of the Oregon Plan Biennial Report

Jay Nicholas, Science and Policy Advisor for the Oregon Watershed Enhancement Board (OWEB), looks forward to talking with you in May about Oregon's progress in enhancing our streams and rivers, and in restoring endangered fish species. Attached is the 2001-2003 Oregon Plan Biennial Report for your review, along with a cover letter from Geoff Huntington, OWEB Executive Director, introducing the report.

Recall that in September 2001, the EQC met jointly with the Oregon Watershed Enhancement Board in Ashland to focus on the many connections and local partnerships between DEQ, OWEB and local watershed restoration groups. Geoff and Jay asked to meet with you again, at this upcoming May meeting, to update you on the Oregon Plan's successes and challenges, and to seek your suggestions for advancing these efforts further. If you have questions or ideas you would like to discuss before the meeting, please contact Jay at (503)-986-0204.





# Oregon

Theodore R. Kulongoski, Governor

Oregon Watershed Enhancement Board

775 Summer Street NE, Suite 360

Salem, Oregon 97301-1290

(503) 986-0178

FAX (503) 986-0199



January 24, 2003

Enclosed is the 2001-2003 Oregon Plan Biennial Report produced by the Oregon Watershed Enhancement Board (OWEB). This first report meets the Oregon Legislature's direction for OWEB to provide an assessment of Oregon Plan implementation beyond just that which OWEB is involved. It is a huge step forward in terms of providing a quantitative accounting of place-based investments in watershed restoration, water quality improvement, and recovery of listed fish species. This and future reports will provide a basis for evaluating the effectiveness of Oregon's investments in supporting healthy watersheds, thriving communities, and strong economies. The report also contains observations and recommendations of the OWEB Board for enhancing implementation in the future.

I invite you to review this document and to call Jay Nicholas (503-986-0204) or me if you would like to discuss any aspect of the report or the recommendations. Jay and I will also be scheduling presentations to a number of organizations on the information set out in the report and welcome your suggestions for that as well.

For many years, vitality and innovation have spirited Oregon's support for voluntary individual efforts to enhance the state's watersheds. This report has been developed with the intent of honoring these efforts and providing a level of detail and accountability that has often times been difficult to communicate to Oregon Plan partners and the public. Please engage us so that both the Oregon Watershed Enhancement Board and its staff can more effectively promote, build on, and report your work. Finally, thank you for your work and involvement in the Oregon Plan for Salmon and Watersheds.

Sincerely,

Geoffrey M. Huntington  
Executive Director

Minutes are not final until approved by the Commission.

## Oregon Environmental Quality Commission Minutes of the Three Hundredth and Ninth Meeting

January 30-31, 2003  
Regular Meeting<sup>1</sup>

The following Oregon Environmental Quality Commission (EQC, Commission) members were present for the regular meeting, held at the Oregon Department of Environmental Quality (DEQ, Department) headquarters building, Room 3A, 811 S.W. Sixth Avenue, in Portland, Oregon.

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

### Thursday, January 30, 2003

Chair Reeve called the regular meeting to order at approximately 2:00 p.m. He introduced members of the Commission and informed the audience that the fifth EQC seat was vacant. Helen Lottridge, DEQ Management Services Division Administrator, served as acting Director for Stephanie Hallock. Agenda items were taken in the following order.

#### **A. Contested Case No. WPM/T-NWR-00-164 regarding Jackson & Son Distributors, Inc., dba Jackson & Son Oil, Inc.**

The Commission considered a contested case between DEQ and Jackson & Son Distributors, Inc., doing business as Jackson & Son Oil, Inc. In May 2002, the Department appealed a hearing officer's proposed order which found that an underground storage tank (UST) owned by Jackson & Son did not meet the definition of a UST and thus was not subject to the Department's rules and regulations regarding USTs. Larry Knudsen, Assistant Attorney General, summarized the findings of fact made by the hearing officer and asked Commissioners to declare any ex parte contacts or conflicts of interest regarding the case. All Commissioners declared that they had no ex parte contacts or conflicts of interest. Susan Greco, DEQ Environmental Law Specialist, presented arguments on behalf of the Department, and Larry Jackson presented arguments on behalf of Jackson & Son Distributors, Inc.

Commissioners discussed key issues in the case with the representatives of both parties and with Mr. Knudsen. After deliberation, Commissioner Van Vliet moved that the EQC uphold the proposed order. Commissioner Malarkey seconded the motion. Commissioner Bennett voted "yes," and Chair Reeve voted "no." The motion passed with three "yes" votes. Chair Reeve asked Mr. Knudsen to prepare an order for the Director's signature on the Commission's behalf.

#### **B. Rule Adoption: Amendments to Lane County Regional Air Pollution Authority Rules**

Andy Ginsburg, DEQ Air Quality Division Administrator, presented amendments to Lane County Regional Air Pollution Authority (LRAPA) rules for Commission approval. LRAPA has statutory authority to adopt and implement air quality rules for Lane County, but must submit new rules to the Commission for approval prior to enforcement. Brian Jennison, LRAPA Director, discussed the changes with Commissioners. Commissioner Van Vliet moved that the EQC approve the LRAPA rules as amendments to Oregon's State

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<sup>1</sup> Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204; phone: (503) 229-5990.

Implementation Plan under the Clean Air Act. Commissioner Bennett seconded the motion and it passed with four "yes" votes.

**C. Informational Item: Update on Status of the Umatilla Chemical Agent Disposal Facility**

Helen Lottridge, DEQ Management Services Division Administrator serving as acting Director for Stephanie Hallock, introduced Dennis Murphey, DEQ's new Chemical Demilitarization Program Administrator, who was hired in December 2002. Mr. Murphey updated the Commission on recent events at the Umatilla Chemical Agent Disposal Facility (UMCDF), and introduced Sue Oliver and Thomas Beam, DEQ Hazardous Waste policy and permit specialists, who described the status of trial burns, the progress of a UMCDF permit modification, and the schedule for facility operation.

**H. Rule Adoption: Underground Storage Tank Compliance Rule Revisions**

Dick Pedersen, DEQ Land Quality Division Administrator, and Alan Kiphut, DEQ Environmental Cleanup and Tanks Manager, proposed new rules to improve compliance with underground storage tank (UST) regulations. Laurie McCulloch, DEQ Land Quality policy coordinator, assisted the presentation. Mr. Pedersen explained that nearly seventy percent of facilities inspected by the DEQ do not meet UST release detection requirements. To increase compliance and protect human health and the environment, the 2001 Legislature amended Oregon's laws governing USTs, which have been in place since 1988. The 2001 amendments required that the Commission adopt rules to implement a mandatory training program for all UST system operators and a pilot program to expedite enforcement of UST compliance violations. Commissioners discussed the proposed rules, which would carry out the legislative directive. Commissioner Malarkey moved that the Commission adopt the proposed rules, as amended to correct numbering in OAR 340-150-0440. Commissioner Van Vliet seconded the motion and it passed with four "yes" votes.

**I. Rule Adoption: National Air Quality Emission Standards for Hazardous Pollutants and New Source Performance Standards**

Andy Ginsburg, DEQ Air Quality Division Administrator, introduced proposed rules to amend Oregon's New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) to maintain consistency with federal standards. Mr. Ginsburg explained that over the past two years, the Environmental Protection Agency (EPA) had updated these standards, which apply to facilities that are considered major sources of air pollution in the United States. Rachel Sakata, DEQ Air Quality Rules Coordinator, and Gerry Ebersol, DEQ Air Quality specialist, explained that the rules also clarify compliance deadlines and incorporate EPA changes to Maximum Achievable Control Technology standards. After Commission discussion, Commissioner Malarkey moved that the Commission adopt the proposed rules. Commissioner Van Vliet seconded the motion and it passed with four "yes" votes.

Commissioner Reeve adjourned the meeting for the day at approximately 4:55 p.m.

**Friday, January 31, 2003**

At 8:00 a.m., the Commission held an executive session to consult with counsel concerning legal rights and duties with regard to litigation against the Department. The executive session was held pursuant to ORS 192.660(1)(h).

Chair Reeve called the regular meeting to order at approximately 9:00 a.m. Agenda items were taken in the following order.

**D. Approval of Minutes**

Commissioner Van Vliet moved that the Commission approve draft minutes of the December 12-13, 2002, EQC meeting with two corrections on page 3: substituting "trail" for "trial" in item F, and substituting "toxics" for "toxic" in item L. Commissioner Bennett seconded the motion and it passed with four "yes" votes. Commissioner Van Vliet moved that the Commission approve draft minutes of the December 30, 2002, EQC meeting. Commissioner Bennett seconded the motion and it passed with four "yes" votes.

**F. Director's Dialogue**

DEQ Director Stephanie Hallock discussed current events and recent issues involving the Department with Commissioners, and asked a number of DEQ staff and managers to provide more information on specific topics.

**G. Action Item: Determination on Findings Associated with the Wastewater Discharge Permit for the Port Westward Energy Facilities Project**

Neil Mullane, DEQ Northwest Region Administrator, and Bob Baumgartner, Northwest Region Water Quality Permit Manager, presented the Department's work and recommendations on a proposed new major wastewater discharge permit for the Port Westward Energy Facilities Project. Mr. Baumgartner explained the proposal to construct of two natural gas fired power plants and one ethanol production plant on land owned by the Port of St. Helens adjacent to the Columbia River near Clatskanie. In early 2002, the Port applied to DEQ for a permit to collect and discharge treated wastewater from the new facilities to the Columbia River. At this meeting, Commissioners discussed the impact that this project would have on Columbia River water quality and on the local economy.

Chair Reeve invited members of the public to provide testimony on the proposal. Those who spoke included: Peter Williams, with the Port of St. Helens; Tony Hyde, Columbia County Commissioner; Jeff Carlson, with the local Association of Iron Workers; Greg Nordine, with the local Association of Electrical Workers; Pat Hodges, a local Union Pipefitter; and Joe Esmonde, a citizen.

After significant Commission discussion of the project and discharge permit, Commissioner Van Vliet moved that the Commission accept the findings required by the water quality anti-degradation rules as recommended by the Department. Commissioner Malarkey seconded the motion and it passed with four "yes" votes. Chair Reeve asked staff to prepare an order for his signature.

**Public Forum**

At approximately 11:30 a.m., Chair Reeve asked whether anyone in the audience wished to make general comments to the Commission. No one testified during the public forum.

**E. Report on Commission Appraisal of Director's Performance**

Commissioner Van Vliet presented a report of the Commission's first appraisal of Director Stephanie Hallock's performance since hiring her as Director in November 2000. In summary, the Commission gave Director Hallock high marks for her professional service, and expressed their appreciation for her dedication and hard work. The Commission began the performance appraisal process in the fall of 2002, based on standards and criteria adopted in January 2002.

The Commission took a short lunch break and was joined by David Van't Hof, the Governor's Natural Resources Policy Advisor. When the meeting resumed, Director Hallock asked Helen Lottridge, DEQ Management Services Division Administrator, to serve as acting Director so that she could continue the meeting with Mr. Van't Hof.

**J. Informational Item: Presentation of Forest Practices Act Sufficiency Analysis**

Mike Llewelyn, DEQ Water Quality Division Administrator, was joined by Lanny Quackenbush and Jim Paul from the Oregon Department of Forestry in presenting results of the Forest Practices Act (FPA) Sufficiency Analysis, a three-year initiative to evaluate the effectiveness of the FPA in achieving water quality standards on state and private forest lands. The study evaluated the effects of forest management practices, as prescribed by the FPA, on stream temperature, sediment levels, turbidity, aquatic habitats and aquatic organisms, with a particular focus on the impacts of tree harvesting, road-building and road maintenance activities. The Commission discussed the findings, including recommendations to strengthen the FPA, which the Department of Forestry intends to pursue as rule revisions in 2003.

**K. Commissioners' Reports**

Chair Reeve reported the current activities of the Oregon Watershed Enhancement Board and the progress of the Oregon Plan for Salmon and Watersheds.

Chair Reeve adjourned the meeting at approximately 1:45 p.m.

Minutes are not final until approved by the Commission.

## Oregon Environmental Quality Commission Minutes of the Three Hundredth and Tenth Meeting

March 11, 2003  
Special Phone Meeting<sup>1</sup>  
9:00 a.m.

The following Environmental Quality Commission (EQC, Commission) members were present for a special phone meeting, held at the Department of Environmental Quality (DEQ, Department) headquarters building, Room 10A, 811 S.W. Sixth Avenue, in Portland, Oregon.

Mark Reeve, Chair<sup>2</sup>  
Tony Van Vliet, Vice Chair  
Harvey Bennett, Member  
Deirdre Malarkey, Member

Paul Slyman, DEQ Deputy Director, served as acting Director for Stephanie Hallock. Larry Knudsen (Assistant Attorney General), DEQ staff, representatives of federal agencies, and members of the public were also present.

Vice Chair Van Vliet called the meeting to order at approximately 9:00 a.m. Agenda items were taken in the following order.

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

Russell Harding, DEQ Columbia River Coordinator, summarized a request from the U.S. Army Corps of Engineers (Corps) for a variance to Oregon's total dissolved gas (TDG) water quality standard to enable water to be spilled at Lower Columbia River dams to assist salmon smolts migrating to the ocean. Dr. Harding noted that the Commission had granted similar waivers to the Corps in previous years, but in making this request, the Corps sought a multi-year variance to the standard. Dave Ponganis, from the Corps, explained the request and answered questions from the Commission.

Dr. Harding stated that in October 2002, the Commission had given the Department guidance that it would be open to considering a multi-year variance, because biological and physical monitoring reports on the results of past spills have not shown significant adverse impacts on fish survival or water quality. At that time, the Commission had suggested a three year waiver. At this meeting, Commissioners discussed development of a five year variance to coordinate evaluation of the spill program with deadlines set in the 2002 National Marine Fisheries Service Biological Opinion for the Columbia River, which requires overall evaluation in 2003, 2005 and 2008.

After discussing various options, Chair Reeve moved that the Commission adopt the findings required for the variance to enable water to be spilled at Lower Columbia River dams to assist salmon smolts migrating to the ocean, and adopt the draft order as presented in Attachment E of the staff report for Item A, with an amendment to enable a five year variance, provided that annual reports to the Department and

<sup>1</sup> Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204; phone: (503) 229-5990.

<sup>2</sup> Chair Reeve joined the meeting at approximately 9:15 a.m.

informational briefings to the Commission are given. Commissioner Malarkey seconded the motion, and Mikell O'Mealy, Assistant to the Commission, called the roll. The motion passed with four "yes" votes.

Chair Reeve asked Dr. Harding to present the next item.

**B. Action Item: Request from U.S. Fish and Wildlife Service for a Waiver to the Total Dissolved Gas Water Quality Standard on the Columbia River**

Dr. Harding explained that on March 10, 2003, the U.S. Fish and Wildlife Service (USFWS) sent a letter to the Department and Commission officially withdrawing their request for a variance to Oregon's total dissolved gas (TDG) water quality standard to enable water to be spilled at Bonneville Dam to assist fish released from Spring Creek National Fish Hatchery. Dr. Harding explained that the USFWS did intend to conduct some spill to assist the hatchery release, but the spill was not projected to exceed the 110 percent TDG standard.

Howard Schaller, project manager for the USFWS, explained that because of low water conditions in the Columbia Basin and the difficult financial situation facing the Bonneville Power Administration, the decision was made to reduce the amount of water spilled to assist the hatchery. Mr. Schaller answered questions from the Commission.

Hearing no further comments, Chair Reeve concluded this item.

Deputy Director Paul Slyman updated the Commission on the Director Stephanie Hallock's activities, which included meetings in the state capitol with legislators and stakeholders, as well as work on DEQ's 2003-2005 budget request to the Legislative Ways & Means Natural Resources Subcommittee.

**C. Commissioners' Reports**

Commissioner Malarkey reported on her recent attendance at a Lane Regional Air Pollution Authority presentation on field burning, and suggested that a similar presentation be made to the EQC sometime in the future. Commissioner Malarkey also reported on her recent attendance at an Association for Clean Water Agencies meeting, at which Kevin Masterson, DEQ water quality staff, gave an excellent presentation. She also reported that she would soon be speaking at a DEQ-sponsored conference on Environmental Partnerships for Oregon Communities.

Commissioner Bennett reported that in the process of balancing its budget for the next few years, the Umpqua Community College has had to cut a significant portion of its budget, and long term thinking for how to support education and other services was needed in light of the current economy.

Chair Reeve adjourned the meeting at approximately 9:50 a.m.



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 G, Action Item: Tax Credit Consideration  
May 9, 2003 EQC Meeting

**Proposed Action** The Department of Environmental Quality (Department) proposes that the Environmental Quality Commission (EQC, Commission) make a decision on DEQ's analysis and recommendations for certification of Pollution Control Facilities Tax Credits presented in the Staff Report.

**Key Issues** There are no key issues presented in this Agenda Item. Each individual Review Report provides the analysis supporting the recommendation to approve the facilities' certification as a pollution control facility. Please note that the Department has revised the Review Report pursuant to Commission feedback to describe the criteria being evaluated and then explain how the claimed facility meets or does not meet that criteria.

**EQC Action Alternatives** Any application may be postponed to a future meeting if the Commission:

- Requires the Department or the applicant to provide additional information; or
- Makes a determination different from the Department's recommendation and that determination may have an adverse effect on the applicant.

**Department Recommendation** The Department recommends the Commission **approve** the **53** applications as summarized in Attachment A and detailed in Attachment B. The Department recommends the Commission reissue a corrected certificate to Boyd Coffee Company as presented in Attachment C.

**Attachments**

- A. Summary Recommendations
- B. Detailed Review Reports
- C. Certificate Correction & Reissue
- D. Certified Wood Chipper Report

**Available Upon Request** ORS 468.150 to 468.190 & OAR 340-016-0005 to 340-016-0080

Approved:

Section:

Division:

*Maggie Vandehey*

Report Prepared By: Maggie Vandehey  
Phone: 503-229-6878

# Attachment A

## Summary Recommendations

App #	Applicant	Claimed	Certified	Difference	% Allocable	Maximum Tax Credit	GF Liability	Media	Notes
5767	East County Recycling	568,188	277,407	(290,781)	62%	50%	85,996	SW	
5781	Willamette Industries, Inc.	4,288,994	2,883,819	(1,405,175)	100%	50%	1,441,910	SW	
5797	Willamette Industries, Inc.	936,279	692,669	(243,610)	100%	50%	346,335	Air	
5854	Willamette Industries, Inc.	5,171,981	3,600,846	(1,571,135)	100%	50%	1,800,423	Air	
5856	Willamette Industries, Inc.	818,977	369,984	(448,993)	100%	50%	184,992	Water	
5886	Roseburg Forest Products, Co	628,804	628,804	0	100%	50%	314,402	Air	
<b>5967</b>	<b>Esco Corporation</b>	<b>1,398,573</b>	<b>1,148,202</b>	<b>(250,371)</b>	<b>100%</b>	<b>50%</b>	574,101	<b>Air</b>	
6026	Willamette Industries, Inc.	184,575	160,575	(24,000)	100%	50%	80,288	SW	
6035	Georgia Pacific Corp.	1,355,717	1,331,756	(23,961)	100%	50%	665,878	Air	
6113	Marion Resource Recovery	3,042,922	932,202	(2,110,720)	24%	50%	113,822	SW	
6134	Global Leasing, Inc.	184,889	184,889	0	60%	50%	55,467	SW	
6149	Wood Waste Management, LLC	126,592	110,135	(16,457)	22%	50%	12,115	SW	
6177	Truax Corporation	21,255	20,993	(262)	100%	50%	10,497	UST	
6188	Synthetech, Inc.	432,263	412,609	(19,654)	100%	50%	206,305	Air	
6199	Georgia Pacific Corp.	1,511,670	1,287,700	(223,970)	100%	50%	643,850	Air	
6200	Georgia Pacific Corp.	2,519,166	2,149,107	(370,059)	100%	50%	1,074,554	Air	
6229	Portland General Electric	1,294,402	1,294,402	0	100%	50%	647,201	Air	
6241	TDY Industries, Inc.	144,274	142,301	(1,973)	100%	35%	49,805	Air	
6242	TDY Industries, Inc.	48,754	47,954	(800)	100%	50%	23,977	Air	
6243	TDY Industries, Inc.	47,016	47,016	0	100%	50%	23,508	Air	
6246	TDY Industries, Inc.	97,726	97,502	(224)	100%	50%	48,751	Air	
6247	TDY Industries, Inc.	67,511	67,511	0	100%	50%	33,756	Water	
6248	TDY Industries, Inc.	34,218	34,218	0	100%	50%	17,109	Water	
6249	TDY Industries, Inc.	325,016	302,801	(22,215)	100%	50%	151,401	Water	
6250	TDY Industries, Inc.	125,455	119,004	(6,451)	100%	50%	59,502	Water	
6258	Michael M. Murray	10,905	10,905	0	100%	50%	5,453	Water	
6290	Medallion Cabinetry, Inc.	212,918	182,127	(30,791)	100%	50%	91,064	Air	
6292	Medallion Cabinetry, Inc.	156,579	61,526	(95,053)	100%	50%	30,763	Water	
6333	Freres Lumber Co, Inc.	245,214	155,995	(89,219)	100%	35%	54,598	Air	
6342	Garbarino Disposal &	3,576	3,576	0	100%	35%	1,252	SW	
6369	Premier West Bank	42,703	42,703	0	100%	35%	14,946	SW	

# Attachment A

## Summary Recommendations

App #	Applicant	Claimed	Certified	Difference	% Allocable	Maximum Tax Credit	GF Liability	Media	Notes
6372	Centennial Bank	88,860	88,860	0	100%	35%	31,101	SW	
6373	Centennial Bank	967,005	886,117	(80,888)	100%	35%	310,141	SW	
6374	Joel Price	8,406	8,406	0	100%	50%	4,203	Water	
6375	Dean R Schrock	107,683	107,683	0	100%	35%	37,689	SW	
6385	Premier West Bank	30,575	30,575	0	100%	35%	10,701	SW	
6386	Premier West Bank	45,516	39,716	(5,800)	100%	35%	13,901	SW	
6387	Tigard Auto Works Inc.	4,730	4,730	0	100%	50%	2,365	SW	
6397	Collins Wood Lath, Inc.	75,597	57,774	(17,823)	100%	35%	20,221	Air	
6410	Miller Associated Enterprises,	178,637	178,637	0	33%	50%	29,475	SW	
<b>6423</b>	<b>Weyerhaeuser Company</b>	<b>463,702</b>	<b>445,188</b>	<b>(18,514)</b>	<b>100%</b>	<b>50%</b>	<b>222,594</b>	<b>Air</b>	
6425	PED Manufacturing, LTD	14,061	14,061	0	100%	35%	4,921	Air	
6426	PED Manufacturing, LTD	12,421	12,421	0	100%	35%	4,347	Air	
6434	Centennial Bank	191,398	191,398	0	100%	35%	66,989	SW	
6437	Harmon & Son Dairy, LLC	43,543	42,558	(985)	100%	50%	21,279	Water	
6439	Cascade Energy LLC	128,768	107,205	(21,563)	100%	35%	37,522	UST	
6443	Smith Seed Service LLC	80,801	75,331	(5,470)	100%	35%	26,366	Air	
6447	CH Perrot Inc, & Subsidiaries	83,083	29,513	(53,570)	100%	50%	14,757	Water	
6450	Novellus Systems, Inc.	874,476	306,732	(567,744)	100%	35%	107,356	Air	
6451	Novellus Systems, Inc.	380,532	274,746	(105,786)	100%	35%	96,161	Air	
6452	Novellus Systems, Inc.	1,489,752	1,489,752	0	100%	35%	521,413	Water	
6454	Weyerhaeuser Company	991,979	981,663	(10,316)	100%	50%	490,832	Air	
6474	Pacific Sanitation Inc.	37,847	37,847	0	100%	35%	13,246	SW	
<b>53</b>	<b>Sum</b>	<b>32,346,484</b>	<b>24,212,151</b>	<b>(8,134,333)</b>			<b>10,951,596</b>		
<b>Apps</b>	<b>Average</b>	<b>610,311</b>	<b>456,833</b>	<b>(153,478)</b>			<b>206,634</b>		
	<b>Minimum</b>	<b>3,576</b>	<b>3,576</b>	<b>(2,110,720)</b>			<b>1,252</b>		
	<b>Maximum</b>	<b>5,171,981</b>	<b>3,600,846</b>	<b>-</b>			<b>1,800,423</b>		
	<b>Median</b>	<b>156,579</b>	<b>142,301</b>	<b>(5,800)</b>			<b>49,805</b>		

# **Attachment B**

## **Detailed Review Reports**

### **Approvals**

The Department recommends the Environmental Quality Commission certify the facilities represented in the attached Review Reports. The Department bases its recommendations on the evidence in the individual application records and the Pollution Control Facilities Tax Credit regulations. The Department recommends that the Commission approve **53** pollution control and material recovery facilities. The Commission's certification of these facilities could reduce taxes paid to the State of Oregon by a maximum of **\$10,951,596**.

The Department organized the Review Reports presented in the attachment by ascending application number under the following categories.

1. Air
2. Material Recovery
3. Underground and Aboveground Storage Tanks
4. Water

## **APPROVALS: Air Pollution Control Facilities**

The Department recommends that the Environmental Quality Commission approve **23** air pollution control facilities installed to dispose of or eliminate air pollution with the use of air cleaning devices. The Commission's certification of these facilities could reduce taxes paid to the State of Oregon by a maximum of **\$7,537,549**.

**Sixteen** applicants constructed facilities in response to a requirement imposed by the Department, the Environmental Protection Agency, or a regional air pollution authority. These **principal purpose** facilities' primary and most important purposes are to comply with requirements to prevent, reduce, control, or eliminate air contamination with the use of air cleaning devices as defined in ORS 468A.005 prior to discharge to the atmosphere. Each of these facilities has only one primary and most important purpose but they may have other ancillary purposes.

**Seven** applicants voluntarily installed facilities to prevent, reduce, control, or eliminate air contamination with the use of air cleaning devices as defined in ORS 468A.005 prior to discharge to the atmosphere. The **sole purpose** of these facilities is to control a substantial quantity of air pollution.

A portion of the facilities represented on **applications numbered 5967 and 6423** replaced previously certified facilities. These portions are eligible for the difference between the cost of the new facility and the **like-for-like replacement** cost of the original facility according to ORS 468.155(3)(e).

### Summary of Air Pollution Control Facilities

App #	Applicant	Facility Cost	% Allocable	Maximum Tax Credit	EQC Action
5797	Willamette Industries, Inc.	692,669	100%	50%	
5854	Willamette Industries, Inc.	3,600,846	100%	50%	
5886	Roseburg Forest Products, Co	628,804	100%	50%	
5967	Esco Corporation	1,148,202	100%	50%	
6035	Georgia Pacific Corp.	1,331,756	100%	50%	
6188	Synthetech, Inc.	412,609	100%	50%	
6199	Georgia Pacific Corp.	1,287,700	100%	50%	
6200	Georgia Pacific Corp.	2,149,107	100%	50%	
6229	Portland General Electric Co.	1,294,402	100%	50%	
6241	TDY Industries, Inc.	142,301	100%	35%	
6242	TDY Industries, Inc.	47,954	100%	50%	
6243	TDY Industries, Inc.	47,016	100%	50%	
6246	TDY Industries, Inc.	97,502	100%	50%	
6290	Medallion Cabinetry, Inc.	182,127	100%	50%	
6333	Freres Lumber Co, Inc.	155,995	100%	35%	
6397	Collins Wood Lath, Inc.	57,774	100%	35%	
6423	Weyerhaeuser Company	445,188	100%	50%	
6425	PED Manufacturing, LTD	14,061	100%	35%	
6426	PED Manufacturing, LTD	12,421	100%	35%	
6443	Smith Seed Service LLC	75,331	100%	35%	
6450	Novellus Systems, Inc.	306,732	100%	35%	
6451	Novellus Systems, Inc.	274,746	100%	35%	
6454	Weyerhaeuser Company	981,663	100%	50%	
<b>23</b>	<b>Sum</b>	<b>\$15,386,906</b>			
<b>Apps</b>	<b>Average</b>	<b>668,996</b>			
	<b>Minimum</b>	<b>12,421</b>			
	<b>Maximum</b>	<b>3,600,846</b>			



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Willamette Industries, Inc.</b>
Application No.	<b>5797</b>
Facility Cost	<b>\$692,669</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>7 years</b>

## Tax Credit Review Report

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### Pollution Control Facility: AIR/CLUSTER RULES

#### Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### *Applicant Identification*

Organized As: **C Corp**

Business: **Mill produces linerboard,  
corrugating medium, and bag  
paper.**

Taxpayer ID: **93-0312940**

The applicant's address is:

**Weyerhaeuser Company  
Tax Department CH 1C28  
PO Box 9777  
Federal Way, WA 98063**

#### *Facility Identification*

The certificate will identify the facility as:

**Blow Heat Accumulator, Heat  
Exchanger and Hot Water Collection  
and Distribution Systems.**

The applicant is the **owner and operator** of  
the facility located at:

**Albany Paper Mill  
3251 Old Salem Road NE  
Albany, OR 97321**

#### *Technical Information*

The claimed facility is a Heat Exchanger System and a Hot Water Collection and Distribution System on the existing Blow Heat Accumulator (BHA).

The cyclones that are installed on the exhausts of the Digester Blow Tanks discharge Hazardous Air Pollutants (HAPs) vapors to the BHA Primary Condenser. The BHA quenches and condenses the HAPs vapors into a stream of cooled condensate that is then re-circulated through the BHA Primary Heat Exchanger and then to the BHA Primary Condenser. The concentrated HAPs condensate is then pumped to the Condensate Stripper and the HAPs are removed and incinerated in the Concentrated Non-Condensable Gas (CNCG) burner of the Recovery Boiler. The stripped condensate from the stripper is pumped to the Process Contaminated Condensate Tank for recycling.

Cooling water from the mill pond is pumped to the BHA Primary Heat Exchanger to cool the concentrated condensate pumped from the BHA that is circulated to the BHA Primary Condenser. The hot cooling water leaving the BHA Primary Heat Exchanger at 150° F is distributed for use in the mill. Previously, process water was added directly into the Primary Condenser of the BHA to provide the cooling required for condensing the flashed HAPs vapors exhausted from the Digester Blow Tanks. The concentration of the recovered HAPs in the condensate of the BHA was too dilute for treatment in the stripper system.

### ***Eligibility***

#### ***Timely Filing*** Criteria

ORS 468.165 (6) and  
OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>12/1/2000</b>
<i>Construction Completed</i>	<b>6/30/2001</b>
<i>Facility Placed into Operation</i>	<b>6/30/2001</b>
<i>Application Filed</i>	<b>11/2/2001</b>

#### ***Purpose: Required*** Criteria

ORS 468.155  
(1)(a)(A)  
OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

#### Applied to this Application

The facility complies with a DEQ Title V permit.

The BHA Heat Exchanger is necessary for the paper mill to be in compliance with the applicant's air permit to meet the requirements of the Cluster Rule for methanol collection. The Cluster Rule uses the amounts of methanol as the indicator of the amounts of other HAPs in the process and waste streams. The rule requires the collection of either 7.2 lbs. methanol per ton of kraft pulp or 65% of the methanol produced by the kraft process. The Albany plant had attained a maximum collection rate of only 5.2 lb of methanol per ton of kraft pulp.

The BHA Heat Exchanger increased the collection of methanol by a minimum of 2 lbs per ton of kraft pulp, allowing the Albany Paper Mill to achieve the minimum acceptable methanol collection rate of 7.2 lbs per ton of kraft pulp.



<b><i>Method</i></b>	<b><u>Criteria</u></b>
ORS 468.155 (1)(b)(B)	The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

**Applied to this Application**

The **prevention** of air pollution is accomplished by the elimination of air contaminants through the use of treatment devices as defined in ORS 468A. The BHA Primary Condenser receives HAPs vapors discharged from the cyclones installed on the exhausts of the Digester Blow Tanks. The HAPs vapors are quenched and condensed into a stream of cooled condensate re-circulated from the BHA through the BHA Primary Heat Exchanger to the BHA Primary Condenser. The concentrated HAPs condensate collected in the BHA is pumped to the Condensate Stripper, where the HAPs are removed for incineration in the Concentrated Non-Condensable Gas (CNCG) burner of the Recovery Boiler.

<b><i>Exclusions</i></b>	<b><u>Criteria</u></b>
ORS 468.155 (3) OAR 340-016- 0070(3)	Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

**Applied to this Application**

The Cooling Tower and Hot Water Collection and Distribution System make an insignificant contribution to the principal purpose of the facility which is to control the amount of methanol and HAPS discharging into the air.

The cooling tower cools excess hot non-contact pond cooling water generated by the BHA Primary Heat Exchanger so that it can be recirculated for use in the paper mill.

The Hot Water Collection and Distribution System upgrades the existing water supply and distribution system to recover the hot pond water for use throughout the paper mill.

The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify the claimed facility or any of its distinguishable parts as a Pollution Control Facility.

***Maximum Credit*** Criteria

ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **12/1/2000**, construction was completed on **6/30/2001**, and the Department received the application on **11/2/2001**.

***Facility Cost***

Invoices and a project accounting detail report substantiated the facility cost.

	Claimed Cost	\$936,279
<u>Insignificant contribution to pollution control purpose:</u>		
Cooling Tower Installation		-180,028
Hot Water Collection and Distribution System		-63,582
	<b>Eligible Cost</b>	<b>\$692,669</b>

### ***Facility Cost Allocable to Pollution Control***

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> An alternative method using a vacuum-type flash tank in lieu of the liquid-to-liquid BHA Primary Condenser was evaluated. This system would not provide adequate methanol removal.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

### ***Compliance and Other Tax Credits***

DEQ Air Quality staff assigned to the source is Gary Andes from the Western Region Office. Mr. Andes has affirmed the applicant's statement that the claimed facility is in compliance with its Title V Air Contamination Discharge Permit.

The following DEQ permits are issued to this site:

- DEQ NPDES Stormwater Permit # 1200Z, issued 7/22/1997NPDES
- Wastewater #101345, issued 11/30/1995
- Title V Air Permit #22-0471, issued 4/26/2001

The EQC has issued 52 certificates to facilities at this location: 33 for Air, 5 for Material Recovery, 13 for Water and 1 for Noise.

Reviewers: Gordon Chun, SJO Consulting Engineers  
Dennis Cartier, SJO Consulting Engineers  
Barrett MacDougall, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost Willamette Industries, Inc.</b>
Applicant	
Application No.	<b>5854</b>
Facility Cost	<b>\$3,600,846</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>7 years</b>

## Tax Credit Review Report

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**Pollution Control Facility: AIR  
Final Certification**  
ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: **C Corp**  
Business: **Paper Mill**  
Taxpayer ID: **93-0312940**

The applicant's address is:

**Weyerhaeuser Company  
Tax Department CH128  
PO Box 9777  
Federal Way, WA 98063**

### *Technical Information*

Willamette Industries' Albany Paper Mill produces linerboard, corrugating medium and bag paper with secondary fiber content, using the kraft and secondary fiber pulping processes and paper machines. The applicant claims an electrostatic precipitator to capture and collect the particulates leaving with the exhaust gases from the recovery boiler and a wet scrubbing system to control the exhaust from the smelt dissolver.

Residual wood product from the pulping process is burned in the recovery boiler and the heat is used as part of the applicant's manufacturing process. The electrostatic precipitator reduces the amount of particulate from the recovery boiler that enters the atmosphere. The 210, 800 cfm of boiler exhaust gases have about 8 grains/dry standard ft<sup>3</sup> (dscf) of particulate which was greater than the stack permitted level which was reduced to 0.044 to 0.015 grains/dscf. The precipitator reduces the particulate by charging the exhaust gas within a large electrical field. Many passes between grounded plates are provided with

### *Facility Identification*

The certificate will identify the facility as:

**Electrostatic Precipitator  
Wet scrubbing system**

The applicant is the **owner and operator** of the facility located at:

**Albany Paper Mill  
3251 Old Salem Road  
Albany, OR 97321**

voltages over 50,000 on the in between electrode wires to charge the dust particles in the gas flow. This is done in a large box to reduce the velocity to less than 3 feet per second. The particles then migrate to the grounded collection plates which are occasionally rapped to drop the dust into the collection system at the bottom. The system includes inlet and outlet gates to each half of the precipitator so that one side can be worked on at a time while the boiler is still on line at reduced capacity. A 260 foot tall stack disperses the cleaned gases.

The wet scrubber cleans the exhaust gases from the smelt dissolver before entering the atmosphere.

Prior to this facility, the amount of particulate discharged with the exhaust emission from the recovery boiler through the stack was permitted at a level of .044 grains per dry standard cubic feet of gas. The permitted level was reduced to .015 gr/dscfm by the new DEQ Title V permit. The existing installation was not capable of meeting the reduced discharge limit.

### ***Eligibility***

#### ***Timely Filing*** Criteria

ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>6/1/1998</b>
<i>Construction Completed</i>	<b>3/31/2000</b>
<i>Facility Placed into Operation</i>	<b>3/31/2000</b>
<i>Application Filed</i>	<b>11/30/2001</b>

#### ***Purpose: Required*** Criteria

ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

#### Applied to this Application

The facility complies with a DEQ Title V permit to reduce air pollution. The claimed facility is necessary to be in compliance with the applicant's air permit to meet the Cluster Rule requirement to reduce particulate emissions. The claimed facility reduced the particulate emission from .044 to .015 grains/dry standard cubic feet @ 8% O<sub>2</sub>.

The following components do not contribute to the primary purpose of the facility:

- The Collection conveyors; ash mix tank transfer pump; and ash mix tank recirculation pump are used for product and material handling and/or recovery.
- The stack, related supports and components are used for venting and dispersing emissions.
- The opacity meter and emissions monitor are used for reporting purposes.
- The platforms provide access.
- The insulation and related equipment are used to control heat loss.
- The crane was used to erect the stack and for the construction of the recovery boiler.
- Pipes, valves and fittings and instrumentation costs are not associated with the precipitator or the scrubber.
- The project overhead related to the ineligible costs was reduced by the overhead calculation provided in Exhibit D.

The associated cost is reduced from the claimed facility cost.

<i><b>Method</b></i>	<u>Criteria</u>
ORS 468.155 (1)(b)(B)	The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

Applied to this Application

The particulate air contaminants meet the definition of air pollution and the electrostatic precipitator and wet scrubbing system meet the definition of an air cleaning device because it reduces the particulate emission.

<i><b>Exclusions</b></i>	<u>Criteria</u>
ORS 468.155 (3) OAR 340-016- 0070(3)	Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The following components do not contribute to the principal purpose of the facility:

The Collection conveyors; ash mix tank transfer pump; and ash mix tank recirculation pump; all costs relating to the stack; reporting meter and monitor; access platforms; insulation; crane rental; various pipes, valves, fittings and instrumentation; project overhead related to ineligible components.

The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

**Replacement Criteria**  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Maximum Credit Criteria**

ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **6/1/1998**, construction was completed on **3/31/2000**, and the Department received the application on **11/30/2001**.

**Facility Cost**

The applicant has prepared the auditors report certifying that the facility cost claimed on the application is eligible as set forth in ORS 340-016-0070. Invoices and a project accounting detail report substantiated most costs.

	Claimed Cost	\$5,171,981
ORS 468.165(2) - <u>Amounts not supported by cost documentation:</u>		
Miscellaneous equipment		-25,000
<u>Insignificant contribution to pollution control purpose :</u>		
Collection conveyors		-192,755
Stack, insulation, concrete support		-743,624
Opacity meter, emission monitor and spares		-94,055
Ash mix tank transfer and recirculation pumps		-18,032
Access platforms		-44,750
Equipment and piping insulation		-42,310
Instrumentation		-92,250
Piping, valves and fittings		-24,750
Crane rental		-60,000
Project overhead for ineligible costs		-233,609
	<b>Eligible Cost</b>	<b>\$3,600,846</b>

***Facility Cost Allocable to Pollution Control***

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

***Compliance and Other Tax Credits***

DEQ Air Quality staff assigned to the source is Gary Andes from the Western Region Office. Mr. Andes has affirmed the applicant's statement that the claimed facility is in compliance with its Title V Air Contamination Discharge Permit.

The following DEQ permits are issued to the site: DEQ NPDES Stormwater Permit # 1200Z, issued 7/22/1997; NPDES Wastewater #101345, issued 11/30/1995; Title V Air Permit #22-0471, issued 4/26/2001. The EQC has issued 52 certificates to facilities at this location: 33 for Air, 5 for Material Recovery, 13 for Water and 1 for Noise.

Reviewers: Gordon Chun, SJO Consulting Engineers  
Dennis Cartier, SJO Consulting Engineers  
Barrett MacDougall, DEQ





State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve</b>
Applicant	<b>Roseburg Forest Products, Co</b>
Application No.	<b>5886</b>
Facility Cost	<b>\$628,804</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Useful Life	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Engineered wood products  
manufacturing**

Taxpayer ID: **93-1240670**

The applicant's address is:

**PO Box 1088  
Roseburg, OR 97470**

#### ***Facility Identification***

The certificate will identify the facility as:

**One - GEO CAT Regenerative  
Catalytic Oxidizer (RCO) Model  
50,000 acfm**

The applicant is the **owner and operator** of  
the facility located at:

**Cow Creek Road  
Riddle, OR 97432**

#### ***Technical Information***

The Roseburg Forest Products manufactures engineered wood products. They installed a Geo Energy GEO-CAT Regenerative Catalytic Oxidizer (RCO), Model 50,000 actual cubic feet per minute (acfm) to reduce Volatile Organic Compounds (VOCs) and Hazardous Air Pollutants (HAPs) generated through the veneer drying operation. The claimed facility uses a catalyst bed and elevated temperatures to destroy VOC and HAP emissions by converting them into carbon dioxide and water vapor. The applicant replaces the catalyst periodically to maintain its efficiency. Prior to installing the RCO, the veneer dryers had the potential to release 125 tons per year of VOCs and about 13 tons per year of HAPs to the atmosphere.

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>8/1/2000</b>
<i>Construction Completed</i>	<b>3/31/2001</b>
<i>Facility Placed into Operation</i>	<b>3/31/2001</b>
<i>Application Filed</i>	<b>12/10/2001</b>

**Purpose: Required** Criteria  
 ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ to control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

Applied to this Application

The applicant installed the RCO to comply with conditions in their ACDP Plant Site Emission Limits (PSEL) for VOC and methanol. The RCO operates whenever the veneer dryers are operating and it reduces 90% of the emissions of VOCs to 12.5 and HAPs to 1.3 each year. The facility complies with the applicant's Air Contaminant Discharge Permit (ACDP) issued by DEQ.

**Method** Criteria  
 ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

Applied to this Application

VOC and HAP emissions **meet the definition of air pollution** because they are criteria pollutants, as defined by EPA and DEQ. Listed HAP emissions include formaldehyde, methanol, and acetaldehyde. The claimed facility **meets the definition of an air cleaning device** because it reduces VOC and HAP emissions.

**Replacement Criteria**

ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ, EPA, or LRAPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

**Applied to this Application**

The State of Oregon did not previously certify the claimed facility or any of its distinguishable parts as a Pollution Control Facility.

**Maximum Credit Criteria**

ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

**Applied to this Application**

The maximum tax credit is **50%** because construction of the facility commenced on **8/1/2000**, construction was completed on **3/31/2001**, and the Department received the application on **12/10/2001**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$628,804
Eligible Cost	<b>\$628,804</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>15</b> years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

***Compliance and Other Tax Credits***

DEQ staff assigned to the source is Kenan Smith in the Western region's Medford office. He affirmed the applicant's statement the facility and site are in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to the site:

NPDES No 1200-Z issued December 8, 2000

Oregon Air Contaminant Discharge Permit No. 10-0013, issued September 5, 2000

WPCF permit No. 101900, issued July 26, 2000.

The EQC issued one certificate at this location for controlling air pollution.

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve @ Reduced Cost</b>
Applicant	<b>ESCO Corporation</b>
Application No.	<b>5967</b>
Facility Cost	<b>\$1,148,202</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>7 years</b>

## **Tax Credit Review Report**

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### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Steel foundry**

Taxpayer ID: **93-0989423**

The applicant's address is:

**2141 N.W. 25th Avenue  
Portland, OR 97210-2578**

#### ***Facility Identification***

The certificate will identify the facility as:

**Two - LMC baghouses (#3-301160 &  
#3-301170), Plant #3:**

**Pouring & cooling conveyor system,  
hoods, cooling room enclosure,  
and casting dump system.**

The applicant is the **owner and operator** of  
the facility located at:

**2211 N.W. Brewer  
Portland, OR 97210**

#### ***Technical Information***

ESCO Corporation is a steel foundry that produces cast steel components for the construction and mining industries. The applicant installed the claimed facility in the batch metal casting area in Plant 3 which is one of three plants on the site. The claimed facility consists of two 50,000 cubic feet per minute (cfm) fans, two LMC fabric filter baghouses, a casting/cooling conveyor, a casting dump system, a cooling chamber, and an exit pan conveyor. Additionally, the applicant claimed interior hoods over the molten metal pouring areas and at drop points in the conveyor system.

The claimed facility captures approximately 90% of the Particulate Matter (PM) emissions from pouring and cooling operations, and 95% of PM from shakeout operations. The applicant estimated these processes were the source of approximately 33 tons per year of fugitive PM emissions that

drifted from their site.

Prior to installing the claimed facility, Plant 3 manufacturing operations produced fugitive particulate matter (PM) emissions and odor that drifted into the surrounding residential areas. The emissions originated from the pouring of molten metal, the cooling of the metal castings, and the removal or shakeout of the sand that formed the mold for the casting. The original conveyor system that moved the molds and castings through the manufacturing process was an open design that allowed excessive fugitive PM to exit the building through several ventilation fans and large door openings.

### ***Eligibility***

#### ***Timely Filing*** Criteria

ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>8/21/2000</b>
<i>Construction Completed</i>	<b>7/15/2001</b>
<i>Facility Placed into Operation</i>	<b>7/15/2001</b>
<i>Application Filed</i>	<b>12/26/2001</b>

#### ***Purpose: Required*** Criteria

ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

#### Applied to this Application

The claimed facility complies with condition 4 (C) of the Mutual Agreement and Order No. AQ/V-NWR-00-219 imposed by the Department of Environmental Quality. DEQ found the applicant was in violation of conditions 27, 28 and 29 of their Oregon Title V Operating Permit Number 26-2068. These conditions require the applicant take measures to reduce off-site impacts of fugitive particulate emissions originating from the manufacturing operations. The facility now complies with the applicant's Title V Permit.

A major portion of the claimed facility involved replacing production equipment that created the fugitive particulate emissions. The primary and most important purpose of the new product conveyors and the new casting dump system is to reduce fugitive particulate emissions. The applicant demonstrated that the installation of these new systems did not increase production, reduce operating costs or replace equipment that failed to address

their production requirements.

The primary and most important purpose of the enclosures and hoods, which were installed at critical points in the production process, is to capture fugitive emissions and direct them to the two new baghouses. The new hoods were not installed to meet Oregon OSHA limits for employee exposure to airborne particulate inside the building because the process complied with Oregon OSHA limits prior to installation of the new hoods.

***Method*** Criteria  
ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and by the use of an air cleaning device. ORS 468A.005 defines an air cleaning device as: "Any method, process or equipment that removes, reduces or renders less noxious air-contaminants prior to their discharge in the atmosphere."

Applied to this Application

Particulate matter **meets the definition of air pollution**. The applicant's Title V Operating Permit places limits on the amount of particulate emissions from the site. The two baghouses **meet the definition of air cleaning devices** because they remove particulate from the airstream. The new enclosed conveyors, casting dump system, enclosures and hoods meet the definition of air cleaning devices because they are a method for reducing fugitive particulate emissions.

***Replacement*** Criteria  
ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The new baghouses replaced two previously certified dust collectors numbered 301480 and 301130. The State of Oregon certified the dust collectors on July 26, 1968 on certificate number 25. The applicant replaced the dust collector due to a new DEQ requirement; therefore, the facility is eligible for the difference between the cost of the new facility and the **like-for-like replacement** cost of the original facility as shown under the Facility Cost Section.

<b><i>Exclusions</i></b>	<b><u>Criteria</u></b>
ORS 468.155 (3) OAR 340-016-0070(3)	Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The applicant claimed the following costs that are specifically excluded from the definition of a pollution control facility:

- Removal of equipment replaced by the facility: The applicant claimed the removal of the pouring and cooling conveyor system, casting dump system and two baghouses prior to the installation of the claimed facility.
- Maintenance, operation, or repair of a facility, including spare parts, and startup costs: The applicant charged internal labor and contractor services for work performed more than three months after the date they claimed the facility was completed and placed into operation
- Feasibility studies: The applicant claimed internal plant engineering labor 16 months prior to the start of the project. The applicant's Title V air permit required the applicant develop a written report evaluating options for reducing odor and fugitive emissions during this period.

The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Facility Cost***

The applicant revised the claimed cost of the facility on November 5, 2002. Copies of invoices and internal labor summary reports substantiated the claimed facility cost.

	Revised Claimed Cost	\$1,398,573
Charges before and after the project period		-59,721
Old baghouse demolition (LMC)		-18,000
Internal labor for demolition		-9,334

The applicant accurately calculated the like-for-like replacement cost based on Consumer Price Index (CPI) as described in Department guidance.

April 1967 Facility Cost	\$30,469.38	
Like-for-like Factor	× 5.36	
Like-for-like Replacement Cost	\$163,316	-\$163,316
	<b>Eligible Cost</b>	<b>\$1,148,202</b>



***Facility Cost Allocable to Pollution Control***

The following factors were used to determine that 100% of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The claimed facility is a component of the applicant's production line. It did not increase production capacity or reduce operating costs.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> The applicant reviewed several control options before concluding the replacement of the production equipment that created the fugitive PM was the only feasible option.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.

***Compliance and Other Tax Credits***

Randy Bailey, with DEQ in the Northwest Region, stated the applicant is in compliance with their permit at Plant 3. DEQ issued a Notice of Intent to Construct and Request for Construction Approval Permit on August 17, 2000 under File No. 26-2068. The EQC has certified 16 air pollution control facilities tax credits to the applicant at the same location as the claimed facility.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve @ Reduced Cost</b>
Applicant	<b>Georgia Pacific Corp.</b>
Application No.	<b>6035</b>
Facility Cost	<b>\$1,331,756</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Useful Life	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Manufacture of formaldehyde  
and synthetic resins**

Taxpayer ID: **58-1576916**

The applicant's address is:

**2190 Old Salem Road NE  
Albany, OR 97321**

#### ***Technical Information***

Georgia Pacific Corp generates hazardous air pollutants (HAPs) and volatile organic compounds (VOC) from the production of formaldehyde, resin manufacturing activities, formaldehyde and methanol storage tanks, and loading racks. The applicant installed an Epcon thermal oxidizer to incinerate the gases reducing them to carbon dioxide and water vapor which are vented to the atmosphere. The thermal oxidizer reduced HAP and VOC emissions by 96%, to 14 tons per year. The process would have emitted more than 300 tons per year of HAPs and VOCs to the atmosphere each year without the installation of the thermal oxidizer.

#### ***Facility Identification***

The certificate will identify the facility as:

**One - Thermal Oxidizer, Model E-13-  
T-75-XX, Serial # 509-916**

The applicant is the **owner and operator** of  
the facility located at:

**Georgia Pacific Resins, Inc.  
2190 Old Salem Road NE  
Albany, OR 97321**

**Eligibility****Timely Filing** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>3/1/2001</b>
<i>Construction Completed</i>	<b>4/30/2001</b>
<i>Facility Placed into Operation</i>	<b>5/1/2001</b>
<i>Application Filed</i>	<b>1/24/2002</b>

**Purpose: Required** Criteria

ORS 468.155  
(1)(a)(A)  
OAR 340-016-  
0060(2)(a)

The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

Applied to this Application

The **thermal oxidizer** complies with Condition 8 of the applicant's Air Contaminant Discharge Permit imposed by DEQ. Condition 8 requires a reduction in the combined inlet VOC emissions of at least 95% from all sources connected to the thermal oxidizer. The primary and most important purpose of the thermal oxidizer is to reduce air pollution.

**Method** Criteria

ORS 468.155  
(1)(b)(B)

The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

Applied to this Application

HAPs and VOCs meet the definition of air pollution because they are regulated by EPA and DEQ. The thermal oxidizer meets the definition of an air cleaning device because it destroys a significant quantity of HAPs and VOCs and converts them into non-regulated emissions.

***Exclusions*** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
 OAR 340-016- an insignificant contribution to the principal or sole purpose of the facility; or  
 0070(3) provides benefits of economic value; or where the costs are not directly related to  
 the operation of the industry or enterprise seeking the tax credit but were installed  
 as a result of the facility.

Applied to this Application

The applicant claimed the cost of an **air conditioner and startup costs** which are specifically excluded from the definition of a pollution control facility. The applicant also claimed **catwalks and handrails** installed on the formaldehyde tank vents which are not part of the thermal oxidizer. The catwalk and handrails make an insignificant contribution to pollution control. Additionally, maintenance is specifically excluded from the definition of a pollution control facility.

The Department subtracted costs for these items from the claimed cost under the Facility Cost section.

***Maximum Credit*** Criteria  
 ORS 468.173(1) The maximum tax credit available to the applicant is **50%**, if construction of the  
 OAR 340-016-0007 facility was completed on or before December 31, 2001, and the application was  
 filed on or before December 31, 2003.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility was completed on **4/30/2001** and the Department received the application on **1/24/2002**.

***Facility Cost***

Copies of invoices substantiated the claimed facility cost.

	Claimed Cost	\$1,355,717
Air conditioning, startup costs		- \$19,371
Catwalks and handrails		- \$4,590
	<b>Eligible Cost</b>	<b>\$1,331,756</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>15</b> years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

The DEQ staff member assigned to the source is Gary Andes in the Western region, Salem office who affirmed the applicant's statement that the facility and site are in compliance with Department rules and statutes.

The following permits have been issued to the site:

NPDES Wastewater No. 32650, issued February 26, 1997

NPDES SWRO No. 1200Z, issued July 22, 1997

ACDP No. 22-1024, issued February 27, 2001

The State of Oregon certified one water pollution control facility to the applicant at the same location as the claimed facility.

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve @ Reduced Cost</b>
Applicant	<b>Synthetech, Inc.</b>
Application No.	<b>6188</b>
Facility Cost	<b>\$412,609</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Useful Life	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp.**

Business: **Develops and produces peptide  
building blocks**

Taxpayer ID: **84-0845771**

The applicant's address is:

**1290 Industrial Way  
Albany, OR 97321**

#### ***Facility Identification***

The certificate will identify the facility as:

**Three - scrubbers manufactured by  
Croll-Reynolds, two Model # M/N  
18T-6H and one Model M/N MW  
88-54**

The applicant is the **owner and operator** of  
the facility located at:

**1290 Industrial Way  
Albany, OR 97321**

#### ***Technical Information***

The applicant generates hydrochloric acid and sulfur dioxide from the production of peptide building blocks. The applicant installed three new scrubbers in conjunction with a plant expansion that included the installation of new reactors. The applicant claimed two packed tower scrubbers and one venturi scrubber manufactured by Croll-Reynolds Clean Air Technologies. The scrubbers, identified internally as S-267, S-268, and S-269, were installed to reduce emissions by neutralizing the hydrochloric acid and sulfur dioxide in the gas stream using a sodium hydroxide solution. The applicant processes the neutralized scrubber solution in their waste water treatment plant. Each packed tower scrubber has a rated gas flow capacity of 560 cubic feet/minute and a rated removal efficiency of 99%.

Prior to the construction of the claimed facility, there was one scrubber fed by four reactors. As a result of plant expansion, three extra scrubbers were needed to scrub gases from eight reactors to meet air quality standards.

***Eligibility***

***Timely Filing*** Criteria  
 ORS 468.165 (6) and The application must be filed within two years of the date that construction of the  
 OAR 340-016-007 facility was completed if construction was completed on or before December 31,  
 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>10/1/1999</b>
<i>Construction Completed</i>	<b>7/1/2000</b>
<i>Facility Placed into Operation</i>	<b>6/1/2000</b>
<i>Application Filed</i>	<b>6/13/2002</b>

***Purpose: Required*** Criteria  
 ORS 468.155 The principal purpose of the claimed facility must be to comply with a  
 (1)(a)(A) requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air  
 OAR 340-016- pollution. That principal purpose must be the most important or primary purpose  
 0060(2)(a) of the facility. The facility must have only one primary purpose.

"Air Pollution" is the presence in the **outdoor atmosphere** of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby. ORS 468A.005

Applied to this Application

The applicant installed the **scrubbers** to comply with Condition 4 of the applicant's DEQ issued Air Contaminant Discharge Permit to limit emissions to 22.4 tons of VOC per year.

The primary and important purpose of the building **fire protection system** and the **building exhaust system** is to meet building code requirements. The primary and most important purpose of the **mezzanine and 10 % of the building** is to add square footage for equipment and processes not associated with the scrubber system. The cost is subtracted from the claimed cost under the Facility Cost section.

**Method** Criteria  
ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and by the use of an air cleaning device as defined in ORS 468A.005.

Applied to this Application

DEQ regulates hydrochloric acid and sulfur dioxide. Both **meet the definition of air pollution** because hydrochloric acid is corrosive and sulfur dioxide is a criteria pollutant. Scrubbers **meet the definition of air cleaning devices** because they **dispose** of the hydrochloric acid and sulfur dioxide emissions.

**Replacement** Criteria  
ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Exclusions** Criteria  
ORS 468.155 (3)  
OAR 340-016-0070(3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed because of the facility.

Applied to this Application

The applicant claimed the costs for the following components that make an insignificant contribution to the primary purpose of the facility:  
Fire protection system; Building exhaust system; Mezzanine; 10% of the building not associated with the scrubber system.  
The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

**Maximum Credit** Criteria  
ORS 468.173(1) The maximum tax credit available to the applicant is 50% if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **10/1/1999**, construction was completed on **7/1/2000**, and the Department received the application on **6/13/2002**.



**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

	Claimed Cost	\$432,263
Building fire protection system		- \$3,224
building exhaust fan system		- \$5,668
mezzanine construction based on Engineering Estimate		- \$10,762
	<b>Eligible Cost</b>	<b>\$412,609</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>40</b> years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increased Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. DEQ staff assigned to the source is Claudia Davis in the Western region and she affirmed the applicant's statement. DEQ issued the following permits to the applicant at this location.

- Hazardous Waste Generator Permit # ORD85979474 issued on January 12, 1988
- Storm Water Permit # ODEQ1200-Z issued on November 24, 1999
- Air Contaminant Permit # ODEQ 22-6009 issued on November 24, 1999
- Industrial Waste Water Discharge Permit # 2834-01 issued on January 1, 2001

EQC certified four pollution control facilities at this location

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve @ Reduced Cost</b>
Applicant	<b>Georgia-Pacific</b>
Application No.	<b>6199</b>
Facility Cost	<b>\$1,287,700</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Useful Life	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **C Corp.**

Business: **Paper towel and tissue consumer products manufacturing**

Taxpayer ID: **541237819**

The applicant's address is:

**92326 Taylorville Road  
Clatskanie, OR 97016**

### ***Facility Identification***

The certificate will identify the facility as:

**Smelt dissolving tank scrubber  
manufactured by Dynamic Dynascrub  
II, capacity: 45,000 ACFM**

The applicant is the **owner and operator** of the facility located at:

**Fort James Company  
92326 Taylorville Road  
Clatskanie, OR 97016**

### ***Technical Information***

Georgia-Pacific manufactures paper towels and tissue paper at its mill in Clatskanie, Oregon. The applicant produces pulp by "cooking" wood chips and white liquor under pressure. Black liquor is a byproduct of this process. The recovery boiler melts the noncombustible elements in the black liquor and it becomes a molten mass. The molten mass drops into water in the "Smelt Tank" located beneath the boiler where it dissolves, generating total reduced sulfur (TRS) and total suspended particulate (TSP). The process routes this TRS and TSP to the claimed facility which is a Dynamic Dynascrub II scrubber with a total gas handling capacity of 45,000 cubic feet per minute. The claimed facility reduced TRS and TSP emissions by about 75% and 60%, respectively.

**Eligibility*****Timely Filing*** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>1/1/2001</b>
<i>Construction Completed</i>	<b>8/15/2001</b>
<i>Facility Placed into Operation</i>	<b>6/26/2001</b>
<i>Application Filed</i>	<b>7/3/2002</b>

***Purpose: Required*** Criteria

ORS 468.155  
(1)(a)(A)  
OAR 340-016-  
0060(2)(a)

The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

Applied to this Application

The applicant installed the claimed facility to comply with DEQ Mutual Agreement Order No. AQ/V-NWR-00-171 to reduce TRS and TSP emissions. The applicant's previous smelt tank scrubber was not in compliance with their Title V permit but the applicant has been in compliance with permit conditions since the installation of the new scrubber.

The primary and most important purpose of the explosion damper and eyewash safety showers is to meet safety requirements. The primary and most important purpose of the lighting around the scrubber area is to facilitate operations and safety at night. The primary and most important purpose of insulation is to improve equipment operating efficiency of the insulated equipment. The primary and most important purpose of the electric hoist installed above the scrubber and platform ladder that provides access to the scrubber housing is to facilitate maintenance activities.

<i><b>Method</b></i>	<u>Criteria</u>
ORS 468.155 (1)(b)(B)	The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and by the use of an air cleaning device as defined in ORS 468A.005.

"Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

"Air-cleaning device" means any method, process or equipment, which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

Applied to this Application

TRS and TSP **meet the definition of air pollution** because they are listed as pollutants by EPA and rules exist to control these emissions from smelt dissolving tanks. The smelt dissolving tank scrubber **meets the definition of an air cleaning device** because it reduces TRS and TSP emissions to the levels required by the Applicant's Title V permit and the Mutual Agreement and Order issued by DEQ.

<i><b>Exclusions</b></i>	<u>Criteria</u>
ORS 468.155 (3)	Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.
OAR 340-016-0070(3)	

Applied to this Application

Lighting, an explosion damper, a 2-ton electric hoist, 3 eyewash safety showers, insulation, platform ladder, and installation labor for these make an insignificant contribution to meeting the requirements of the Mutual Agreement and Order. The Department subtracted the associated costs from the claimed cost under the Facility Cost section.

<i><b>Replacement</b></i>	<u>Criteria</u>
ORS 468.155 (3)(e)	The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify the claimed facility or any of its distinguishable parts as a Pollution Control Facility.

**Maximum Credit Criteria**

ORS 468.173(1) The maximum tax credit available to the applicant is 50% if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

**Applied to this Application**

The applicant completed construction of the facility on 8/15/2001 and filed the application on 7/3/2002.

**Facility Cost**

Copies of purchase orders substantiated the claimed facility cost.

	<b>Claimed Cost</b>	\$1,511,670
No cost documentation - ORS 468.165(2)		-152,978
Lighting		-3,280
Explosion Damper		-9,544
2-ton electric hoist		-18,605
3 eyewash safety showers		-2,050
Insulation		-16,134
Platform ladder		-519
Installation labor for excluded items		-20,860
	<b>Eligible Cost</b>	<b>\$1,287,700</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that 100% of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> Black liquor has a value as fuel. The applicant burns the black liquor in their recovery boiler.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 20 years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increased Costs:</b> The applicant did not identify savings or increases in costs.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> The Department did not identify any other relevant factors.

***Compliance and Other Tax Credits***

The DEQ staff member assigned to the source is George Davis in the Western region office. He affirmed the applicant's statement that the facility and the site comply with Department rules and statutes. The facility has no outstanding EQC orders. DEQ issued the following permits to the site:

NPDES No 100716, Oregon Title V No. 04-0004, issued May 10, 2002  
Solid waste permits, No. 1148, 1032, and 1171

The EQC certified 23 applications at this location, including 14 for air pollution control and 9 for water pollution control.

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve @ Reduced Cost</b>
Applicant	<b>Georgia-Pacific</b>
Application No.	<b>6200</b>
Facility Cost	<b>\$2,149,107</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Useful Life	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: AIR/CLUSTER RULES**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp.**

Business: **Paper towel and tissue consumer products manufacturing**

Taxpayer ID: **541237819**

The applicant's address is:

**92326 Taylorville Road  
Clatskanie, OR 97016**

#### ***Facility Identification***

The certificate will identify the facility as:

**Bleach Plant Scrubber, condensate bioremediation, and black liquor containment system**

The applicant is the **owner and operator** of the facility located at:

**92326 Taylorville Road  
Clatskanie, OR 97016**

#### ***Technical Information***

Georgia-Pacific manufactures paper towels and tissue paper at its mill in Clatskanie, Oregon. The manufacturing process includes bleaching pulp with chlorinated chemicals.

The existing scrubber collected chlorine gas emissions from most processes but it did not capture chlorine dioxide emissions from the "D" stage washers, the west bleach-plant sewer vent, and two medium-consistency standpipe vents. The applicant claims a new fluidized bed scrubber, manufactured by Bionomic Industries, Series 5700, Model 54. The scrubber system collects emissions from these sources at 19,200 cubic feet per minute. The scrubber system is designed to remove at least 99.5% of the chlorine in the gas stream and 99.9% of the chlorine dioxide in the gas stream.

The applicant claims equipment they installed to collect and treat hazardous air pollutants (HAPs) that are in the condensate streams from the digester blow tank cyclone, the non-condensable gas cooler, and

various process evaporators. The three new tanks collect and a dedicated pipeline transports the condensate streams to the mill's biological wastewater treatment system that destroys the HAPs by biodegradation. The tanks are located in the Chemical Prep Building and are connected by various lengths and diameters of piping.

EPA's Cluster Rules require that bleached pulp and paper mills employ best management practices (BMPs) to prevent black liquor spills to the environment and to process sewers. The applicant changed a manually operated 10-inch diverter valve on Weak Black Liquor tanks numbered 1 and 2 to an automated system for transferring the black liquor to another existing tank. The automated valve minimizes the danger of an overflow. The applicant also installed concrete curbing around black liquor processing areas and modified drainage to divert potential black liquor spills to process sewers. They installed conductivity probes in the process sewers to monitor the sewers for a potential black liquor spill.

### ***Eligibility***

#### ***Timely Filing*** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The applicant must file the application within two years of the date that they completed construction of the facility, if they completed construction on or before December 31, 2001.

#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>3/8/2000</b>
<i>Construction Completed</i>	<b>11/15/2000</b>
<i>Facility Placed into Operation</i>	<b>6/12/2000</b>
<i>Application Filed</i>	<b>7/3/2002</b>

The application record states that the facility was placed into operation on 6/12/2000, however, only a portion of the project was completed and placed into operation on that date. Invoices indicate that the entire facility was not fully operational until December of 2000, therefore the application is considered to be filed in a timely manner.



**Purpose: Required** Criteria

ORS 468.155 (1)(a)(A) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

OAR 340-016-0060(2)(a)

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

Applied to this Application

The scrubber, the modifications to the biological wastewater treatment system, and BMP activities comply with 40 CFR Part 63.440 through 63.459, Subpart S – National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and 40 CFR Part 403.03 – Best Management Practices requirements imposed by EPA. These Cluster Rules require pulp and paper mills reduce releases of both air and water emissions.

The primary and most important purpose of the scrubber access platform and pump parts are to facilitate system maintenance. The primary and most important purpose of the scrubber system flame arrestor is to meet safety requirements. The Department subtracted from the claimed cost under the Facility Cost section.

**Method** Criteria

ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

"Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

"Air-cleaning device" means any method, process or equipment, which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

Applied to this Application

Chlorine **meets the definition of air pollution** because it is listed as a hazardous air pollutant (HAP) by EPA.

The bleach plant scrubber **meets the definition of an air cleaning device** because it reduces and removes chlorine emissions that would otherwise be emitted to the atmosphere.

The condensate collection system meets the definition of an air cleaning device because it reduces HAPs by collecting them in a dedicated system and sending them to a bioremediation system for destruction.

OAR 340-016- Criteria

0060(2)(a) The prevention, control, or reduction must be accomplished by the disposal or elimination of water pollution and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

Applied to this Application

Black liquor, turpentine, and soaps **meet the definition of water** pollutants that are covered by the Cluster Rules. The BMP changes **meet the definition of a treatment works**, as defined by DEQ.

*Exclusions* Criteria

ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
OAR 340-016- provides benefits of economic value; or where the costs are not directly related to  
0070(3) the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The scrubber access platform, pump parts, and scrubber flame arrestor make an insignificant contribution to meeting Cluster Rule requirements. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

**Replacement Criteria**  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify the claimed facility or any of its distinguishable parts as a Pollution Control Facility.

**Maximum Credit Criteria**  
 ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, the applicant completed construction prior to January 1, 2004, and filed the application on or before December 1, 2004.

Applied to this Application

Construction of the facility commenced on **3/8/2000**, the applicant completed construction by **12/31/2000**, and filed the application on **7/3/2002**.

**Facility Cost**

Copies of purchase orders substantiated the claimed facility cost.

Claimed Cost	\$2,519,166
No cost documentation - ORS 468.165(2)	-\$342,931
Scrubber access platform	-\$13,460
Pump parts	-\$10,003
Scrubber Flame Arrestor	-\$3,465
<b>Eligible Cost</b>	<b>\$2,149,107</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable/Usable Commodity	The facility produces no salable or usable commodities.
ORS 468.190(1)(b) Return on Investment (ROI)	The functional life of the facility used in considering the ROI is <b>15</b> years. The facility does not have a positive cash flow.

ORS 468.190(1)(c) Alternative Methods	No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d) Savings/Increased Costs	No savings or increases in costs were identified.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors were identified.

### ***Compliance and Other Tax Credits***

The DEQ staff member assigned to the source is George Davis in the Northwestern region office, who affirmed the applicant's statement that the facility and site are in compliance with Department rules and statutes. The facility has no outstanding EQC orders. The following DEQ permits have been issued to the site: NPDES No 100716, Oregon Title V No. 04-0004, issued May 10, 2002, and three solid waste permits, No. 1148, 1032, and 1171. The EQC certified 23 applications at this location, including 14 for air pollution control and nine for industrial waste control.

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	Approve
Applicant	Portland General Electric Company
Application No.	6229
Facility Cost	\$1,294,402
Percentage Allocable	100%
Maximum Tax Credit	50%
Certificate Period	10 years

## Tax Credit Review Report

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### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corporation**

Business: **Generates & distributes  
electricity to residential and  
commercial users**

Taxpayer ID: **93-0256820**

The applicant's address is:

**121 SW Salmon Street  
Portland, OR 97204**

#### ***Technical Information***

PGE constructed a 24-megawatt peaking natural gas-fired combustion turbine unit for electrical generation at its Beaver Plant. The combustion of natural gas in the turbine produces nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) from incomplete combustion, and volatile organic compounds (VOC). The applicant claims:

- A water injection system that reduces the formation of NO<sub>x</sub> emissions by 60%. The system injects water into the turbine's combustor to lower the temperature; and
- A catalyst bed that converts 80% of the CO emissions from the combustion turbine's exhaust into non-regulated carbon dioxide emissions.

#### ***Facility Identification***

The certificate will identify the facility as:

**Alstom Model MBU30 water injection  
system to control NO<sub>x</sub>  
ATS Express Model GT10B2 CO  
Catalyst**

The applicant is the **owner and operator** of  
the facility located at:

**Beaver Plant  
80997 Kallunkie  
Clatskanie, OR 97016**

**Eligibility****Timely Filing** Criteria

ORS 468.165 (6) and  
OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed, if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>5/2/2001</b>
<i>Construction Completed</i>	<b>8/1/2001</b>
<i>Facility Placed into Operation</i>	<b>8/1/2001</b>
<i>Application Filed</i>	<b>7/25/2002</b>

**Purpose: Required** Criteria

ORS 468.155  
(1)(a)(A)  
OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

Applied to this Application

The claimed facility complies with PGE's Title V operating permit. Condition 4 of the Title V permit requires that the applicant install both the water injection system and CO catalyst on the combustion turbine to reduce air pollution.

**Method** Criteria

ORS 468.155  
(1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and by the use of an air cleaning device as defined in ORS 468A.005.

"Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

"Air-cleaning device" means any method, process or equipment, which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

Applied to this Application

NO<sub>x</sub> and CO **meet the definition of air contaminants**. The water injection system and the CO catalyst **meet the definition of an air cleaning device**.

**Exclusions**

ORS 468.155 (3)  
OAR 340-016-  
0070(3)

Criteria

Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

**Maximum Credit**

ORS 468.173(1)  
OAR 340-016-0007

Criteria

The maximum tax credit available to the applicant is **50%** if construction of the facility was completed on or before December 31, 2001 and the application was filed on or before December 31, 2003.

Applied to this application

The maximum tax credit is **50%** because the applicant completed the construction of the facility on **8/1/2001** and filed the application on **7/25/2002**.

**Facility Cost**

Copies of invoices and project schematics substantiated the claimed facility cost.

Claimed Cost	\$1,294,402
Eligible Cost	<u>\$1,294,402</u>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> The applicant conducted a Best Available Control Technology (BACT) analysis and the selected control methods were determined to represent BACT by DEQ.
ORS 468.190(1)(d)	<b>Savings/Increased Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

***Compliance and Other Tax Credits***

The DEQ staff member assigned to the source is Jim Broad from the Northwest Region, who affirmed the applicant's statement that the facility and site are in compliance with Department rules and statutes. DEQ issued a Title V Operating Permit to the facility on July 1, 2002. The EQC issued five pollution control facilities tax credits to the applicant at this location.

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ





State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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Director's Recommendation Applicant	<b>Approve @ Reduced Cost TDY Industries, Inc. dba Wah Chang</b>
Application No.	<b>6241</b>
Facility Cost (reduced)	<b>\$142,301</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Useful Life	<b>7 years</b>

### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corporation**

Business: **Production, refinement, and  
forming of zirconium and other  
non-ferrous metal**

Taxpayer ID: **95-2316677**

The applicant's address is:

**PO Box 460  
Albany, OR 97321**

#### ***Technical Information***

TDY Industries Inc., dba Wah Chang, produces large pieces of metal products at its Albany, Oregon facility. The applicant removes impurities and defects from the surfaces of the metal products in order to meet quality standards for the final products. The machine that removes the surface defects is a Tysaman grinder. It is a large rotating abrasive wheel that produces very fine particulate and blue smoke as it removes the defects. Prior to the installation of the claimed facility, the emissions from the Tysaman grinder went to a rotoclone which proved incapable of capturing the very fine particulate matter that created a blue haze. The blue haze had an opacity that was greater than 20% which was not in compliance with the applicant's Title V air permit for the plant.

The applicant claimed the installation cost for a new baghouse system. The major components of the claimed facility include a 200 ft<sup>3</sup> drop box, Steelcraft baghouse with 80 cartridges rated at 99% removal efficiency, and a 25,000 cfm exhaust fan with a 60 hp motor. The exhaust fan pulls the airborne particulates from the grinding operation through the drop box and baghouse for treatment. The drop box removes the larger particulates to reduce the solids loading on the baghouse. The bags in the baghouse

#### ***Facility Identification***

The certificate will identify the facility as:

**One - Tysaman Grinder Baghouse,  
Steelcraft Model C-80D-2000,  
Serial # F20256**

The applicant is the **owner and operator** of  
the facility located at:

**1600 Old Salem Road NE  
Albany, OR 97321**

capture the very fine particulates (blue haze) and the cleaned air is discharged through the exhaust fan to the atmosphere.

## **Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

### Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>03/18/2002</b>
<i>Construction Completed</i>	<b>05/08/2002</b>
<i>Facility Placed into Operation</i>	<b>05/08/2002</b>
<i>Application Filed</i>	<b>08/12/2002</b>

**Purpose: Required** Criteria  
 ORS 468.155 The **principal purpose** of the claimed facility must be to comply with a  
 (1)(a)(A) requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air  
 OAR 340-016- pollution. That principal purpose must be the most important or primary purpose  
 0060(2)(a) of the facility. The facility must have only one primary purpose.

### Applied to this Application

The Tysaman grinder **baghouse** system complies with the applicant's Title V Air Discharge Permit imposed by DEQ to control the opacity in the exhaust stream to less than 20%.

The primary and most important purpose of the modifications to the **berm** was to facilitate the relocation of the replaced rotoclone, not to comply with the applicant's Title V permit. The cost is subtracted from the claimed cost under the Facility Cost section.

**Method** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by the disposal or  
 (1)(b)(B) elimination of air contaminants, air pollution, or air contamination sources; and  
 the use of an air cleaning device as defined in ORS 468A.005.

Air contaminant, as defined in ORS 468A.005(2), means any dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

Air-cleaning device, as defined in ORS 468A.005(1), means any method, process or equipment which removes, reduces or renders less noxious air contaminants prior to their discharge to atmosphere.

Applied to this Application

The exhaust containing the fine particulate matter **meets the definition** of an air contaminant. The Tysaman grinder baghouse system meets the definition of an air cleaning device.

**Replacement** Criteria

ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ, EPA, or LRAPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The baghouse replaced a rotoclone that was not previously certified as a Pollution Control Facility; therefore, the claimed facility is not considered a replacement facility for tax credit purposes.

**Exclusions** Criteria

ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
 OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The applicant claimed the following cost that makes an insignificant contribution to the principal purpose of the facility:

Modifications to the berm

The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

**Maximum Credit** Criteria

ORS 468.173(3)(f) The maximum tax credit available to the applicant is **35%** if construction of the  
 ORS 468.170(10) facility commenced after December 31, 2000, the application was filed between  
 ORS 468.165(6) January 1, 2002 and December 31, 2008, inclusively; and the certified facility cost does not exceed \$200,000.

Applied to this Application

The maximum tax credit is **35%** because construction commenced on **03/18/2002**, the application was filed on **8/12/2002**, and the certified facility cost is **\$142,301**.

**Facility Cost**

Copies of invoices and a project summary report substantiated the claimed facility cost.

Claimed Cost	\$144,274
Insignificant contribution to pollution control purpose:	
Berm modifications	- \$1,973
<b>Eligible Cost</b>	<b>\$142,301</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

DEQ Air Quality staff assigned to the source is Ali Nikukar from the Western Region Office. As of the submission of this tax credit review, Mr. Nikukar has affirmed that the claimed facilities are in compliance with its Title V Air Contamination Discharge Permit.

The following DEQ permits have been issued to the site:

Title V Air Contamination Discharge Permit No. 22-0547, issued September 12, 2001  
 NPDES General Permit – Storm Water Permit No. 1200-Z, issued July 22, 1997  
 NPDES Wastewater Discharge Permit No. 100522, issued September 30, 1988

The EQC certified 115 pollution control facility tax credits at this location.

60 for Water, 52 for Air, 2 for Material Recovery and 1 NPS

Reviewers: PBS Environmental and Engineering  
 Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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Director's Recommendation Applicant	<b>Approve @ Reduced Cost TDY Industries, Inc. dba Wah Chang</b>
Application No.	<b>6242</b>
Facility Cost	<b>\$47,954</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Useful Life	<b>7 years</b>

**Pollution Control Facility: AIR  
Final Certification**  
ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: **C Corp.**  
Business: **Production, refinement and  
forming of zirconium and other  
non-ferrous metals.**  
Taxpayer ID: **95-2316677**

The applicant's address is:

**PO Box 460  
Albany, OR 97321**

### *Facility Identification*

The certificate will identify the facility as:

**One - ID/OD Blaster Baghouse,  
One - Torit Downflo Filter, Model DF  
T4-16, SN IG617217-001**

The applicant is the **owner and operator** of  
the facility located at:

**1600 Old Salem Road NE  
Albany, OR 97321**

### *Technical Information*

Teledyne Industries, Inc., dba Wah Chang, produces non-ferrous metal tubing at its Albany, Oregon, facility. Sand blasting the surfaces of the tubing removes metal impurities, powder lubricants, and surface defects.

Prior to installing the claimed facility, the applicant ducted the particulate emissions generated by the sand blasting process to a cyclone that discharged to a rotoclone and then to the atmosphere. The applicant said that the 20-year old rotoclone was beyond economic repair and that it caused particulate emissions to exceed the limits allowed in the applicant's Title V air permit. Additionally, there were no air pollution control devices installed to contain the particulate emissions generated in the Lubrication Room from mixing finely-divided powdered lubricants that the applicant uses in the various metal working processes.

The applicant replaced the rotoclone with an ID/OD Blaster Baghouse and ducted the Lubrication Room emission to the new baghouse. (The applicant disposes of the collected dust as non-hazardous waste at Columbia Ridge Landfill in Arlington, Oregon.) The major components of the claimed facility include a Torit Downflo Filter; 16 Ultra-Web II cartridges, each containing 254 ft<sup>2</sup> of filtering area and having a particulate (> 0.5 micron in size) removal efficiency of 99.999%; an 8" Prator rotary valve with a gear box and 0.5 hp Marathon motor; and a 10,000 cfm TBI exhaust fan, rated at 10,000 cfm @ 10" WG suction pressure, with a 25 hp WEG motor.

### ***Eligibility***

#### ***Timely Filing*** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>12/01/2000</b>
<i>Construction Completed</i>	<b>01/16/2001</b>
<i>Facility Placed into Operation</i>	<b>02/02/2001</b>
<i>Application Filed</i>	<b>08/12/2002</b>

#### ***Purpose: Required*** Criteria

ORS 468.155  
(1)(a)(A)  
OAR 340-016-0060(2)(a)

The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Air Pollution" is the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby. ORS 468A.005

#### Applied to this Application

The ID/OD Blaster **Baghouse** complies with the applicant's Title V Air Contamination Discharge Permit imposed by the EPA to limit the opacity of and to control particulate discharged to the environment.

The applicant claimed an **exhaust duct** from the Lubrication Room. The duct removes dust that the applicant previously allowed to accumulate in the room. The primary and most important purpose of the exhaust dust is maintenance and indoor air quality rather than to control "air pollution." The applicant also

claimed a Lo-Profile **Drum Caddy** used to move full drums of dust. The primary and most important purpose of the caddy is material handling.

**Method** Criteria  
 ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

“Air contaminant” means any dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

“Air-cleaning device” means any method, process or equipment that removes, reduces or renders less noxious air contaminants prior to their discharge to atmosphere.

Applied to this Application

The baghouse **disposes of** particulate matter in the exhaust stream from the ID/OD sand blasting process and the new lubrication room ventilation ducting. The particulate matter **meets the definition of an air contaminant**. The ID/OD Blaster Baghouse system **meets the definition of an air cleaning device** because it removes 99.999% of the particulate matter.

**Exclusions** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portions of a pollution control facility that make  
 OAR 340-016- insignificant contributions to the principal or sole purpose of the facility; or  
 0070(3) provide benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The Lo-Profile Drum Caddy makes an insignificant contribution to meeting the conditions of the applicant's Title V Air Contamination Discharge Permit. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

**Replacement** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ, EPA, or LRAPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Maximum Credit** Criteria

ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **12/01/2000**, was completed on **01/16/2001** and the Department received the application on **08/12/2002**.

**Facility Cost**

Copies of invoices and a project summary report substantiated the claimed facility costs.

Claimed Cost	<b>\$48,754</b>
Insignificant contribution to pollution control purpose:	
Lubrication Room exhaust duct	- \$725
Lo-Profile Drum Caddy	- \$75
<b>Eligible Cost</b>	<b>\$47,954</b>

**Facility Cost Allocable to Pollution Control**

The only factor used in determining that **100%** of the claimed facility cost is allocable to pollution control is the percentage of time the facility is used for pollution control. [ORS 468.190 (3)]

**Compliance and Other Tax Credits**

DEQ Air Quality staff assigned to the source is Ali Nikukar from the Western Region Office. As of the submission of this tax credit review, Mr. Nikukar has affirmed that the claimed facilities are in compliance with its Title V Air Contamination Discharge Permit.

The following DEQ permits have been issued to the site

- Title V Air Contamination Discharge Permit No. 22-0547, issued September 12, 2001
- NPDES General Permit – Storm Water Permit No. 1200-Z, issued July 22, 1997
- NPDES Wastewater Discharge Permit No. 100522, issued September 30, 1988

The EQC certified 115 pollution control facility tax credits at this location.

60 for Water, 52 for Air, 2 for Material Recovery and 1 NPS

Reviewers: PBS Environmental and Engineering  
Maggie Vandehey, DEQ





State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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Director's Recommendation Applicant	<b>Approve TDY Industries, Inc. dba Wah Chang</b>
Application No.	<b>6243</b>
Facility Cost	<b>\$47,016</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Useful Life	<b>7 years</b>

**Pollution Control Facility: AIR  
Final Certification**  
ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: **C Corp.**  
Business: **Production, refinement, and  
forming zirconium and other  
non-ferrous metals.**  
Taxpayer ID: **95-2316677**

The applicant's address is:

**PO Box 460  
Albany, OR 97321**

### *Technical Information*

Teledyne Industries, Inc., dba Wah Chang, produces non-ferrous metal tubing at its Albany, Oregon, facility. The applicant removes the external surface impurities and defects from the product with a Stokes Grinder which is a belt sander that uses a continuous sandpaper (abrasive-coated) belt.

The applicant processed the particulate emissions from the grinding operation through a rotoclone that had become unreliable and, at times, caused particulate emissions to exceed the limits allowed in the applicant's Title V air permit.

The claimed facility is a new American Air Filter Rotoclone with an inside water spray that removes the fine dusts and particulate, an automatic sludge ejector, and a mist eliminators in the clean gas chamber. The system includes a Twin City Blower rated at 6,000 cfm with a 25 hp motor. A rotoclone cleans the air by drawing dust laden air through a water curtain that traps dust particles. The rotoclone's second stage

### *Facility Identification*

The certificate will identify the facility as:

**One - Stokes Grinder Rotoclone,  
One - AAF Rotoclone, Model 6M,  
SN 00-3080**

The applicant is the **Owner/Operator** of the facility located at:

**1600 Old Salem Road NE  
Albany, OR 97321**

separates dust laden water from the air stream by centrifugal force. The rotoclone has a hopper for removing sludge from the water. The water is recycled within the rotoclone.

### ***Eligibility***

#### ***Timely Filing*** Criteria

ORS 468.165 (6) and  
OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>07/19/2000</b>
<i>Construction Completed</i>	<b>09/29/2000</b>
<i>Facility Placed into Operation</i>	<b>09/29/2000</b>
<i>Application Filed</i>	<b>08/12/2002</b>

#### ***Purpose: Required*** Criteria

ORS 468.155  
(1)(a)(A)  
OAR 340-016-0060(2)(a) The **principal** purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Air Pollution" is the presence in the **outdoor atmosphere** of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby. ORS 468A.005

#### Applied to this Application

The Stokes Grinder Rotoclone complies with the applicant's Title V Air Contamination Discharge Permit imposed by the EPA to control the opacity of and the amount of particulate discharged to the environment. The applicant's monitoring records indicate that excess opacity and particulate emissions have been within permit limits since they installed the Stokes Grinder Rotoclone.

**Method** Criteria  
 ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

“Air contaminant” means any dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

“Air-cleaning device” means any method, process or equipment that removes, reduces or renders less noxious air contaminants prior to their discharge to atmosphere.

Applied to this Application

The rotoclone **removes** and **disposes of** air contaminants. The fine particulate matter from the grinding process **meets the definition of an air contaminant**. The Stokes Grinder Rotoclone system **meets the definition of an air cleaning device**.

**Exclusions** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portions of a pollution control facility that make insignificant contributions to the principal or sole purpose of the facility; or  
 OAR 340-016-0070(3) provide benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

There was no indication in the application record that any ineligible costs were included.

**Replacement** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ, EPA, or LRAPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility and any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Maximum Credit**    Criteria  
 ORS 468.173(1)    The maximum tax credit available to the applicant is **50%** if construction of the  
 OAAR 340-016-0007    facility was completed prior to December 31, 2001 and the application was filed  
    on or before December 31, 2003.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility was completed on **09/29/2000** and the Department received the application on **08/12/2002**.

**Facility Cost**

Copies of invoices and a project summary report substantiated the claimed facility cost.

Claimed Cost	\$47,016
<b>Eligible Cost</b>	<b>\$47,016</b>

**Facility Cost Allocable to Pollution Control**

The only factor used in determining that **100%** of the claimed facility cost is allocable to pollution control is the percentage of time the facility is used for pollution control. ORS 468.190 (3)

**Compliance and Other Tax Credits**

DEQ Western Region Office staff assigned to the source is Ali Nikukar. Mr. Nikukar affirmed that the claimed facility is in compliance with its Title V Air Contamination Discharge Permit.

The following DEQ permits have been issued to the site

Title V Air Contamination Discharge Permit No. 22-0547, issued September 12, 2001

NPDES General Permit – Storm Water Permit No. 1200-Z, issued July 22, 1997

NPDES Wastewater Discharge Permit No. 100522, issued September 30, 1988

The EQC certified 115 pollution control facility tax credits at this location.

60 for Water, 52 for Air, 2 for Material Recovery and 1 NPS

Reviewers:    PBS Environmental and Engineering  
    Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

**Pollution Control Facility: AIR**

**Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **C Corporation**

Business: **Production, refinement, and  
forming of zirconium and other  
non-ferrous metals.**

Taxpayer ID: **95-2316677**

The applicant's address is:

**PO Box 460  
Albany, OR 97321**

### ***Technical Information***

Wah Chang produces large non-ferrous metal "logs" through a rotary forge and then cuts them with a high-speed abrasive cutting wheel called a Hot Saw. The applicant installed a two-stage air-cleaning device, manufactured by Steelcraft, to capture the particulate matter (PM) from the cutting process. The PM consists of metal oxides and cutting wheel abrasives. The first stage of the claimed facility consists of a cyclone, Model HE-51, which removes the heavier PM. The second stage is a baghouse, Model C-32-8000, with a fabric-to-air ratio of 1.25. The claimed facility has a removal efficiency of 99.5% at 10,000 cubic feet of air per minute. The first stage cyclone is required to protect the damage to the second stage filter media by removing the hot, heavy metal particles. The claimed facility also includes a Meyers rotary lock valve and a 10,000 cfm Twin City exhaust fan with a 50 hp motor. The applicant disposes of the material collected from the claimed facility as a non-hazardous waste at Columbia Ridge Landfill in Arlington, Oregon.

Director's Recommendation Applicant	<b>Approve @ Reduced Cost TDY Industries, Inc. dba Wah Chang</b>
Application No.	<b>6246</b>
Facility Cost	<b>\$97,502</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>7 years</b>

### ***Facility Identification***

The certificate will identify the facility as:

#### **A Two-stage air cleaning device:**

**One - Hot Saw Cyclone, Steelcraft  
Model HE-51**

**One - Baghouse, Steelcraft Model  
C-32-8000**

The applicant is the **owner and operator** of the facility located at:

**1600 Old Salem Road, NE  
Albany, OR 97321**

The applicant replaced an old baghouse system with the claimed facility because they had difficulty maintaining continuous compliance with the PM emissions and opacity of the exhaust. Source test data confirmed the emissions from the claimed facility are in full compliance with conditions G17 and G19 of the applicant's Title V Permit.

### ***Eligibility***

<b><i>Timely Filing</i></b> ORS 468.165 (6) and OAR 340-016-007	<u>Criteria</u> The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.
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#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>07/20/2000</b>
<i>Construction Completed</i>	<b>12/23/2000</b>
<i>Facility Placed into Operation</i>	<b>12/23/2000</b>
<i>Application Filed</i>	<b>08/12/2002</b>

<b><i>Purpose: Required</i></b> ORS 468.155 (1)(a)(A) OAR 340-016- 0060(2)(a)	<u>Criteria</u> The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.
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"Air Pollution" is the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

#### Applied to this Application

The facility **complies** with conditions G17 and G19 of the applicant's Title V Permit, which prohibits excessive PM emissions and opacity. This requirement is imposed by the DEQ.

<b><i>Method</i></b> ORS 468.155 (1)(b)(B)	<u>Criteria</u> The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.
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"Air contaminant" means any dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

“Air-cleaning device” means any method, process or equipment that removes, reduces or renders less noxious air contaminants prior to their discharge to atmosphere.

Applied to this Application

The claimed facility **disposes** of particulate matter in the exhaust stream from the Hot Saw. The particulate matter **meets the definition of an air contaminant**. The claimed facility **meets the definition of an air cleaning device** because it removes 99.5% of the particulate matter.

**Exclusions** Criteria

ORS 468.155 (3) Ineligible costs are any distinct portions of a pollution control facility that make an insignificant contribution to the principal or sole purpose of the facility; or  
OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The applicant claimed a Lo-Profile Drum Caddy used to transport full drums of dust from the baghouse to the disposal area. The collected material is disposed at Columbia Ridge Landfill in Arlington, Oregon as non-hazardous waste. The **caddy makes an insignificant contribution** to the principal purpose of the facility. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

**Replacement** Criteria

ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were **not previously certified** as a Pollution Control Facility.

**Maximum Credit** Criteria

ORS 468.173(1) The maximum tax credit available to the applicant is 50% if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **07/20/2000**, construction was completed on **12/23/2000**, and the Department received the application on **08/13/2002**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$97,726
Lo-profile drum caddies	- \$224
<b>Eligible Cost</b>	<b>\$97,502</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increased Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

Ali Nikukar is the staff assigned to the source in DEQ's Western Region Office. He affirmed the applicant's statement that the claimed facility is in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to the site:

Title V Air Contamination Discharge Permit No. 22-0547, issued September 12, 2001  
 NPDES General Permit – Storm Water Permit No. 1200-Z, issued July 22, 1997  
 NPDES Wastewater Discharge Permit No. 100522, issued September 30, 1988

The EQC certified 115 pollution control facility tax credits at this location.

60 for Water, 52 for Air, 2 for Material Recovery and 1 NPS

Reviewers: PBS Engineering and Environmental  
 Maggie Vandehey, DEQ





State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	Approve @ Reduced Cost
Applicant	Medallion Cabinetry, Inc.
Application No.	6290
Facility Cost	\$182,127
Percentage Allocable	100%
Maximum Tax Credit	50%
Useful Life	10 years

## Tax Credit Review Report

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**Pollution Control Facility: AIR**  
**Final Certification**  
ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: **C Corp.**  
Business: **Manufacturer of finished  
wooden cabinets**  
Taxpayer ID: **41-1507499**

The applicant's address is:

**180 Industrial Blvd.  
Waconia, MN 55387**

### *Facility Identification*

The certificate will identify the facility as:

**Thirteen - Spray booth particulate  
filter systems manufactured by  
Midway Industrial Supply, Inc.**

The applicant is the **owner and operator** of  
the facility located at:

**625 Hoffman Rd.  
Independence, OR 97351**

### *Technical Information*

The applicant installed thirteen (13) spray booth filter systems in their new cabinet manufacturing plant. The filter systems were manufactured by Midway Industrial Supply, Inc. The claimed facility includes the filter media and support structures, fans, and motors. The applicant also included the prorated costs of the land and building that the claimed facility occupies based on the footprint. The applicant did not include the costs of the spray booth chambers and exhaust ductwork.

The filter systems control particulate matter (PM) and fine particulate (PM<sub>10</sub>) generated when the operator applies the protective finish to wooden cabinet components. The operator sprays a finishing coat on the product as it passes through the spray booth. The filter media located behind the product captures particulate over-spray. The spray booth filters are disposable roll media filters with a rated PM/PM<sub>10</sub> removal efficiency of 97.1%. The exhaust fans draw between 8,750 and 14,000 cubic feet/minute of air through each filter.

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>12/18/2000</b>
<i>Construction Completed</i>	<b>10/8/2001</b>
<i>Facility Placed into Operation</i>	<b>10/5/2001</b>
<i>Application Filed</i>	<b>10/7/2002</b>

**Purpose: Required** Criteria  
 ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

Applied to this Application

The facility complies with its Air Contaminant Discharge Permit (ACDP) imposed by DEQ. Specifically, Condition 2 lists the spray booth filters as pollution control devices in the ACDP. The filters reduce PM/PM<sub>10</sub> emissions from a potential of 47 tons/year to less than 1.36 tons/year. Particulate emissions from the spray booths comply with the applicant's Air Contaminant Discharge Permit.

**Method** Criteria  
 ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

Applied to this Application

Particulate matter meets the definition of air pollution; it is listed as a priority pollutant by EPA. The claimed facility meets the definition of an air cleaning device because it significantly reduces potential particulate emissions by more than 97%.

***Exclusions*** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
 OAR 340-016-0070(3) an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The applicant claimed internal **ductwork** from the fans to the roof that would have been installed to convey emissions to the exterior of the building without the installation of the claimed facility. They also included **electrical** costs that relate to the spray booth but not the filter system that included lighting, control work, and emergency circuits. These items make insignificant contributions to the principal purpose of the facility. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Maximum Credit*** Criteria  
 ORS 468.173(1) The maximum tax credit available to the applicant is 50% if construction of the  
 OAR 340-016-0007 facility was completed on or before December 31, 2001 and the application was filed on or before December 31, 2003.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility was completed on **10/8/2001** and the Department received the application on **10/7/2002**.

***Facility Cost***

Copies of invoices, cancelled checks, and a project summary report substantiated the claimed facility cost.

Claimed Cost	\$212,918
Ductwork and non-related electrical.	- \$30,791
<b>Eligible Cost</b>	<b>\$182,127</b>

***Facility Cost Allocable to Pollution Control***

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

***Compliance and Other Tax Credits***

The DEQ staff member assigned to the source is Gary Andes from the DEQ Western region, Salem office, who affirmed the applicant's statement that the facility and site are in compliance with Department rules and statutes. No EQC orders have been issued for this facility. The following DEQ permits have been issued to the site:

- Air Contaminant Discharge Permit Number 27-005 issued January 30, 2001
- Hazardous Waste permit number ORQ000019729 issued February 4, 2002
- Storm water discharge permit number 1200-C issued December 22, 2000.

The EQC issued two certificates to the applicant on December 13, 2002.

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve @ Reduced Cost</b>
Applicant	<b>Freres Lumber Co., Inc.</b>
Application No.	<b>6333</b>
Facility Cost	<b>\$155,995</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>7 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corporation**

Business: **Plywood production**

Taxpayer ID: **93-0357299**

The applicant's address is:

**PO Box 276  
Lyons, OR 97358**

#### ***Facility Identification***

The certificate will identify the facility as:

**One - Clarke Pneu-Aire Baghouse,  
Model 100-200**

The applicant is the **owner and operator** of  
the facility located at:

**47842 Lyons-Mill City Dr.  
Mill City, OR 97360**

#### ***Technical Information***

Freres Lumber Company manufactures plywood at its mill in Lyons, Oregon. The manufacturing process generates particulate matter (PM) and fine particulate matter (PM<sub>10</sub>). Prior to installation of the claimed facility, the applicant used four cyclones to convey chips and sawdust. The exhausts from the four cyclones vented 4.8 tons/year of PM and 2.3 tons/year of PM<sub>10</sub> to the atmosphere. The applicant installed two new cyclones that replaced two of the four existing cyclones and a baghouse manufactured by Clarke Pneu-Aire, Model 100-200. The exhaust from the cyclones are ducted into the baghouse, which removes PM and PM<sub>10</sub> from the exhausted air. The baghouse has a capture efficiency of 99.9%, with a flowrate of 54,500 cubic feet/minute.

**Eligibility**

**Timely Filing**  
ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>4/1/2002</b>
<i>Construction Completed</i>	<b>5/28/2002</b>
<i>Facility Placed into Operation</i>	<b>5/28/2002</b>
<i>Application Filed</i>	<b>10/28/2002</b>

**Purpose: Voluntary**  
ORS 468.155 The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of air pollution.

(1)(a)(B)

OAR 340-016-

0060(2)(a)

Applied to this Application

The baghouse reduces PM emissions by 4.8 tons/year and PM<sub>10</sub> emissions by 2.3 tons/year. PM and PM<sub>10</sub> meet the definition of air pollution.

The cyclones are used to convey chips and sawdust. The applicant installed the fire suppression system to comply with building and fire code requirements. These items do not have an exclusive pollution control purpose.

**Method**

ORS 468.155

(1)(b)(B)

Criteria

The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and by the use of an air cleaning device as defined in ORS 468A.005.

"Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

"Air-cleaning device" means any method, process or equipment, which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

Applied to this Application

PM and PM<sub>10</sub> meet the definition of air pollution. The baghouse **meets the definition of an air cleaning device** because it reduces and controls PM and PM<sub>10</sub> emissions.

The fire suppression equipment; and the cyclones, the catwalks, and related material handling equipment fail to meet the definition of air pollution as defined in ORS 468A.005 because they do not remove particulate matter. The fire protection system was installed to meet a code requirement. The costs of the fire

protection system, the two cyclones, the airlocks for the cyclones, and the associated installation costs are subtracted from the claimed cost under the Facility Cost section.

***Exclusions*** Criteria

ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

OAR 340-016-0070(3) and OAR 340-016-0070(3)(m) and (p)

Applied to this Application

The claimed cost included cost for a fire protection; and material handling cyclones, a motor, catwalk materials, airlocks, and related installation costs. These items make an insignificant contribution to the sole purpose of the facility. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Maximum Credit*** Criteria

ORS 468.173(3)(g) The maximum tax credit available to the applicant is **35%** if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and

ORS 468.170(10) construction or installation of the facility is **entirely voluntary** and no portion of it is required in order to comply with a federal law administered by DEQ, EPA, or LRAPA.

ORS 468.165(6)

Applied to this application

The application was filed on **10/28/2002** and the applicant voluntarily installed the facility.

***Facility Cost***

Copies of invoices and a project summary were used to substantiate the claimed facility cost. The amount allocated to installation of the material handling cyclones and related material handling equipment was estimated to be 50% of the total installation costs based on a telephone conversation with the installation contractor.

	Claimed Cost	\$245,214
Material Handling cyclones		- \$600
Fire Protection system		- \$42,223
Material Handling airlocks		- \$3,500
Material Handling motor		- \$935
Material Handling installation costs		- \$40,502
Catwalk materials		- \$1,459
	<b>Eligible Cost</b>	<b>\$155,995</b>

***Facility Cost Allocable to Pollution Control***

The following factors were used to determine that 100% of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increased Costs:</b> No savings or increases in costs were identified.

***Compliance and Other Tax Credits***

The DEQ staff assigned to the source is Barbara Michels from the Western region office. Ms. Michels affirmed the applicant's statement that the facility and site are in compliance with Department rules. The facility has no outstanding EQC orders. DEQ issued an Air Contaminant Discharge Permit to the facility on October 21, 1998. The EQC certified four certificates at this location; two for water quality, one for material recovery, and one for controlling air pollution.

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ





State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve @ Reduced Cost</b>
Applicant	<b>Collins Wood Lath, Inc.</b>
Application No.	<b>6397</b>
Facility Cost	<b>\$57,774</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>7 years</b>

## Tax Credit Review Report

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**Pollution Control Facility: AIR**  
**Final Certification**  
ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0080

***Applicant Identification***  
Organized As: **S Corporation**  
Business: **Wood Products**  
**Remanufacturing**  
Taxpayer ID: **93-1269731**

The applicant's address is:

**875 W Hilliard Lane**  
**Eugene, OR 97404**

### ***Technical Information***

Collins Wood Lath produces 2' x 4' x 48" wooden kiln sticks that saw mills use to separate lumber during the drying process. In the production process, the applicant uses gang rip saws that create sawdust and fine particulate. The applicant previously conveyed the wood waste to an outdoor cyclone but the fine particulate would blow out of the top. Neighbors complained to Lane Regional Air Pollution Authority about the dust. In response, the applicant installed a Carter-Day baghouse and ducting to capture and remove the excessive particulate matter emissions that were discharged from the top of the cyclone.

The claimed facility is a used Carter-Day baghouse; model number CFN-72-RJ-96, which contain 72 polyester bags that are eight feet long. The polyester bags have a collection efficiency of polyester bags at 99.0% and greater. The applicant also claimed one used fan powered by a used 75 hp motor, and ducting connecting the outdoor cyclone exhaust to the outdoor baghouse ducting. They claimed a fire suppression system and a well to provide water to the fire suppression system.

### ***Facility Identification***

The certificate will identify the facility as:

**One - Carter-Day Baghouse, Model**  
**Number CFN-72-RJ-96**

The applicant is the **owner and operator** of the facility located at:

**91000 Brown Lane**  
**Eugene, OR 97402**

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed, if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>8/01/01</b>
<i>Construction Completed</i>	<b>11/30/02</b>
<i>Facility Placed into Operation</i>	<b>11/30/02</b>
<i>Application Filed</i>	<b>12/05/02</b>

**Purpose: Required** Criteria  
 ORS 468.155 The principal purpose of the claimed facility must be to comply with a  
 (1)(a)(A) requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air  
 OAR 340-016- pollution. That principal purpose must be the most important or primary purpose  
 0060(2)(a) of the facility. The facility must have only one primary purpose.

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

Applied to this Application

The **baghouse** complies with **Conditions 3 and 4 of the applicant's air permit** imposed by **Lane Regional Air Pollution Authority (LRAPA)**, which prohibits PM emissions with opacity readings greater than 20%. The air permit also prohibits PM emissions greater than 0.1 grain per cubic foot of exhausted air. The installation eliminated the PM emissions and complaints from the neighbors.

The primary and most important purpose of the **fire suppression system and well** is to comply with the International Mechanical Code not a LRAPA or DEQ requirement. The Deputy Fire Marshal for the City of Eugene confirmed the requirement to have fire suppression in ducting systems that convey combustible fine particulate. The **well** is a part of the fire suppression system. The cost is subtracted from the claimed cost under the Facility Cost section.

**Method** Criteria  
 ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

"Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

"Air-cleaning device" means any method, process or equipment, which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

Applied to this Application

Particulate **meets the definition of air pollution**. The Carter-Day baghouse **meets the definition of an air cleaning device** because it removes the particulate.

**Exclusions** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
 OAR 340-016- an insignificant contribution to the principal or sole purpose of the facility; or  
 0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The **fire suppression system and well** make an insignificant contribution to the principal purpose of the facility. The cost is subtracted from the claimed facility cost.

The applicant included the **LRAPA air permit application fee** in the claimed facility cost. The Department subtracted the amount of the fee from the claimed facility cost as shown under the Facility Cost section below.

**Replacement** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility did not replace a previously certified pollution control facility.

**Maximum Credit Criteria**  
 ORS 468.173(3)(f) The maximum tax credit available to the applicant is **35%** if the application was  
 ORS 468.170(10) filed between January 1, 2002 and December 31, 2008, inclusively; and the  
 ORS 468.165(6) certified facility **cost does not exceed \$200,000.**

Applied to this Application

The maximum tax credit is **35%** because the application was filed on **December 5, 2002** and the certified facility cost is **\$57,774.**

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

	Claimed Cost	\$76,597
LRAPA Air Permit application fee		-1,690
Fire Suppression System – Clark Sheet Metal		-14,568
Well drilling and pump – Bill Fielder Well Drilling		-3,565
Electrical for fire suppression and well – ARC Electric		
ARC Invoice No. 6109		-1,387
ARC Invoice No 5401		-753
Erroneous calculations:		
The applicant incorrectly listed salvage value of equipment that was not sold as salvage.		+ 1,000
Addition error in the Olympic Fabricators' invoices		+ 2,140
<b>Eligible Cost</b>		<b>\$57,774</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology
ORS 468.190(1)(d)	<b>Savings/Increased Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

***Compliance and Other Tax Credits***

The LRAPA staff member assigned to the source is Tom Freeman, who affirmed that the facility and site are in compliance with LRAPA rules and statutes and with EQC orders. The following DEQ permits were issued to the site: Minimal Air Contaminant Discharge Permit No. 201289 issued January 23, 2002. The EQC has not issued any pollution control tax credit certificates at this location.

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve @ Reduced Cost</b>
Applicant	<b>Weyerhaeuser Company</b>
Application No.	<b>6423</b>
Facility Cost	<b>\$445,188</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>7 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### **Applicant Identification**

Organized As: **C Corporation**

Business: **Plywood manufacturing**

Taxpayer ID: **91-0470860**

The applicant's address is:

**Tax Department CH 1C28**

**PO Box 9777**

**Federal Way, WA 98063**

### **Facility Identification**

The certificate will identify the facility as:

**Regenerative Thermal Oxidizer (RTO)  
/Regenerative Catalytic Oxidizer  
(RCO)**

The applicant is the **Owner and Operator** of  
the facility located at:

**611 E. Highway 20  
Sweet Home, OR 97477**

### **Technical Information**

Weyerhaeuser Company's Sweet Home mill produces veneer and plywood from raw logs. Drying the plywood is part of the manufacturing process. The steam-heated veneer dryers generate volatile organic compound (VOC) emissions. The applicant connected the exhaust from dryers numbered 3, 4, and 5 to the new GeoEnergy Regenerative Thermal Oxidizer / Regenerative Catalytic Oxidizer (RTO/RCO) to control the VOC emissions. The RTO/RCO uses two combustion chambers and two catalyst beds to convert the VOC emissions to carbon dioxide and water. It destroys 20.1 tons of VOC emissions per year with a destruction efficiency of 90%. The RTO/RCO has a design inlet gas flow of 57,282 cubic feet per minute.

**Eligibility**

**Timely Filing :** Criteria  
 ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>6/1/2000</b>
<i>Construction Completed</i>	<b>1/31/2001</b>
<i>Facility Placed into Operation</i>	<b>2/19/2001</b>
<i>Application Filed</i>	<b>1/7/2003</b>

**Purpose: Required** Criteria  
 ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

Applied to this Application

The primary and most important purpose of the RTO/RCO is to **reduce air pollution**. The claimed facility **complies with a Notice of Approval (NOA)** issued by the DEQ.

The primary and most important purpose of the **CAD drawings for fire suppression** is to meet fire code. The primary and most important purpose of the **temperature sensors** on the dryers is for production purposes. Spare parts and extra computer hardware and software make an insignificant contribution to reducing VOC emission for the facility. The associated costs are subtracted from the claimed facility cost.

***Method*** Criteria  
 ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and by the use of an air cleaning device as defined in ORS 468A.005.

"Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

"Air-cleaning device" means any method, process or equipment, which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

Applied to this Application

Volatile organic compounds (VOC) **meet the definition of air contaminant.** An RTO/RCO **meets the definition of an air cleaning device.**

***Exclusions*** Criteria  
 ORS 468.155 (3) OAR 340-016-0070(3) Ineligible costs are any distinct portion of a pollution control facility that makes an **insignificant contribution** to the principal or sole purpose of the facility; or provide benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The applicant included **spare parts, extra computer hardware and software, Cad drawings** for fire suppression and **temperature sensors.** Spare parts are specifically excluded in rule. These items make an insignificant contribution to reducing VOC emissions for the facility. The associated costs are subtracted from the claimed cost under the Facility Cost section.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The facility replaces previously certified electrified filter beds (EFB.) On November 18, 1999, the EQC certified the EFB on **certificate number 4208.** The applicant installed the new RTO/RCO to comply with a consent decree; therefore, the facility is eligible for the difference between the cost of the new facility and the **like-for-like replacement cost** of the original facility as shown under the Facility Cost Section. The previously certified facility did not reduce VOC emissions.



**Maximum Credit Criteria**

ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **6/1/2000**, construction was completed on **1/31/2001**, and the Department received the application on **1/7/2003**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost. The applicant correctly calculated the like-for-like replacement cost based on Consumer Price Index (CPI) as described in Department guidance. They accurately subtracted the like-for-like replacement cost prior to claiming the facility cost.

Claimed Costs	\$973,159
Spare parts	- \$9,972
CAD drawings for fire protection system	- \$507
Extra computer hardware and software	- \$5,562
Temperature sensors for dryers	- \$2,473

The applicant accurately calculated the like-for-like replacement cost based on Consumer Price Index (CPI) as described in Department guidance.

September 1997 Facility Cost	\$460,586	
Like-for-like Factor	X 1.106107	
Like-for-like Replacement Cost	\$509,457	- \$509,457
<b>Eligible Cost</b>	<b>\$445,188</b>	

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increased Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

***Compliance and Other Tax Credits***

The DEQ staff from the Western Region assigned to the source is James Boylan. Mr. Boylan affirmed the applicant's statement that the facility and site are in compliance with Department rules and statutes and with EQC orders. DEQ has issued the following permit to the site:

Oregon Title V No. 23-3010, issued March 26, 2001.

The EQC certified ten facilities to the applicant at this location.

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	Approve
Applicant	<b>PED Manufacturing, LTD</b>
Application No.	<b>6425</b>
Facility Cost	<b>\$14,061</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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**Pollution Control Facility: AIR**

**Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: **C Corporation**

Business: **Metal Casting Foundry**

Taxpayer ID: **93-0605811**

The applicant's address is:

**13963 Fir Street**

**Oregon City, OR 97045**

### *Facility Identification*

The certificate will identify the facility as:

**One - LMC Pulse Jet Baghouse, Model  
FSD36-8**

The applicant is the **owner and operator** of  
the facility located at:

**13963 Fir Street**

**Oregon City, OR 97045**

### *Technical Information*

PED Manufacturing produces metal castings using the investment casting process. The applicant recently installed a tumble blaster to remove the ceramic shell that surrounds the metal casting, a casting polishing lathe and a weld station. The newly installed machines generate particulate matter (PM) emissions. The applicant installed an LMC Pulse Jet Baghouse, manufactured by Air Tek Northwest - Blast Cleaning Services, to control the particulate matter emissions. The baghouse is capable of handling 4,000 cubic feet per minute of exhaust air. It has a rated efficiency of 98% at filtering contaminants between 5 and 7 microns in size.

***Eligibility***

***Timely Filing*** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed, if construction was completed on or after January 1, 2002.

Applied to this Application  
 The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>8/19/2002</b>
<i>Construction Completed</i>	<b>11/1/2002</b>
<i>Facility Placed into Operation</i>	<b>11/2/2002</b>
<i>Application Filed</i>	<b>1/8/2003</b>

***Purpose: Required*** Criteria  
 ORS 468.155 (1)(a)(A) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.  
 OAR 340-016-0060(2)(a)

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

Applied to this Application  
 The facility complies with its Air Contaminant Discharge Permit, #03-2505, imposed by DEQ to control PM emissions.

***Method*** Criteria  
ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and by the use of an air cleaning device as defined in ORS 468A.005.

"Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

"Air-cleaning device" means any method, process or equipment, which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

Applied to this Application

Particulate matter **meets the definition of air pollution**. The baghouse **meets the definition of an air cleaning device** because it controls and reduces particulate matter emissions.

***Exclusions*** Criteria  
ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
OAR 340-016- an insignificant contribution to the principal or sole purpose of the facility; or  
0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices and applicant statements did not indicate that any ineligible costs were included.

***Replacement*** Criteria  
ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Maximum Credit** Criteria  
 ORS 468.173(3)(f) The maximum tax credit available to the applicant is **35%** if the application was  
 ORS 468.170(10) filed between January 1, 2002 and December 31, 2008, inclusively; and the  
 ORS 468.165(6) certified facility **cost does not exceed \$200,000.**

Applied to this Application

The maximum tax credit is **35%** because the application was filed on **1/8/2003**  
 and the certified facility cost is **\$14,061.**

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$14,061
<b>Eligible Cost</b>	<b>\$14,061</b>

**Facility Cost Allocable to Pollution Control**

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$14,061** and the facility is used **100%** of the time for pollution control.

**Compliance and Other Tax Credits**

The applicant states that the facility and site are in compliance with Department rules and statutes and with EQC orders. DEQ has issued the following permits to the site: an ACDP #03-2505 issued on February 16, 1995, amended on January 2, 2002, and a Storm Water Permit #1200-Z issued on September 27, 2002. The EQC has issued five certificates to this location: one for treating industrial wastewater and four for controlling air pollution.

Reviewers: PBS Engineering and Environmental  
 Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve</b>
Applicant	<b>PED Manufacturing, LTD</b>
Application No.	<b>6426</b>
Facility Cost	<b>\$12,421</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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**Pollution Control Facility: AIR**  
**Final Certification**  
ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0080

***Applicant Identification***  
Organized As: **C Corporation**  
Business: **Metal Casting Foundry**  
Taxpayer ID: **93-0605811**

The applicant's address is:

**13963 Fir Street  
Oregon City, OR 97045**

***Facility Identification***  
The certificate will identify the facility as:

**One - LMC Pulse Jet Baghouse, Model  
FSD 36-8**

The applicant is the **owner/operator** of the facility located at:

**13963 Fir Street  
Oregon City, OR 97045**

### ***Technical Information***

PED Manufacturing produces metal castings using the investment casting process. One step in the manufacturing process is the removal of the ceramic shell that surrounds the metal casting by using a Pacific Kiln Knockout Machine and a Universal Medical Blast Machine. The two machines generate particulate emissions. To control the dust emissions, the applicant installed a LMC Pulse Jet Baghouse manufactured by Air Tek; Northwest - Blast Cleaning Services. The system has 480 square feet of filter area and an 8.3:1 air to cloth ratio. The baghouse is capable of handling 4,000 cfm with a rated efficiency of 98% at filtering contaminants between 5 and 7 microns in size.

Prior to the installation of this facility a smaller and less efficient dust collector was used.

***Eligibility******Timely Filing:*** ORS Criteria

468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>10/1/2002</b>
<i>Construction Completed</i>	<b>11/15/2002</b>
<i>Facility Placed into Operation</i>	<b>11/20/2002</b>
<i>Application Filed</i>	<b>1/8/2003</b>

***Purpose: Required*** Criteria

ORS 468.155 (1)(a)(A) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

OAR 340-016-0060(2)(a)

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

Applied to this Application

The facility complies with PED Manufacturing's Air Contaminant Discharge Permit, #03-2505, imposed by DEQ.



<u>Method</u>	<u>Criteria</u>
ORS 468.155 (1)(b)(B)	The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and by the use of an air cleaning device as defined in ORS 468A.005.

"Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

"Air-cleaning device" means any method, process or equipment, which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

Applied to this Application

The particulate matter **meets the definition of air pollution**. The baghouse **meets the definition of an air cleaning device** because it controls and reduces particulate matter emissions.

<u>Exclusions</u>	<u>Criteria</u>
ORS 468.155 (3) OAR 340-016- 0070(3)	Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

<u>Replacement</u>	<u>Criteria</u>
ORS 468.155 (3)(e)	The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Maximum Credit Criteria**  
 ORS 468.173(3)(f) The maximum tax credit available to the applicant is **35%** if the application was  
 ORS 468.170(10) filed between January 1, 2002 and December 31, 2008, inclusively; and the  
 ORS 468.165(6) certified facility **cost does not exceed \$200,000.**

Applied to this Application

The maximum tax credit is **35%** because the application was filed on **1/8/2003** and the certified facility cost is **\$12,421.**

**Facility Cost**

Copies of invoices and a project summary report substantiated the claimed facility cost.

Claimed Cost	\$12,421
Eligible Cost	<u>\$12,421</u>

**Facility Cost Allocable to Pollution Control**

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$12,421** and the facility is used **100%** of the time for pollution control.

**Compliance and Other Tax Credits**

The applicant states that the facility and site are in compliance with Department rules and statutes and with EQC orders. DEQ has issued the following permits to the site: an ACDP #03-2505 issued on February 16, 1995, amended on January 2, 2002, and a Storm Water Permit #1200-Z issued on September 27, 2002. The EQC has issued five certificates to this location: one for treating industrial wastewater and four for controlling air pollution.

Reviewers: PBS Engineering and Environmental  
 Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Smith Seed Service, LLC</b>
Application No.	<b>6443</b>
Facility Cost	<b>\$75,331</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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**Pollution Control Facility: AIR  
Final Certification**  
ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: **LLC**  
Business: **Seed Cleaning Operation**  
Taxpayer ID: **93-0666692**

The applicant's address is:

**26890 Powerline Road  
Halsey, OR 97348**

### *Facility Identification*

The certificate will identify the facility as:

**Seed lift and filter system**

The applicant is the **Owner/Operator** of the facility located at:

**26890 Powerline Road  
Halsey, OR 97348**

### *Technical Information*

The applicant claims a new seed lift system with a CSL 20-HPBR secondary filter and pit dust collection system. Seed is unloaded by forced air, lifting it up a 40' pipe powered by a 40-HP Electric motor to the new feeder and distributor set with cyclone attachment. The cyclone removes dirt and dust from the seed. The seed is then drawn through 6" tubing to the new CSL secondary filter system. The dust from the truck receiving pit is vacuumed up and into the existing bag house. The collected dust from the bag house and screenings from the bunker are used in the production of animal feed.

The previous system discharged without a filter into the air. With the installation of the new system, dust is filtered out of 99.99% of incoming seed loads down to 1 micron particle size. Prior to the installation of this facility, dust from unloading of seed emitted into the atmosphere at over 26 tons a year. With the installation of this facility, approximately a half ton of dust is released annually.

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>6/1/2002</b>
<i>Construction Completed</i>	<b>8/30/2002</b>
<i>Facility Placed into Operation</i>	<b>7/1/2002</b>
<i>Application Filed</i>	<b>2/3/2003</b>

The seed lift system and filter was placed into operation in time for harvest. The facility was completed after harvest with the installation of the dust collection system.

**Purpose: Required** Criteria  
 ORS 468.155 The principal purpose of the claimed facility must be to comply with a  
 (1)(a)(A) requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air  
 OAR 340-016- pollution. That principal purpose must be the most important or primary purpose  
 0060(2)(a) of the facility. The facility must have only one primary purpose.

Applied to this Application

The facility complies with Air Quality Permit, Number 22-3525, Issued May 1, 2000.

**Method** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by the disposal or  
 (1)(b)(B) elimination of air contaminants, air pollution, or air contamination sources; and  
 the use of an air cleaning device as defined in ORS 468A.005.

Applied to this Application

Airborne dust from the seed cleaning operation **meet the definition of air pollution** and the lift and filter system **meet the definition of an air cleaning device**.

***Exclusions*** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
 OAR 340-016- an insignificant contribution to the principal or sole purpose of the facility; or  
 0070(3) provides benefits of economic value; or where the costs are not directly related to  
 the operation of the industry or enterprise seeking the tax credit but were installed  
 as a result of the facility.

Applied to this Application

Costs occurred in 1998 for disconnects, starters for motors and pull wire and disconnects for motors are outside the scope of the project dates. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

***Maximum Credit*** Criteria  
 ORS 468.173(3)(f) The maximum tax credit available to the applicant is **35%** if the application was  
 ORS 468.170(10) filed between January 1, 2002 and December 31, 2008, inclusively; and the  
 ORS 468.165(6) certified facility **cost does not exceed \$200,000.**

Applied to this Application

The maximum tax credit is **35%** because the application was filed on **2/3/2003** and the certified facility cost is **\$75,331.**

***Facility Cost***

Copies of invoices and a project summary report substantiated the claimed facility cost.

	Claimed Cost	\$80,801
Costs occurred in 1998 for disconnects, starters for motors and pull wire and provide disconnects for motors are outside the scope of the project dates.		- 5,470
	<b>Eligible Cost</b>	<b>\$75,331</b>

### ***Facility Cost Allocable to Pollution Control***

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The seed dust used for animal feed does not provide a profit.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

### ***Compliance and Other Tax Credits***

The applicant states that the facility and site are in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to the site: Air Quality Permit, No. 22-3525, Issued May 1, 2000.

The EQC certified two facilities at this location; one for material recovery and one for air pollution control.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Novellus Systems, Inc.</b>
Application No.	<b>6450</b>
Facility Cost	<b>\$306,732</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: Manufactures technology for  
producing semi-conductor devices

Taxpayer ID: **77-0024666**

The applicant's address is:

**11155 SW Leveton Drive  
Tualatin, OR 97062**

#### ***Technical Information***

Novellus manufactures chemical vapor deposition systems, physical vapor deposition, copper electrofill systems and surface preparation/cleaning systems used in fabricating integrated circuits. The applicant claims an Air Scrubber System that scrubs acidic exhaust from the manufacturing process. The acidic exhaust is carried from the point of generation to the scrubber through four main trunks of the stainless steel ductwork. The exhaust is then wet scrubbed and the water is treated on site with an acid waste neutralization system.

The scrubber system was installed prior to the start of operations at this site. Without the scrubber system in place, the applicant estimates that the plant would emit approximately 427 pounds of acid gases a year. The building D scrubber treats approximately 76% of this waste stream or 325 pounds of acid gases. The facility has a 99% control efficiency for acid in the exhaust stream. About 321 pounds of acid gas is recovered each year by the system instead of being released to the atmosphere.

#### ***Facility Identification***

The certificate will identify the facility as:

**One - Air Scrubber for Building D,  
Model MPSV 3860-7-659, Serial  
# SC-E1-1**

The applicant is the **Owner/Operator** of the  
facility located at:

**11155 SW Leveton Drive  
Tualatin, OR 97062**

**Eligibility****Timely Filing** ORS

468.165 (6)

Criteria

The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>3/1/2001</b>
<i>Construction Completed</i>	<b>4/1/2002</b>
<i>Facility Placed into Operation</i>	<b>6/1/2002</b>
<i>Application Filed</i>	<b>2/12/2003</b>

**Purpose: Required**

ORS 468.155

(1)(a)(A)

OAR 340-016-

0060(2)(a)

Criteria

The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Air Pollution" is the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

ORS 468A.005

Applied to this Application

The facility complies with Air Contaminant Discharge Permit, Number 34-0063, Issued March 27, 2002 by DEQ.

Approximately 80% of the ductwork carries the waste stream from the point of origin to the scrubber. The purpose of this internal duct work is material handling. The waste stream would have to be vented from the building whether or not it was treated. Until the waste stream reaches the atmosphere, it is not air pollution. The remainder of the ductwork carries the treated air externally to the stack. There is no additional pollution control device between the scrubber and the point of release into the atmosphere.

The associated cost is reduced from the claimed facility cost.



**Method** Criteria  
 ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

Applied to this Application

VOC's and HAP's **meet the definition of air pollution** and the Air Scrubber system meets the definition of an air cleaning device because it reduces air contaminants.

**Exclusions** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
 OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Approximately 80% of the ductwork makes an insignificant contribution to pollution control. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility cost section below.

**Replacement** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Maximum Credit** Criteria  
 ORS 468.173(3)(a) The maximum tax credit available to the applicant is **35%** if the application was  
 ORS 468.170(10) filed between January 1, 2002 and December 31, 2008, inclusively; and the  
 ORS 468.165(6) applicant is certified under International Organization for Standardization standard **ISO 14001**.

Applied to this Application

The maximum tax credit is **35%** because the application was filed on **2/12/2003** and the applicant is certified under International Organization for Standardization standard ISO 14001 as shown on the attachment to this report.

**Facility Cost**

Copies of invoices and a project summary report substantiated the claimed facility cost.

	Claimed Cost	\$874,476
Ducting		- 567,744
	<b>Eligible Cost</b>	<b>\$306,732</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

DEQ staff assigned to the source, Cory Chang in the Northwest region, has affirmed the applicant's statement that the facility and site are in compliance with Department rules and statutes and with EQC orders. The following permits have been issued to the site:

Industrial Wastewater Discharge Permit No. 111272, issued by Clean Water Services, September 30, 2002.

Air Contaminant Discharge Permit, Number 34-0063, Issued March 27, 2002 by DEQ.

The EQC certified two facilities at this location: One for treating air and one for treating wastewater.

Reviewers: Maggie Vandehey, DEQ

**UNDERWRITERS LABORATORIES INC.**  
**ENVIRONMENTAL MANAGEMENT SYSTEM REGISTRATION**

# Novellus Systems, Inc.

4000 North First Street, San Jose, CA 95134

(see the Certificate Addendum for off-site locations)

Underwriters Laboratories Inc.® (UL) issues this certificate to the Firm named above, after assessing the Firm's environmental management system and finding it in compliance with

## ISO 14001:1996

### ENVIRONMENTAL MANAGEMENT SYSTEM

for the following scope of registration

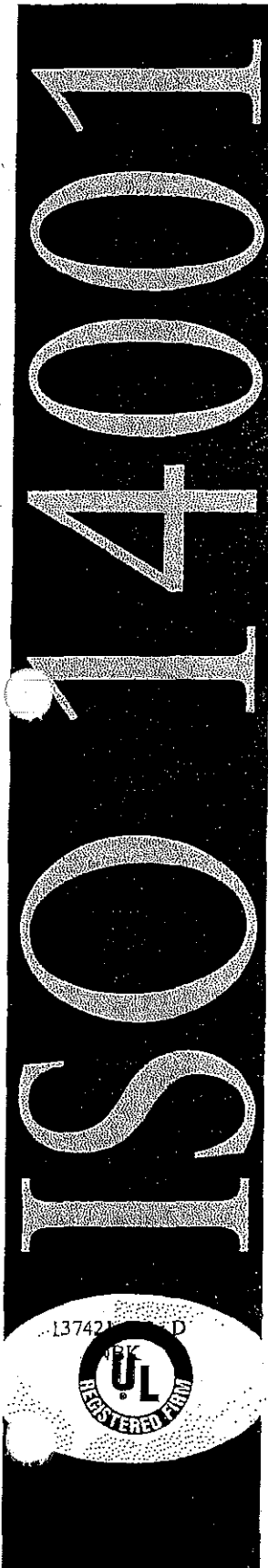
The Environmental Management System of Novellus Systems, Inc. associated with the design, development, manufacture, installation, and servicing of semiconductor production equipment used in the semiconductor manufacturing industry at 4000 North First Street, San Jose, CA, U.S.A. This also includes the following offsite locations:

- Building 3950, North First Street, San Jose, CA 95134,
- Building 3011, North First Street, San Jose, CA 95134
- Building 4041, North First Street, San Jose, CA 95134
- Building 3970, North First Street, San Jose, CA 95134
- Building 3960, North First Street, San Jose, CA 95134
- Building 3940, North First Street, San Jose, CA 95134
- 81 Vista Montana, San Jose, CA 95134
- PTC Wilsonville Facility, 26277 SW 95<sup>th</sup> Avenue, Suite 402, Wilsonville, OR 97070
- SIG Operations, 2730 Junction Avenue, San Jose, CA 95134
- SIG Operations, 404 E. Plumeria Drive, San Jose, CA 95134
- 11155 SW Leveton Drive, Tualatin, OR 97062

This environmental management system registration is included in UL's Directory of Registered Firms and applies to the operations of the address(es) shown above. By issuance of this certificate the firm represents that it will maintain its registration in accordance with the applicable requirements. This certificate is not transferable and remains the property of Underwriters Laboratories Inc. ®.

File Number: A8682  
Volume: 1  
Issue Date: March 1, 2000  
Revision Date: March 6, 2002  
Renewal Date: March 1, 2004

S. Joe Bhatia  
Executive Vice President and  
Chief Operating Officer - International



**UNDERWRITERS LABORATORIES INC.**  
**ENVIRONMENTAL MANAGEMENT SYSTEM REGISTRATION**

**ADDENDUM**

File No: A8682

Volume: 1

Registered Company:

**Novellus  
Systems, Inc.**

4000 North First Street, San Jose, CA 95134

The following off-site locations are included under this registration for the functions as identified in the scope of registration and appearing on the Certificate of Registration:

Building 3950  
North First Street  
San Jose, CA 95134

Building 3011  
North First Street  
San Jose, CA 95134

Building 4041  
North First Street  
San Jose, CA 95134

Building 3970  
North First Street  
San Jose, CA 95134

Building 3960  
North First Street  
San Jose, CA 95134

Building 3940  
North First Street  
San Jose, CA 95134

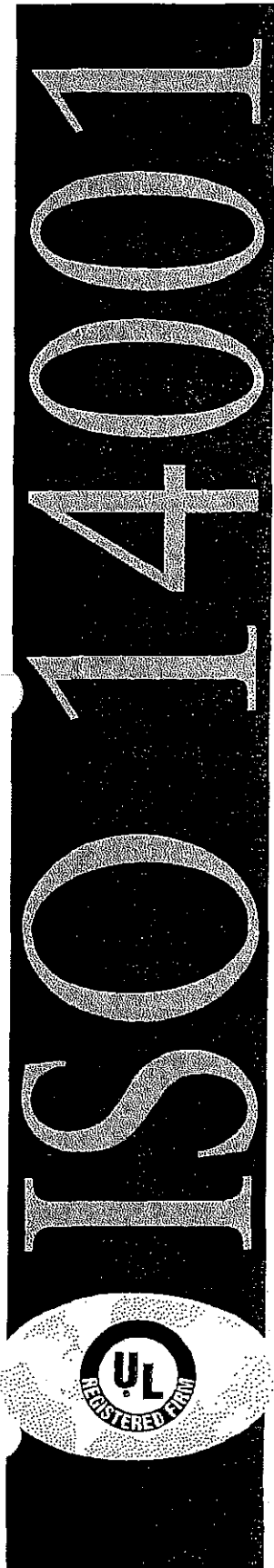
81 Vista Montana  
San Jose, CA 95134

PTC Wilsonville Facility  
26277 SW 95<sup>th</sup> Avenue, Suite 402  
Wilsonville, OR 97070

SIG Operations  
404 E. Plumeria Drive  
San Jose, CA 95134

SIG Operations  
2730 Junction Avenue  
San Jose, CA 95134

11155 SW Leveton Drive  
Tualatin, OR 97062





State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Novellus Systems, Inc.</b>
Application No.	<b>6451</b>
Facility Cost	<b>\$274,746</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: AIR**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Manufactures technology for  
producing semi-conductor devices**

Taxpayer ID: **77-0024666**

The applicant's address is:

**11155 SW Leveton Drive  
Tualatin, OR 97062**

#### ***Technical Information***

Novellus manufactures chemical vapor deposition systems, physical vapor deposition, copper electrofill systems and surface preparation/cleaning systems used in fabricating integrated circuits. The applicant claims an Air Scrubber System that scrubs acidic exhaust from the manufacturing process. The exhaust is wet scrubbed by the facility and the water is treated on site with an acid waste neutralization system.

The scrubber system was installed prior to the start of operations at this site. Without the scrubber system in place, the applicant estimates that the plant would emit approximately 427 pounds of acid gases a year. The Building F scrubber treats approximately 24% of this waste stream or 102 pounds of acid gases. The facility has a 99% control efficiency for acid in the exhaust stream. About 101 pounds of acid gas is recovered each year by the system instead of being released to the atmosphere.

#### ***Facility Identification***

The certificate will identify the facility as:

**One - Air Scrubber, Model MPSH 408-  
7-659, Serial #SC-M1-1**

The applicant is the **Owner/Operator** of the facility located at:

**11155 SW Leveton Drive  
Tualatin, OR 97062**

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>3/1/2001</b>
<i>Construction Completed</i>	<b>4/1/2002</b>
<i>Facility Placed into Operation</i>	<b>6/1/2002</b>
<i>Application Filed</i>	<b>2/12/2003</b>

**Purpose: Required** Criteria  
 ORS 468.155 (1)(a)(A) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.  
 OAR 340-016-0060(2)(a)

"Air Pollution" is the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

ORS 468A.005

Applied to this Application

The facility complies with Air Contaminant Discharge Permit, Number 34-0063, Issued March 27, 2002 imposed by DEQ.

The purpose of the internal duct work is material handling. The waste stream would have to be vented from the building whether or not it was treated. Until the waste stream reaches the atmosphere, it is not air pollution. The remainder of the ductwork carries the treated air externally to the stack. There is no additional pollution control device between the scrubber and the point of release into the atmosphere. The associated cost is reduced from the claimed facility cost.

**Method** Criteria  
 ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

Applied to this Application

VOC's and HAP's **meet the definition of air pollution** and the Air Scrubber system meets the definition of an air cleaning device because it reduces air contaminants.

***Exclusions*** Criteria

ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
 OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The duct work makes an insignificant contribution to the principal purpose of the facility. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Replacement*** Criteria

ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

***Maximum Credit*** Criteria

ORS 468.173(3)(a) The maximum tax credit available to the applicant is **35%** if the application was  
 ORS 468.170(10) filed between January 1, 2002 and December 31, 2008, inclusively; and the  
 ORS 468.165(6) applicant is certified under International Organization for Standardization standard **ISO 14001**.

Applied to this Application

The maximum tax credit is **35%** because the application was filed on **2/12/2003** and the applicant is certified under International Organization for Standardization standard ISO 14001 as shown on the attachment to this report.

***Facility Cost***

Copies of invoices and a project summary report substantiated the claimed facility cost.

	Claimed Cost	\$380,532
Insignificant contribution to pollution control purpose		
Duct work		- 105,786
	<b>Eligible Cost</b>	<b>\$274,746</b>

### ***Facility Cost Allocable to Pollution Control***

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

### ***Compliance and Other Tax Credits***

DEQ staff assigned to the source is Cory Chang in the Northwest region has affirmed the applicant's statement that the facility and site are in compliance with Department rules and statutes and with EQC orders. The following permits have been issued to the site: Industrial Wastewater Discharge Permit No. 111272, issued by Clean Water Services, September 30, 2002. Air Contaminant Discharge Permit, Number 34-0063, Issued March 27, 2002 by DEQ. The EQC certified two facilities at this location: One for treating air and one for treating wastewater.

Reviewers: Maggie Vandehey, DEQ



**UNDERWRITERS LABORATORIES INC.**  
**ENVIRONMENTAL MANAGEMENT SYSTEM REGISTRATION**

# Novellus Systems, Inc.

4000 North First Street, San Jose, CA 95134

(see the Certificate Addendum for off-site locations)

Underwriters Laboratories Inc.® (UL) issues this certificate to the Firm named above, after assessing the Firm's environmental management system and finding it in compliance with

## ISO 14001:1996

### ENVIRONMENTAL MANAGEMENT SYSTEM

for the following scope of registration

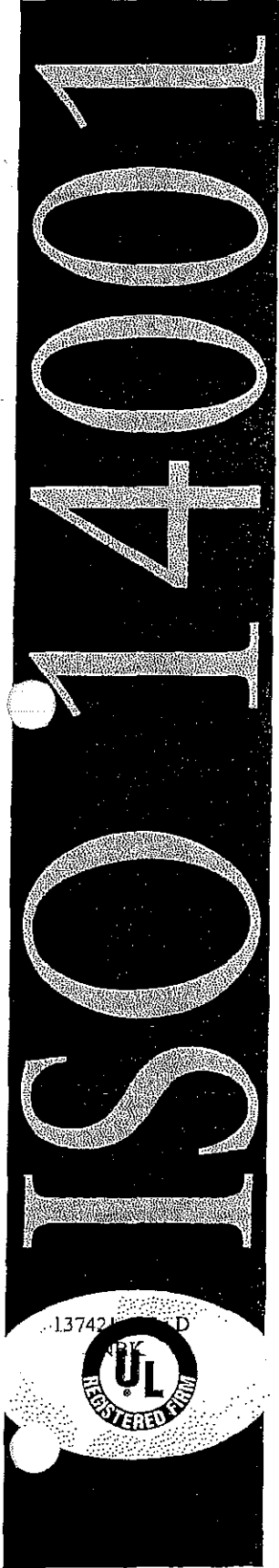
The Environmental Management System of Novellus Systems, Inc. associated with the design, development, manufacture, installation, and servicing of semiconductor production equipment used in the semiconductor manufacturing industry at 4000 North First Street, San Jose, CA, U.S.A. This also includes the following offsite locations:

- Building 3950, North First Street, San Jose, CA 95134
- Building 3011, North First Street, San Jose, CA 95134
- Building 4041, North First Street, San Jose, CA 95134
- Building 3970, North First Street, San Jose, CA 95134
- Building 3960, North First Street, San Jose, CA 95134
- Building 3940, North First Street, San Jose, CA 95134
- 81 Vista Montana, San Jose, CA 95134
- PTC Wilsonville Facility, 26277 SW 95<sup>th</sup> Avenue, Suite 402, Wilsonville, OR 97070
- SIG Operations, 2730 Junction Avenue, San Jose, CA 95134
- SIG Operations, 404 E. Plumeria Drive, San Jose, CA 95134
- 11155 SW Leveton Drive, Tualatin, OR 97062

This environmental management system registration is included in UL's Directory of Registered Firms and applies to the operations of the address(es) shown above. By issuance of this certificate the firm represents that it will maintain its registration in accordance with the applicable requirements. This certificate is not transferable and remains the property of Underwriters Laboratories Inc. ®.

File Number: A8682  
Volume: 1  
Issue Date: March 1, 2000  
Revision Date: March 6, 2002  
Renewal Date: March 1, 2004

S. Joe Bhatia  
Executive Vice President and  
Chief Operating Officer - International



**UNDERWRITERS LABORATORIES INC.**  
**ENVIRONMENTAL MANAGEMENT SYSTEM REGISTRATION**

**ADDENDUM**

File No: A8682

Volume: 1

Registered Company:

**Novellus  
Systems, Inc.**

4000 North First Street, San Jose, CA 95134

The following off-site locations are included under this registration for the functions as identified in the scope of registration and appearing on the Certificate of Registration:

Building 3950  
North First Street  
San Jose, CA 95134

Building 3011  
North First Street  
San Jose, CA 95134

Building 4041  
North First Street  
San Jose, CA 95134

Building 3970  
North First Street  
San Jose, CA 95134

Building 3960  
North First Street  
San Jose, CA 95134

Building 3940  
North First Street  
San Jose, CA 95134

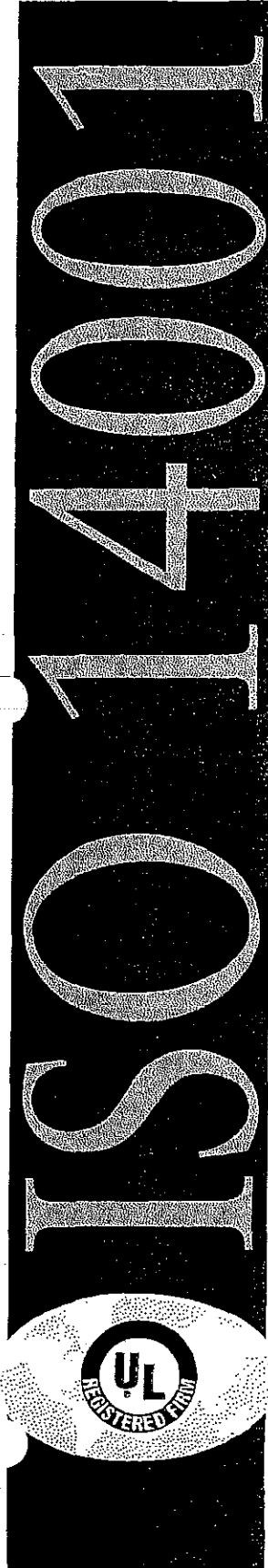
81 Vista Montana  
San Jose, CA 95134

PTC Wilsonville Facility  
26277 SW 95<sup>th</sup> Avenue, Suite 402  
Wilsonville, OR 97070

SIG Operations  
404 E. Plumeria Drive  
San Jose, CA 95134

SIG Operations  
2730 Junction Avenue  
San Jose, CA 95134

11155 SW Leveton Drive  
Tualatin, OR 97062





State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve @ Reduced Cost</b>
Applicant	<b>Weyerhaeuser Company</b>
Application No.	<b>6454</b>
Facility Cost	<b>\$981,663</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Air Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **C Corp.**

Business: **Plywood manufacturing**

Taxpayer ID: **91-0470860**

The applicant's address is:

**Tax Department CH 1C28**

**PO Box 9777**

**Federal Way, WA 98063**

### ***Facility Identification***

The certificate will identify the facility as:

**GeoTherm Regenerative Thermal  
Oxidizer (RTO)**

The applicant is the **owner and operator** of  
the facility located at:

**419 South 28th Street  
Springfield, OR 97477**

### ***Technical Information***

Weyerhaeuser Company's Springfield mill produces veneer and plywood from raw logs. Drying the plywood is part of the manufacturing process. The steam-heated veneer dryers generate volatile organic compound (VOC) emissions. The applicant connected the exhaust from existing dryers to the new GeoEnergy Regenerative Thermal Oxidizer (RTO) to control the VOC emissions. The RTO uses two combustion chambers and two catalyst beds to convert the VOC emissions to carbon dioxide and water. It destroys over 50 tons of VOC emissions per year with a destruction efficiency of 90%. The RTO has a design inlet gas flow of 53,209 cubic feet per minute.

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years the date that construction of the facility was completed, if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>8/1/2000</b>
<i>Construction Completed</i>	<b>3/21/2001</b>
<i>Facility Placed into Operation</i>	<b>3/21/2001</b>
<i>Application Filed</i>	<b>2/18/2003</b>

**Purpose: Required** Criteria  
 ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

Applied to this Application

The primary and most important purpose of the RTO is to **reduce air pollution**. The claimed facility **complies with a Construction Approval** issued by the LRAPA. Weyerhaeuser requested the Construction Approval in response to a consent decree (Clean Air Act 42 USC 7414b) issued by the United States District Court, District of Oregon on behalf of EPA, for alleged past air quality violations at various plant sites.

**Method** Criteria  
 ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and by the use of an air cleaning device as defined in ORS 468A.005.

"Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

"Air-cleaning device" means any method, process or equipment, which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

Applied to this Application

Volatile organic compounds (VOC) **meet the definition of air contaminant**. An RTO **meets the definition of an air cleaning device**.

**Exclusions** Criteria

ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
OAR 340-016-0070(3) provide benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The applicant included **spare parts, and an RTO scrubber control room air conditioner**. The rule specifically excludes spare parts and air conditioners. These items make an insignificant contribution to reducing VOC emissions for the facility. The associated costs are a subtraction from the claimed cost under the Facility Cost section.

**Replacement** Criteria

ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The state did not previously certify the claimed facility or any of its distinguishable parts as a Pollution Control Facility.

**Maximum Credit** Criteria

ORS 468.173(1) The maximum tax credit available to the applicant is 50% if construction of the facility commenced prior to January 1, 2001, the applicant completed construction prior to January 1, 2004, and filed the application on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **8/1/2000**, the applicant completed construction on **3/21/2001** and filed the application on **2/18/2003**.

**Facility Cost**

Copies of purchase orders and invoices substantiated the claimed facility cost.

	Claimed Cost	\$991,979
Spare parts		- \$9,787
RTO control room air conditioner		- \$529
	<b>Eligible Cost</b>	<b>\$981,663</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> The applicant and the reviewer did not identify savings or increases in costs.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> The reviewer did not notice any other relevant factors.

**Compliance and Other Tax Credits**

The LRAPA staff member assigned to the source is Robert Koster, who affirmed the applicant's statement that the facility and site are in compliance with LRAPA and Department rules and statutes and with EQC orders. DEQ issued the following permits to the site: Oregon Title V No. 208864, issued December 13, 2001. The State certified 79 certificates at this location, including 34 for treating industrial waste, one for material recovery, and 44 for controlling air pollution.

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ

## APPROVALS: Material Recovery Facilities

The Department recommends that the Environmental Quality Commission approve the 17 material recovery facilities for certification as pollution control facilities. The certification of these facilities could reduce taxes paid to the State of Oregon by a maximum of \$2,321,403.

The Department recommends that the EQC certify the facilities summarized below and represented on the attached Review Reports.

### Summary of Material Recovery Facilities

App #	Applicant	Facility Cost	% Allocable	Maximum Tax Credit	EQC Action
5767	East County Recycling Co.	\$ 277,407	62%	50%	
5781	Willamette Industries, Inc.	2,883,819	100%	50%	
6026	Willamette Industries, Inc.	160,575	100%	50%	
6113	Marion Resource Recovery	932,202	24%	50%	
6134	Global Leasing, Inc.	184,889	60%	50%	
6149	Wood Waste Management, LLC	110,135	22%	50%	
6342	Garbarino Disposal & Recycling	3,576	100%	35%	
6369	Premier West Bank	42,703	100%	35%	
6372	Centennial Bank	88,860	100%	35%	
6373	Centennial Bank	886,117	100%	35%	
6375	Dean R Schrock	107,683	100%	35%	
6385	Premier West Bank	30,575	100%	35%	
6386	Premier West Bank	39,716	100%	35%	
6387	Tigard Auto Works Inc.	4,730	100%	50%	
6410	Miller Associated Enterprises	178,637	33%	50%	
6434	Centennial Bank	191,398	100%	35%	
6474	Pacific Sanitation Inc.	37,847	100%	35%	
<b>17</b>	<b>Sum of</b>	<b>\$6,160,869</b>			
<b>Apps</b>	<b>Average</b>	<b>\$ 362,404</b>			
	<b>Minimum</b>	<b>\$ 3,576</b>			
	<b>Maximum</b>	<b>\$2,883,819</b>			



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Material Recovery Facility**

Taxpayer ID: **93-0195760**

The applicant's address is:

**PO Box 20096  
Portland, OR 97294**

Director's	
Recommendation:	<b>Approve</b>
Applicant	<b>East County Recycling Company</b>
Application No.	<b>5767</b>
Facility Cost	<b>\$277,407</b>
Percentage Allocable	<b>62%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>5 years</b>

#### ***Facility Identification***

The certificate will identify the facility as:

- One - Used 1981 Clark Forklift, Model C-300-50, Serial # 356939-4376**
- One - Used Furikawa FL150 Wheel Loader Serial # 1017**
- One - Marathon 'Stealth' Horizontal Baler, Serial # 118206**
- One - Used Kobelco Excavator, Model SK09, Serial # LQ01629**
- Three - 1999 4-Axel Peerless 53' Trailers, Vin #**
  - 1PLE05341XPF29415**
  - 1PLE05341XPF29416**
  - 1PLE05341XPF29417**
- One - 1984 Trailer, VIN #**
  - 1S12S9488ED255271**

The applicant is the **owner and operator** of the facility located at:

**12409 NE San Rafael  
Portland, OR 97230**



### ***Technical Information***

East County Recycling is a material recovery facility licensed by Metro to process dry mixed solid waste. The applicant accepts solid waste from multiple haulers and then sorts and reprocesses some of the waste into marketable commodities. They transport residual waste to Wasco Landfill, Inc.

The applicant claims a noise and visual barrier wall along the northern perimeter of the site and two scales to weigh incoming and outgoing loads. The company purchased a Kobelco excavator to separate mixed solid waste, and a Furikawa loader to sort mixed waste and empty bins of sorted material. The applicant also claims equipment to bale the recyclable materials and a forklift to move and load the bales. They also claim four trailers used to transport both recovered material and refuse to the landfill.

### ***Eligibility***

<b><i>Timely Filing</i></b> ORS 468.165 (6) and OAR 340-016-007	<u>Criteria</u> The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.
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#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>5/12/1999</b>
<i>Construction Completed</i>	<b>12/14/1999</b>
<i>Facility Placed into Operation</i>	<b>12/14/1999</b>
<i>Application Filed</i>	<b>5/11/2001</b>

<b><i>Purpose: Voluntary</i></b> ORS 468.155 (1)(a)(B) OAR 340-016- 0060(2)(a)	<u>Criteria</u> The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a <u>substantial quantity</u> of solid waste, hazardous waste; or used oil.
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#### Applied to this Application

The claimed equipment is used exclusively to recover material that would otherwise go to the landfill. The applicant salvaged 184,474 tons of material at the site in the last four years according to the *Recovery Facility Report* to DEQ. This is 52% of the material processed at the site.

The trailers are used for both material recovery and to haul the residual waste to the landfill. The eligible portion of the trailers is equal to the percentage of recovered material (52% eligible, 48% ineligible.)

<u>Method</u>	<u>Criteria</u>
ORS 468.155 (1)(b)(D)	The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be <b>solid waste</b> as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

Applied to this Application

The facility is a material recovery facility that recovers materials from solid waste. They are one of the few facilities that accepts mattresses and toilets; recovering metal, wood fiber, and ceramic material.

The scales and the concrete perimeter wall are not directly used in a process that obtains useful material from solid waste. The applicant uses the scales for reporting and billing purposes. The concrete wall provides a visual/noise barrier between the site and the residential neighborhood to the North.

OAR 340-016-  
0010(7)

OAR 340-016-  
0060(4)(e)

Criteria

The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state. The facility shall produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility segregates and processes solid waste into cardboard, wood fiber, ferrous and nonferrous metals, nylon fiber, and base aggregate. East County recycling sends the reclaimed material to a re-processor that produces a product that is competitive with a product produced in another state.

**Exclusions**      Criteria  
 ORS 468.155 (3)      Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not related directly to the operation of the industry or enterprise seeking the tax credit but were installed because of the facility.  
 OAR 340-016-0070(3)

Applied to this Application

The costs incurred on behalf of Nature's Needs located in North Plains, Oregon do not contribute to a material recovery process at the Portland location. The applicant submitted a second application for Natures' Needs. The scales and concrete perimeter wall do not contribute to a material recovery process. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

**Maximum Credit**      Criteria  
 ORS 468.173(1)      The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, completed construction prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

Construction of the facility commenced on **5/12/1999**, the applicant completed construction on **12/14/1999**, and submitted the application on **5/11/2001**.

**Facility Cost**

Claimed Cost	\$568,188
Costs associated with Nature's Needs in North Plains	-154,477
ORS 468.170(1) The actual cost or portion of the actual cost certified may not exceed the taxpayer's own cash investment in the facility or portion of the facility. Trade in of equipment for the Kobelco excavator.	-12,000
Two scales and their installation	-59,904
Visual/Noise Barrier Wall on North Property Line	-64,400
<b>Eligible Cost</b>	<b>\$277,407</b>

A copy of the applicant's 1999 Asset Acquisition, their Account's Payable log, and copies of invoices substantiated the eligible facility cost.

***Facility Cost Allocable to Pollution Control***

The claimed costs are not considered "integral" to the applicant's business as described in OAR 340-016-0075(4)(a). The factors listed below were used to determine that **62%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility recovers usable materials. The applicant considered the revenue in the ROI calculation.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>5</b> years. The truck and the compost turner do not have a positive cash flow. The percentage of the cost allocable to pollution control is 100% when calculated according to rule.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> The applicant did not investigate alternative methods.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No increased savings or costs identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> The percentage of the facility cost that is allocable to pollution control is <b>62%</b> based on the eligible cost of trailers at 52% and the eligible cost of the remaining components at 100%. The three trailers cost \$220,328 and the applicant transports 52% of the materials to a re-processor and the remainder to a landfill.

***Compliance and Other Tax Credits***

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. The EQC has not issued any previous pollution control facilities tax credit certificates to the applicant or to the site.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Paper Mill**

Taxpayer ID: **93-0312940**

The applicant's address is:

**Weyerhaeuser Company  
Tax Department CH 1C28  
PO Box 9777  
Federal Way, WA 98063**

#### ***Technical Information***

Willamette Industries, Incorporated constructed a new 65,000 square foot production building on five acres of land that Far West Fibers uses to house its material recovery facility in Hillsboro. Far West Fibers collects and sorts mixed waste brought in by haulers from Washington, Marion and Yamhill Counties. The applicant, Willamette Industries, claims land improvements that include truck dock levelers and truck scales, along with the acreage and the building. Far West Fibers reclaims newspaper, white paper, and cardboard that it bales and ships to paper mills.

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Willamette Industries, Inc.</b>
Application No.	<b>5781</b>
Facility Cost	<b>\$2,883,819</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>10 years</b>

#### ***Facility Identification***

The certificate will identify the facility as:

#### **Material Recovery Building and Land**

The applicant is the **owner and operator** of the facility located at:

**Far West Fibers  
6440 SE Alexander Street  
Hillsboro, OR 97123**

***Eligibility*** Criteria  
***Timely Filing*** The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.  
 ORS 468.165 (6) and  
 OAR 340-016-007

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>6/1/1999</b>
<i>Construction Completed</i>	<b>11/30/1999</b>
<i>Facility Placed into Operation</i>	<b>11/30/1999</b>
<i>Application Filed</i>	<b>10/25/2001</b>

***Applicant*** Criteria  
 ORS 315.304 (4) The applicant may be the owner, including a contract purchaser, or lessee, that owns or leases a recycling or material recovery facility.

Applied to this Application

Willamette Industries owns the building and land that Far West Fibers uses for the material recovery facility.

***Purpose: Voluntary*** Criteria  
 ORS 468.155 The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste; or used oil.  
 (1)(a)(B)  
 OAR 340-016-0060(2)(a)

Applied to this Application

Far West Fibers uses the building and the land in a material recovery process that reduces the amount of waste sent to the landfill by 5,400 to 8,700 tons per month, of which 5,000 to 8,000 tons is fiber.

Far West Fibers uses the truck scales and related costs for billing, tracking, and reporting purposes. The purpose of the plumbing is to provide fresh water and sewer services. These items do not have an exclusive pollution control purpose and they make an insignificant contribution to the sole purpose of the facility. The Department subtracted the associated cost from the claimed cost as shown under the Facility Cost section.

***Method*** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal

solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

Applied to this Application

The material processed at Far West Fibers **meets the definition** of solid waste as defined in ORS 459.005.

OAR 340-016- Criteria

- 0010(7) The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.
- OAR 340-016-0060(4)(e) The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility obtains ferrous and non-ferrous metals, glass, cardboard, and plastic from solid waste through pre-segregation. Remanufacturing mills use the reclaimed materials to produce competitive products with similar properties. For example, Weyerhaeuser's Albany Paper Mill uses the secondary fiber to produce linerboard, corrugating medium, and bag paper.

***Exclusions*** Criteria

- ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or
- OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed because of the facility.

Applied to this Application

The applicant claimed the following costs that are specifically excluded from the definition of a pollution control facility: Air conditioners; Start-up costs and; Interest, warranty charges, financing costs, capitalized costs (property taxes, capitalized interest, etc.), insurance premiums, legal fees, court costs, patent searches and feasibility studies. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify the facility or any of its distinguishable parts as a Pollution Control Facility.

***Maximum Credit*** Criteria  
 ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **6/1/1999**, construction was completed on **11/30/1999**, and the Department received the application on **10/25/2001**.

***Facility Cost***

Copies of invoices substantiated most of the claimed facility cost.

	<b>Claimed Cost</b>	
	\$4,288,994	
No cost documentation: Machinery & Equipment	-238,491	
No cost documentation: Other plant assets – outside access, storage, slab-work, etc.	-232,536	
Air Conditioning (HVAC) - \$70,000 minus 6.5% that applicant excluded for office space	-65,450	
Start up costs	-1,066	
Water and sewer permits, start up costs property taxes (County tax on land)	-1,741	
Truck scales and associated costs	-\$53,236	
Acreage associated with parking lots, roadways, landscaped areas, and land not used for material recovery process: 131,020 square feet @ \$5.91 per square foot	-774,328	
Plumbing: \$40,000 minus 6.5% that applicant excluded for office space	-37,400	
Erroneous calculation: Land	-927	
	<b>Eligible Cost</b>	<b>\$2,883,819</b>



**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility reclaims a salable and a useable commodity.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> Far West Fibers does not pay rent to Willamette Industries for the building and Willamette Industries states they are paying fair market value for the secondary fiber. The functional life of the facility used in considering the ROI is <b>10</b> years. The facility does not have a positive cash flow for Willamette Industries.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> The applicant owns the building, land and improvements. Far West Fibers operates the facility but does not pay Willamette Industries rent for the land or the building. The facility assures the applicant that there is a reliable source for secondary fibers. According to the agreement, Far West Fibers was not required to reimburse the applicant in any way. The applicant pays the prevailing Northwest prices for reclaimed fibers at \$95.00 per ton.

**Compliance and Other Tax Credits**

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified no other facilities at this location.

Reviewers: William Bree, DEQ  
Barrett McDougall, DEQ  
Gordon Chun, SJO Engineering



State of Oregon  
Department of  
Environmental  
Quality

Director's  
Recommendation: **Approve @ Reduced Cost**  
Applicant **Willamette Industries, Inc.**  
Application No. **6026**  
Facility Cost **\$160,575**  
Percentage Allocable **100%**  
Maximum Tax Credit **50%**  
Certificate Period **5 years**

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Paper mill**

Taxpayer ID: **93-0312940**

The applicant's address is:

**Weyerhaeuser Company  
Tax Department CH 1C28  
PO Box 9777  
Federal Way, WA 98063**

#### ***Facility Identification***

The certificate will identify the facility as:

**Three - Hyster fork lifts, Model  
H80XM, Serial #'s K005D03945X,  
K005D03450X, K005V01943Y  
One - Hyster fork lift with Bale Clamp  
Model H80XM, Serial #  
K005V01942Y**

The applicant is the **owner and operator** of  
the facility located at:

**3251 Old Salem Road NE  
Albany, OR 97321**

#### ***Technical Information***

Willamette Industries/Weyerhaeuser Company claims four lift trucks for its Albany Paper Mill location. The Albany Paper Mill produces kraft linerboard paper utilizing over 50% recycled secondary fiber. The applicant consumes over 39 million tons of secondary fiber in waste bale form in its production processes annually, mostly purchased from Far West Fibers at the same location. The claimed trucks are used to move bales of wastepaper, the bale clamp is used specifically for the movement of preseggregated waste paper bales. The claimed lifts are used for the secondary fiber plant. The secondary fiber plant lift trucks are distinguishable from lift trucks in other areas of the paper mill as they are not equipped with roll grabs.

This facility replaces four older lift trucks which are currently being used in other parts of the mill.

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>7/31/2000</b>
<i>Construction Completed</i>	<b>12/31/2001</b>
<i>Facility Placed into Operation</i>	<b>12/31/2001</b>
<i>Application Filed</i>	<b>1/15/2002</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 (1)(a)(B) The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste; or used oil.  
 OAR 340-016-0060(2)(a)

Applied to this Application

The forklifts reduce a substantial quantity of solid waste by handling approximately 81,000 tons of OCC (Old Corrugated Cardboard) annually that is recycled into use to make kraft linerboard paper.

**Method** Criteria  
 ORS 468.155 (1)(b)(D) The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. (b) **excludes** "Materials used for fertilizer or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

Waste paper **meets the definition** of solid waste as defined in ORS 459.005.

OAR 340-016-0010(7) Criteria  
 The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.

OAR 340-016-0060(4)(e) The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility obtains sorted and separated waste paper from a material recovery facility. The recovered material is used to produce linerboard and bag paper with 50% secondary fiber content. The facility produces the end product through mechanical processing and chemical processing of the recovered materials.

**Exclusions** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

OAR 340-016-0070(3)

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included. The four lift trucks that were replaced are used in other parts of the mill and have an estimated salvage value of \$24,000. The Department subtracted the associated cost from the claimed facility cost as shown under the Facility Cost section below.

**Replacement** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Maximum Credit** Criteria

ORS 468.173(1) The maximum tax credit available to the applicant is 50% if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **7/31/2000**, construction was completed on **12/31/2001**, and the Department received the application on **1/15/2002**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

	Claimed Cost	\$184,575
Salvage		
The four lift trucks that were replaced are being used in other parts of the mill. The applicant estimates the in house salvage value at \$6,000 per truck.		-24,000
	<b>Eligible Cost</b>	<b>\$160,575</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>5</b> years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to the site: NPDES Stormwater, No 1200-Z, Issued 7/22/1997; NPDES Waste Water, No 101345, Issued 11/30/1995; Title V Air, No 22-0471; SWDP Solid Waste, No 1025, Issued 3/31/2000. The EQC has issued 52 certificates to facilities at this location: 33 for Air, 5 for Material Recovery, 13 for Water and 1 for Noise.

Reviewers: Jeannette Freeman, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### Pollution Control Facility: Material Recovery Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: LLC

Business: **Material recovery facility**

Taxpayer ID: **93-1278502**

The applicant's address is:

**3680 Brooklake Road NE  
Salem, OR 97305**

Director's

Recommendation: **Approve @ Reduced Cost**  
Applicant **Marion Resource Recovery  
Facility, LLC**

Application No.	<b>6113</b>
Facility Cost	<b>\$932,202</b>
Percentage Allocable	<b>24%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>10 years</b>

### *Facility Identification*

The certificate will identify the facility as:

**Resource Recovery Facility including  
a building, fixed equipment and mobile  
equipment as follows:**

**One - 621 CXT Case Wheel Loader,  
Serial # JEE0092596**

**One - used MI 4141 Forklift**

**One - Case 90XT Scrap Grapple, Serial #  
JAF0299089**

**One - Takenchi TB070 PSM Grapple**

**One - C580SW Series II, 4-Wheel Drive  
Loader, Serial # JJG0271797**

**One - 1978 International Tractor, Serial  
# E2327HGA22576**

**One - IT18F Group B, Fork Loader,  
Serial # 06ZF00460;**

**One - IT18B Group B, Fork Loader,  
Serial # 02NJ00374;**

**Ten - 4-yard Tote Bin Heavy Duty Cans  
Model MR4HDTB, Serial numbers  
165260-165269**

The applicant is the **owner and operator** of  
the facility located at:

**3680 Brooklake Road NE  
Salem, OR 97305**

### ***Technical Information***

Marion Resource Recovery Facility, LLC claims a new resource recovery facility including a building, and fixed and mobile equipment. The applicant accepts mixed solid waste from commercial refuse haulers. They do not accept residential or "wet" commercial loads.

Marion Resource Recovery uses the claimed loaders, grapples, and forklift to empty and sort the truckloads of mixed solid waste. The applicant spreads the load over the floor and reloads any unacceptable material back onto the truck for delivery to an authorized disposal facility. Large bulky items are sorted first into storage bins for recycling. The conveyor belt elevates the solid waste onto the shaker screen that is 18 feet above the sorting floor. The shaker screen separates smaller materials, and large items pass over the shaker screen onto a sorting conveyor. Employees remove recyclable material such as cardboard, ferrous and non-ferrous metals, wood, and sheetrock. Five bunkers, located directly below the sorting platform, provide interim storage for recovered materials. All material recovered from the waste stream is hauled to the appropriate recycling mill.

### ***Eligibility***

#### ***Timely Filing***

ORS 468.165 (6) and  
OAR 340-016-007

#### Criteria

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>8/1/1999</b>
<i>Construction Completed</i>	<b>3/31/2000</b>
<i>Facility Placed into Operation</i>	<b>4/10/2000</b>
<i>Application Filed</i>	<b>3/29/2002</b>

#### ***Purpose: Voluntary***

ORS 468.155  
(1)(a)(B)  
OAR 340-016-  
0060(2)(a)

#### Criteria

The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste; or used oil.

#### Applied to this Application

The facility reduces, prevents, or controls a substantial quantity of solid waste from entering the landfill. Within the first two years of operation, the facility took in over 30,700 tons of mixed dry waste and recovered approximately 10,347 tons of recyclable material.

The claimed facility, however, does not have an exclusive pollution control purpose because it operates as a transfer station. 66% of material is transferred to landfill. 34% of material is recovered and recycled. 66% of eligible costs have been reduced under the facility cost section.

**Method** **Criteria**  
 ORS 468.155 (1)(b)(D) The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

**Applied to this Application**

Cardboard, metals, wood, concrete, appliances and sheetrock **meet the definition of solid waste** as defined in ORS 459.005.

OAR 340-016-0010(7) **Criteria**  
 OAR 340-016-0060(4)(e) The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state. The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

(A) Have useful chemical or physical properties and which may be used for the same or other purposes; or

(B) May be used in the same kind of application as its prior use without change in identity.

**Applied to this Application**

The facility obtains recyclable material such as cardboard, ferrous and non-ferrous metals and other recyclable material from mixed dry waste. The applicant sorts and sells the recovered material at market value to respective recycling mills. The recyclable material is made into competitive end products with similar properties.

**Exclusions** **Criteria**  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the sole purpose of the facility; or provides  
 OAR 340-016-0070(3) benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

**Applied to this Application**

The claimed cost included cost for office buildings and furnishings, such as computer equipment and telephones, are specifically excluded under ORS 468.155.



Components not making a significant contribution to the sole purpose of the facility include:

Scales used to weigh waste for billing purposes, scale shack and related costs. Pressure washer and grease pump are used for maintenance.

Diesel tank and associated costs (listed as Misc. Equipment in the application record) are for continued operation.

Plumbing, HVAC, fire protection, shower/eyewash station and extra transmission oil do not contribute to material recovery.

The Department subtracted the associated cost from the claimed facility cost as shown under the Facility Cost section below.

***Replacement*** Criteria  
ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify the claimed facility or any of its distinguishable parts as a Pollution Control Facility.

***Maximum Credit*** Criteria  
ORS 468.173(1) The maximum tax credit available to the applicant is 50% if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because the applicant commenced construction of the facility on **8/1/1999**, completed construction on **3/31/2000**, and filed the application on **3/29/2002**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost. The applicant submitted costs by three related vendors that are LLC members. These costs are for hauling, a used tractor and project management and represent less than 1% of the claimed cost. The costs are considered reasonable.

	Claimed Cost	\$3,042,922
<u>Insignificant contribution to sole purpose:</u>		
Office computers and telephones		-14,935
Weigh scales for billing purposes, scale house, scale wiring, electrical and related costs		-138,397
Pressure washer		-740
Plumbing		-25,898
HVAC		-22,557
Fire protection		-90,000
Shower/Eye wash area		-1,083
Extra transmission oil		-69
Grease pump		-599
Diesel Tank and related costs		-6873
	Subtotal	2,741,771
Less 66% of costs not allocable to material recovery		-1,809,569
	<b>Eligible Cost</b>	<b>\$932,202</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **24%** of the facility cost is allocable to pollution control. ORS 468.190 (2) provides that the portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces usable material for recycling mills and composting facilities. Relative market value of material is as follows on a per ton basis: appliances \$5, cardboard \$25, ferrous metal \$49, non-ferrous metal \$250, wood \$6.50. The applicant and the Department considered the revenue in the ROI calculation.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The applicant calculated and the Department verified that the calculation was performed according to the integral section of OAR 340-016-0075(4). The percentage allocable to pollution control is <b>24.42%</b> when calculated according to rule.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> The greater part of the income generated by the facility comes from fees paid by solid waste haulers.

***Compliance and Other Tax Credits***

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to the site: Solid Waste Disposal, #400, Issued 12/30/93. The EQC certified no previous facilities at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **S Corp**

Business: **Financial institution**

Taxpayer ID: **93-1097105**

The applicant's address is:

**PO Box 250**

**North plain, OR 97133**

#### ***Technical Information***

Global Leasing, Inc. claims a new Volvo recycling truck and a cart lift for yard debris. They lease the claimed facility to Garbarino Disposal. The split-body truck collects solid waste and yard debris from residential and commercial collection customers in Washington County. The dual purpose vehicle allows the lessee to collect solid waste and yard debris in one trip, thereby, reducing the number of trips and the need for additional vehicles. Prior to this facility, these residential customers had no yard debris pick up.

Director's

Recommendation: **Approve @ Reduced Percentage**

Applicant **Global Leasing, Inc.**

Application No. **6134**

Facility Cost **\$184,889**

Percentage Allocable **60%**

Maximum Tax Credit **50%**

Certificate Period **7 years**

#### ***Facility Identification***

The certificate will identify the facility as:

**One - 2002 Volvo WX64 Serial #  
4V2DC6HE82N333481**

**One - Labrie 31 cubic-yard Automizer,  
Serial # F01102RIU**

The applicant is the **lessor and non-operator**  
of the facility located at:

**Garbarino Disposal**

**30966 NW Hillcrest Street**

**North Plains, OR 97133**

**Eligibility****Timely Filing** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>12/21/2001</b>
<i>Construction Completed</i>	<b>12/21/2001</b>
<i>Facility Placed into Operation</i>	<b>2/1/2002</b>
<i>Application Filed</i>	<b>4/24/2002</b>

**Purpose: Voluntary** Criteria

ORS 468.155  
(1)(a)(B)  
OAR 340-016-  
0060(2)(a)

The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste; or used oil.

Applied to this Application

The facility reduces a substantial amount of solid waste by collecting and diverting 1,354 tons of yard debris each year. The lessee increased yard debris recycling by 50% on the routes they service with this truck. The truck has a split body that is used to collect 40% solid waste and 60% yard debris; therefore, 60% of the truck has an exclusive material recovery purpose.

**Method** Criteria

ORS 468.155  
(1)(b)(D)

The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

Applied to this Application

Yard debris **meets the definition** of solid waste as defined in ORS 459.005.

OAR 340-016-0010(7) Criteria  
The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.  
OAR 340-016-0060(4)(e) The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The lessee collects the yard debris from residential curbside service and delivers it to a yard debris collection depot where it is composted for garden mulch.

**Exclusions** Criteria  
ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, the application, and the applicant's statements did not indicate that any ineligible costs were included.

**Replacement** Criteria  
ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Maximum Credit**    Criteria  
 ORS 468.173(1)    The maximum tax credit available to the applicant is 50% if construction of the facility was completed on or before December 31, 2001 and the application was filed on or before December 31, 2003.  
 OAR 340-016-0007

Applied to this Application

The maximum tax credit is **50%** because Global Leasing, Inc. purchased the facility on **12/21/2001** and submitted the application on **4/24/2002**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$184,889
<b>Eligible Cost</b>	<b>\$184,889</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **60%** of the facility cost is allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces a usable commodity through the collection of yard waste which is composted into garden mulch.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> The truck has a split body that is used to collect 40% solid waste and 60% yard debris. Only 60% of the truck has an exclusive material recovery purpose.

**Compliance and Other Tax Credits**

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified nine material recovery facilities at this location.

Reviewers:    Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

**Pollution Control Facility: Material Recovery**

**Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: LLC

Business: **Residential, commercial and  
solid waste recycler**

Taxpayer ID: **93-1267383**

The applicant's address is:

**PO Box 365**

**Lebanon, OR 97355-0365**

### *Technical Information*

Wood Waste Management processes green and wood waste materials that they convert into compost, bark dust, or hog fuel. The applicant accepts woody debris from yard and land clearing. They also accept treated and untreated wood waste. The wheel loader and its attachments move and sort the the wood waste. The applicant also claims concrete blocks that contain the composting material.

Director's

Recommendation: **Approve @ Reduced Cost and  
Percentage**

Applicant	<b>Wood Waste Management, LLC</b>
Application No.	<b>6149</b>
Facility Cost	<b>\$110,135</b>
Percentage Allocable	<b>22%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>7 years</b>

### *Facility Identification*

The certificate will identify the facility as:

**One - Caterpillar Wheel Loader Serial #  
95W00544**

**One - Caterpillar CYD GP Bucket,  
Serial # GPI-368**

**One - CYD Roll-out bucket, Serial #  
ROB5-371**

**One - JRB 200HV Quick Coupler, Serial  
# 0200-57036**

**Concrete containment area**

The applicant **owns and operator** of the  
facility located at:

**7315 NE 47th Avenue**

**Portland, OR 97218**



**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>5/22/2000</b>
<i>Construction Completed</i>	<b>7/31/2000</b>
<i>Facility Placed into Operation</i>	<b>7/31/2000</b>
<i>Application Filed</i>	<b>5/10/2002</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 (1)(a)(B) OAR 340-016-0060(2)(a) The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste; or used oil.

Applied to this Application

The facility reduces a substantial quantity of solid waste because each year it diverts 75,000 yards of green and wood waste from the landfill. The claimed facility; however, does not have an exclusive pollution control purpose because it also produces hog fuel which is excluded from the material recovery process as described below.

**Method** Criteria  
 ORS 468.155 (1)(b)(D) The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386

Applied to this Application

Green and wood waste **meets the definition** of solid waste as defined in ORS 459.005.

OAR 340-016-0060(4)(e) Criteria  
 The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state. The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility accepts deliveries of green waste and wood waste. The applicant recovers material that they compost to make garden mulch. The mulch is a competitive end product.

OAR 340-016-0010(7) Criteria  
 The material recovery process does not include processes in which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy.

Applied to this Application

The applicant converts wood waste to hog fuel. This amounts to approximately 10,000 yards annually, or 13% of the green and wood waste.

**Exclusions** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
 OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included. The Department subtracted the portion of the facility cost that is associated with hog fuel production from the claimed facility cost as shown under the Facility Cost section below.

**Replacement Criteria**  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Maximum Credit Criteria**  
 ORS 468.173(1) The maximum tax credit available to the applicant is 50% if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **5/22/2000**, construction was completed on **7/31/2000**, and the Department received the application on **5/10/2002**.

**Facility Cost**

Copies of invoices and a project summary report substantiated the claimed facility cost.

Claimed Cost	\$126,592
Hog Fuel Production @ 13%	-16,457
<b>Eligible Cost</b>	<b>\$110,135</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **22%** of the facility cost is allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces compost, bark dust, and hog fuel that is sold to the general public. The revenue was considered in the ROI calculation.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The percentage of the cost allocable to pollution control is <b>22%</b> when calculated according to rule.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> The Department did not identify any other relevant factors

***Compliance and Other Tax Credits***

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. DEQ issued the following permits to the site: General permit 1200-COLS, issued February 18, 2000. The EQC has not issued any pollution control facilities tax credits to the applicant or at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### Pollution Control Facility: Material Recovery Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0080

#### *Applicant Identification*

Organized As: **S Corp**  
Business: **Recycling Collection & Transport**  
Taxpayer ID: **93-0563390**

The applicant's address is:

**PO Box 250  
North Plains, OR 97133**

#### *Technical Information*

The applicant claims 750 14-gallon red recycling bins used for new residential customers participating in the co-mingled recycling program. Prior to the co-mingled recycling program, customers pre-segregated their recyclable materials. With the installation of this facility, the applicant estimates that 8 to 10 tons per week of material is being diverted from landfill. This represents an increase of 10% more material being recycled than the previous method.

Director's Recommendation: Applicant	<b>Approve Garbarino Disposal &amp; Recycling Service, Inc.</b>
Application No.	<b>6342</b>
Facility Cost	<b>\$3,576</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>7 years</b>

#### *Facility Identification*

The certificate will identify the facility as:

**750 14-Gallon Red recycling bins,  
Model RB003RE05GA025, RB  
Fire Red**

The applicant is the **owner and operator** of  
the facility located at:

**30966 NW Hillcrest St  
North Plains, OR 97133**

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>10/22/2002</b>
<i>Construction Completed</i>	<b>11/1/2002</b>
<i>Facility Placed into Operation</i>	<b>11/1/2002</b>
<i>Application Filed</i>	<b>11/8/2002</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be  
 (1)(a)(B) to prevent, control, or reduce a substantial quantity of solid waste, hazardous  
 OAR 340-016- waste; or used oil.  
 0060(2)(a)

Applied to this Application

The facility reduces a substantial quantity of solid waste and used oil because it diverts 8 to 10 tons of material from the landfill each week. This is a 10% increase over the previous program.

**Method** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by the use of a  
 (1)(b)(D) material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

Used oil as defined in ORS 459A.555: Any oil that has been refined from crude oil, or any synthetic oil that has been used as a lubricant, coolant (non-contact heat transfer fluids), hydraulic fluid or for similar uses and as a result of such use is contaminated by physical or chemical impurities. Used oil includes, but is not limited to, used motor oil, gear oil, greases, machine cutting and coolant oils, hydraulic fluids, brake fluids, electrical insulation oils, heat transfer oils and refrigeration oils. Used oil does not include used oil mixed with hazardous waste except as allowed in 40 CFR 279.10(b), oil (crude or synthetic) based products used as solvents, antifreeze, wastewaters from which the oil has been recovered, and oil contaminated media or debris.

Applied to this Application

Mixed recyclable material **meets the definition of solid waste** as defined in ORS 459.005 and used oil as defined in ORS 459A.555.

OAR 340-016- Criteria

0010(7) The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.

OAR 340-016-0060(4)(e)

The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The recycling bins obtain co-mingled recyclable materials, glass and used oil from residential curbside collection. The material is delivered to a sorting facility where it is segregated prior to being taken to the respective recycling mills. The recovered material is used in competitive end products with similar properties.

**Exclusions** Criteria

ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, the application, and the applicant statements did not indicate that any ineligible costs were included.

**Replacement** Criteria

ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify the claimed facility or any of its distinguishable parts as a Pollution Control Facility.

**Maximum Credit**    Criteria  
 ORS 468.173(3)(d)    The maximum tax credit available to the applicant is 35% if the application was  
 ORS 468.170(10)    filed between January 1, 2002 and December 31, 2008, inclusively; and  
 ORS 468.165(6)    construction of the facility commenced on or after January 1, 2001 and  
                                  construction was completed on or after January 1, 2002; and the facility is used  
                                  for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35%** because the applicant purchased the bins on **10/22/2002**, completed construction on **11/1/2002**, and filed the application on **11/8/2002**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$3,576
Eligible Cost	<u>\$3,576</u>

**Facility Cost Allocable to Pollution Control**

ORS 468.190 (3)    Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$3,576** and the facility is used **100%** of the time for material recovery.

**Compliance and Other Tax Credits**

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified nine other facilities at this location.

Reviewers:    Maggie Vandehey, DEQ





State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **93-1007653**

Business: **Financial Institution**

Taxpayer ID: **93-1007653**

The applicant's address is:

**c/o Dooling Lease Management Corp  
6400 SW Corbett Ave  
Portland, OR 97239**

#### ***Technical Information***

The applicant is a financial institution that leases the claimed Kenworth Truck to Canby Disposal Company. Canby Disposal Company uses the truck to collect commercial recyclables from new commercial accounts that had previously been sending these materials to the landfill.

Director's Recommendation:	<b>Approve</b>
Applicant	<b>Premier West Bank</b>
Application No.	<b>6369</b>
Facility Cost	<b>\$42,703</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>5 years</b>

#### ***Facility Identification***

The certificate will identify the facility as:

**One - 1999 Model T80 Kenworth  
Truck, VIN #  
1XKDD69XXXR815275**

The applicant is the **lessor and non-operator** of the facility located at:

**Canby Disposal Company  
1600 SE 4th Ave  
Canby, OR 97013**

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>6/5/2002</b>
<i>Construction Completed</i>	<b>6/5/2002</b>
<i>Facility Placed into Operation</i>	<b>6/5/2002</b>
<i>Application Filed</i>	<b>11/18/2002</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 (1)(a)(B) The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste; or used oil.  
 OAR 340-016-0060(2)(a)

Applied to this Application

The facility reduces a substantial quantity of solid waste because it diverts 2,500 tons of recyclable material annually from being sent to landfill. The amount of material being diverted is considered substantial when compared to the previous program where a large percentage of commercial accounts were not recycling.

**Method** Criteria  
 ORS 468.155 (1)(b)(D) The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

Applied to this Application

Discarded recyclable material **meets the definition** of solid waste as defined in ORS 459.005.

OAR 340-016- Criteria  
0010(7) The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.  
OAR 340-016-  
0060(4)(e) The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility obtains recyclable material from the applicant's commercial customers. The recovered materials are used in competitive end products with similar properties.

***Exclusions*** Criteria  
ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
OAR 340-016-  
0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

***Replacement*** Criteria  
ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

<b>Maximum Credit</b>	<u>Criteria</u>
ORS 468.173(3)(d)	The maximum tax credit available to the applicant is 35% if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and construction of the facility commenced on or after January 1, 2001 and construction was completed on or after January 1, 2002; and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.
ORS 468.170(10)	
ORS 468.165(6)	

Applied to this Application

The maximum tax credit is **35%** because construction of the facility commenced on **6/5/2002**, construction was completed on **6/5/2002**, and the Department received the application on **11/18/2002**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$42,703
<b>Eligible Cost</b>	<b>\$42,703</b>

**Facility Cost Allocable to Pollution Control**

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$42,703** and the facility is used **100%** of the time for pollution control.

**Compliance and Other Tax Credits**

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified three material recovery facilities at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve</b>
Applicant	<b>Centennial Bank</b>
Application No.	<b>6372</b>
Facility Cost	<b>\$88,860</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>7 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **93-068117**  
Business: **Financial Institution**  
Taxpayer ID: **93-068117**

The applicant's address is:

**6400 SW Corbett Ave  
Portland, OR 97239**

### ***Facility Identification***

The certificate will identify the facility as:

**51 Two-yard cardboard containers, no  
serial numbers**  
**502 65-gallon yard debris carts, Serial  
#'s YD6500001 – YD6500502**  
**80 65-gallon paper carts, Serial #'s  
P65000001 – P65000080**

The applicant is the **lessor and non-operator**  
of the facility located at:

**Canby Disposal Company  
1600 SE 4th Ave  
Canby, OR 97013**

### ***Technical Information***

The applicant is a financial institute that leases the claimed residential collection containers to Canby Disposal Company. The containers and carts are used for collecting residential curbside recyclables and yard debris. Through the acquisition of the B & J Garbage Company's assets, Canby Disposal Company has been able to distribute containers and carts to new customers. Customers now co-mingle their recycling which has resulted in an increase in participation. Prior to this facility, customers segregated their recyclables.

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>9/26/2002</b>
<i>Construction Completed</i>	<b>9/26/2002</b>
<i>Facility Placed into Operation</i>	<b>9/26/2002</b>
<i>Application Filed</i>	<b>11/18/2002</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste; or used oil.  
 (1)(a)(B)  
 OAR 340-016-0060(2)(a)

Applied to this Application

The facility reduces a substantial quantity of solid waste because it diverts 1,200 tons of waste annually from being sent to landfill. Recovered recyclables and yard debris are considered substantial compared to the previous control. Prior to this facility recyclables were segregated at the curb. This facility is part of a co-mingled recycling program that has increased participation by 30%.

**Method** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.  
 (1)(b)(D)

Applied to this Application

Cardboard, paper, recyclable containers and yard debris **meets the definition** of solid waste as defined in ORS 459.005.

- OAR 340-016-0010(7) Criteria  
The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.
- OAR 340-016-0060(4)(e) Criteria  
The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility recovers and pre-segregates paper, cardboard, recyclable containers and yard debris from solid waste. The recovered material is used in the manufacturing of a competitive end product with similar properties. Yard debris is composted to produce garden mulch.

- Exclusions** Criteria  
ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

- Replacement** Criteria  
ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

- Maximum Credit** Criteria  
ORS 468.173(3)(d) The maximum tax credit available to the applicant is **35%** if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and  
ORS 468.170(10) construction of the facility commenced on or after January 1, 2001 and  
ORS 468.165(6) construction was completed on or after January 1, 2002; and the facility is used

for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35%** because construction of the facility commenced on **9/26/2002**, construction was completed on **9/26/2002**, and the Department received the application on **11/18/2002**.

***Facility Cost***

A Bill of Sale and an Asset and Liabilities statement from B & J Garbage Company substantiated the claimed facility cost.

Claimed Cost	\$88,860
<b>Eligible Cost</b>	<b>\$88,860</b>

***Facility Cost Allocable to Pollution Control***

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

***Compliance and Other Tax Credits***

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified three other facilities at this location. No EQC certificates were issued to B & G Garbage Company for this facility prior to the sale.

Reviewers: Maggie Vandehey, DEQ





State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Centennial Bank</b>
Application No.	<b>6373</b>
Facility Cost	<b>\$886,117</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>7 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Financial Institution**

Taxpayer ID: **93-068117**

The applicant's address is:

**c/o Dooling Lease Management Corp  
6400 SW Corbett Ave  
Portland, OR 97239**

#### ***Facility Identification***

The certificate will identify the facility as:

**One - Recycling Conveyor System**

**Two - Compactors**

The applicant is the **lessor and non-operator** of the facility located at:

**Canby Disposal Company  
9602 SE Clackamas Rd  
Clackamas, OR 97015**

#### ***Technical Information***

The applicant claims a new recycling conveyor system, truck scales and compactors leased to Canby Disposal Company for pre-segregation of co-mingled recyclable material. Hauling companies deliver truckloads of co-mingled recycling to the facility from their collection routes. The loads are weighed by two eighty-foot truck scales that are linked to a computerized database for tracking and payments. The three-stage conveyor system first sorts out corrugated cardboard. Next, it sorts out newsprint that is then conveyed to the compactor in preparation for delivery to a newsprint mill for end use. The third stage separates fines (i.e. glass, dirt) from the remaining co-mingled recycling stream and a magnetic separator removes steel cans. Plastic bottles, aluminum cans and foil are sorted manually. The segregated recyclables are hauled to their respective recycling mills where they are used to manufacture products with similar properties.

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>8/1/2002</b>
<i>Construction Completed</i>	<b>12/31/2002</b>
<i>Facility Placed into Operation</i>	<b>12/31/2002</b>
<i>Application Filed</i>	<b>1/2/2003</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 (1)(a)(B) The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste; or used oil.  
 OAR 340-016-0060(2)(a)

Applied to this Application

The facility reduces a substantial quantity of solid waste because it diverts approximately 75,000 tons of waste annually from being sent to landfill. The facility supports co-mingled recycling programs. The convenience to customers of co-mingled recycling has increased participation in recycling programs by 30%.

The truck scale component of the facility is not eligible for certification because it makes an insignificant contribution to the sole purpose of the facility according to ORS 468.155(3)(d). The purpose of the truck scales is weighing and tracking the loads for payment. The cost is subtracted from the claimed cost under the Facility Cost section.

**Method** Criteria  
 ORS 468.155 (1)(b)(D) The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be: solid waste as defined in ORS 459.005: all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

Applied to this Application

Cardboard, newsprint, plastic, glass and aluminum **meet the definition** of solid waste as defined in ORS 459.005.

OAR 340-016-0010(7)  
OAR 340-016-0060(4)(e)

Criteria

The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state. The facility shall produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility obtains recyclable cardboard, newsprint, aluminum and other recyclable materials from solid waste. The recovered material is used to make a competitive end product with similar properties. The facility is involved in the production of the end product through pre-segregation of the recovered material.

***Exclusions***

ORS 468.155 (3) OAR 340-016-0070(3)

Criteria

Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The claimed cost included cost for:

Truck scales used for payment tracking purposes. The truck scales make an insignificant contribution to the sole purpose of the facility. The associated cost is reduced from the claimed facility cost.

***Replacement***

ORS 468.155 (3)(e)

Criteria

The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

<b>Maximum Credit</b>	<b>Criteria</b>
ORS 468.173(3)(d)	The maximum tax credit available to the applicant is 35% if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and construction of the facility commenced on or after January 1, 2001 and construction was completed on or after January 1, 2002; and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.
ORS 468.170(10)	
ORS 468.165(6)	

Applied to this Application

The maximum tax credit is **35%** because construction of the facility commenced on **8/1/2002**, construction was completed on **12/31/2002**, and the Department received the application on **1/2/2003**.

<b>Facility Cost</b>	Copies of invoices substantiated the claimed facility cost.	\$967,005
	Claimed Cost	
	Insignificant contribution to pollution control purpose	
	Truck Scales	-80,888
	<b>Eligible Cost</b>	<b>\$886,117</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces, through pre-segregation, usable commodities in the form of recyclable materials that can be used by recycling mills in manufacturing products with similar properties.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified one facility at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation	<b>Approve</b>
Applicant	<b>Dean R. Schrock</b>
Application No.	<b>6375</b>
Facility Cost	<b>\$107,683</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **Sole Proprietor**

Business: **Grass seed cleaning**

Taxpayer ID: **93-0631995**

The applicant's address is:

**31696 Allen Lane  
Tangent, OR 97389**

### ***Facility Identification***

The certificate will identify the facility as:

**Screening bunker and baghouse**

The applicant is the **owner and operator** of  
the facility located at:

**32397 Old Hwy. 34  
Tangent, OR 97389**

### ***Technical Information***

The applicant owns and operates a grass seed processing company. The cleaning process separates the seed from inert waste material. The claimed facility allows the applicant to capture and convey the inert waste material. The material is sent off-site for other uses such as making feed pellets and animal bedding. The claimed facility consists of a 30-horsepower fan and a FDS Model 121FSD-10 baghouse. The suction from the fan conveys the inert waste material to the baghouse, where it is separated from the air stream. The inert waste material that is collected in the lower section of the baghouse is discharged through a rotary valve that drops the inert material into a pneumatic conveying system. The pneumatic conveying system moves the inert waste material to a screening bunker, which drops the inert waste material into trucks.

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>4/1/2002</b>
<i>Construction Completed</i>	<b>7/1/2002</b>
<i>Facility Placed into Operation</i>	<b>7/15/2002</b>
<i>Application Filed</i>	<b>11/18/2002</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must  
 (1)(a)(B) be to prevent, control, or reduce a substantial quantity of solid waste, hazardous  
 OAR 340-016- waste or used oil.  
 0060(2)(a)

Applied to this Application

The facility reduces a substantial quantity of solid waste, because it diverts approximately 300 tons per year of waste from the Corvallis/Albany sanitary landfill at Coffin Butte. Three hundred tons of inert grass seed screenings are considered a substantial reduction in the amount of material that potentially could be disposed of at the landfill.

**Method** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by the use of a  
 (1)(b)(D) material recovery process that obtains useful material from solid waste that would otherwise be disposed of at a landfill: solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. Solid Waste does not include: Materials used for fertilizer or for other productive purposes or which are salvageable as such material that are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

Applied to this Application

Inert grass seed screenings **meet the definition** of solid waste as defined in ORS 459.005 because they would otherwise be useless or discarded agricultural materials.

***Exclusions*** Criteria  
ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
OAR 340-016- an insignificant contribution to the principal or sole purpose of the facility; or  
0070(3) provides benefits of economic value; or where the costs are not directly related to  
the operation of the industry or enterprise seeking the tax credit but were installed  
as a result of the facility.

Applied to this Application

Invoices did not indicate that any ineligible costs were included.

***Replacement*** Criteria  
ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously  
been certified as a pollution control facility under ORS 468.170 is not eligible for  
the tax credit with two exceptions: 1) the facility was replaced due to a  
requirement imposed by DEQ or EPA that is different than the requirement to  
construct the original facility; or 2) the facility was replaced before the end of its  
useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously  
certified as a Pollution Control Facility.

***Maximum Credit*** Criteria  
ORS 468.173(3)(d) The maximum tax credit available to the applicant is **35%** if the application was  
ORS 468.170(10) filed between January 1, 2002 and December 31, 2008, inclusively; and  
ORS 468.165(6) construction of the facility commenced on or after January 1, 2001 and  
construction was completed on or after January 1, 2002; and the facility is used  
for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35%** because construction of the facility commenced  
on **4/1/2002**, construction was completed on **7/1/2002**, and the Department  
received the application on **11/18/2002**.

***Facility Cost***

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$107,683
<b>Eligible Cost</b>	<b>\$107,683</b>

***Facility Cost Allocable to Pollution Control***

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces a usable commodity that does not produce revenue. The applicant does not receive any payment for the waste inert material, nor does he pay for the removal of the material.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

***Compliance and Other Tax Credits***

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. There are no DEQ permits that have been issued to the site. The EQC issued two certificates to the applicant for facilities at this location.

Reviewers: PBS Engineering & Environmental  
Maggie Vandehey, DEQ





State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve</b>
Applicant	<b>PremierWest Bank</b>
Application No.	<b>6385</b>
Facility Cost	<b>\$30,575</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>7 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Financial Institution**

Taxpayer ID: **93-1007653**

The applicant's address is:

**c/o Dooling Lease Management Corp.  
6400 SW Corbett Avenue  
Portland, OR 97239-3558**

#### ***Technical Information***

The applicant claims a paper separation and sorting system leased to Canby Disposal Company for retrieving small pieces of recyclable paper. Prior to the installation of this facility, significant amounts of recyclable paper were being transferred through the disc screen portion of the sorting system and were being disposed of with other fine material. This facility uses an air system that "vacuums" the paper exiting the screen and blows the paper through air ducts and into the sorted recyclable paper staging area.

#### ***Facility Identification***

The certificate will identify the facility as:

#### **Paper Separation/Sorting System**

The applicant is the **lessor and non-operator** of the facility located at:

**Canby Disposal Company  
9602 SE Clackamas Road  
Clackamas, OR 97015**

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>6/5/2002</b>
<i>Construction Completed</i>	<b>6/5/2002</b>
<i>Facility Placed into Operation</i>	<b>6/5/2002</b>
<i>Application Filed</i>	<b>11/18/2002</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be  
 (1)(a)(B) to prevent, control, or reduce a substantial quantity of solid waste, hazardous  
 OAR 340-016- waste; or used oil.  
 0060(2)(a)

Applied to this Application

The facility reduces a substantial quantity of solid waste, because it diverts over 20 tons of waste paper per month from being sent to land fill. The waste paper recovered is considered substantial when compared to the previous control where smaller pieces of paper were being transferred through the disc screen in the residual staging area. The residual was transferred to land fill. This facility has reduced that amount by 80%.

**Method** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by the use of a  
 (1)(b)(D) material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. (b) **excludes** "Materials used for fertilizer or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

Waste paper **meets the definition** of solid waste as defined in ORS 459.005.

- OAR 340-016-0010(7) Criteria The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.
- OAR 340-016-0060(4)(e) Criteria The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:
- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
  - (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility obtains recyclable paper from solid waste. The recovered material is used in the manufacturing of a competitive end product with similar properties that is of real economic value. The facility produces the end product through pre-segregation of the recovered materials.

- Exclusions*** Criteria
- ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or
- OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

- Replacement*** Criteria
- ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

**Maximum Credit** Criteria  
 ORS 468.173(3)(d) The maximum tax credit available to the applicant is **35%** if the application was  
 ORS 468.170(10) filed between January 1, 2002 and December 31, 2008, inclusively; and  
 ORS 468.165(6) construction of the facility commenced on or after January 1, 2001 and  
 construction was completed on or after January 1, 2002; and the facility is used  
 for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35%** because construction of the facility commenced  
 on **6/5/2002**, construction was completed on **6/5/2002**, and the Department  
 received the application on **11/18/2002**.

**Facility Cost**

Copies of invoices to K.B. Recycling substantiated the claimed facility cost. K.B. Recycling is a  
 subsidiary of Canby Disposal and operates at the same location.

Claimed Cost	\$30,575
<b>Eligible Cost</b>	<b>\$30,575</b>

**Facility Cost Allocable to Pollution Control**

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not  
 exceed \$50,000, the portion of the actual costs properly allocable shall be in the  
 proportion that the ratio of the time the facility is used for prevention, control or  
 reduction of air, water or noise pollution or solid or hazardous waste or to  
 recycling or appropriately disposing of used oil bears to the entire time the  
 facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$30,575** and the facility is used **100%** of the time  
 for pollution control.

**Compliance and Other Tax Credits**

The applicant states the facility and site are in compliance with Department rules and statutes and with  
 EQC orders. No DEQ permits have been issued to the site. The EQC certified three facilities for  
 material recovery at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>PremierWest Bank</b>
Application No.	<b>6386</b>
Facility Cost	<b>\$39,716</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>7 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Financial Institution**

Taxpayer ID: **93-1007653**

The applicant's address is:

**c/o Dooling Lease Management Corp.  
6400 SW Corbett Avenue  
Portland, OR 97239-3558**

#### ***Facility Identification***

The certificate will identify the facility as:

**One - Cascon Automatic Tarper, Serial  
#CCMTS-0298**

**Two - Fender Diamond 12GA Plates**

**Fifteen - Model 165UT, 20 yard,  
Standard Utility Drop Boxes,  
Serial #'s 12281 - 12295**

The applicant is the **lessor and non-operator**  
of the facility located at:

**Canby Disposal Company  
1600 SE 4th Avenue  
Canby, OR 97013**

#### ***Technical Information***

The applicant claims a Cascon Automatic Tarper and Fender Diamond Plates and fifteen 20-yard drop boxes leased to Canby Disposal Company. Canby Disposal uses the tarper to automatically tarp drop boxes that collect recyclable materials. Prior to this facility, Canby Disposal manually covered the drop boxes. The tarper increases the speed and efficiency in covering the drop boxes. The drop boxes are used by new commercial customers to recycle glass, metals and paper. Prior to the drop boxes these customers were probably discarding their recyclables as trash. The new drop boxes have the capacity to collect approximately 200,000 tons of recyclable material per year that previously would have gone to landfill.

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>6/5/2002</b>
<i>Construction Completed</i>	<b>7/30/2002</b>
<i>Facility Placed into Operation</i>	<b>7/30/2002</b>
<i>Application Filed</i>	<b>11/18/2002</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be  
 (1)(a)(B) to prevent, control, or reduce a substantial quantity of solid waste, hazardous  
 OAR 340-016- waste; or used oil.  
 0060(2)(a)

Applied to this Application

The drop boxes reduce a substantial quantity of solid waste because they divert approximately 10 tons of recyclable material, weekly or bi-weekly, per drop box from being sent to landfill. The drop boxes are made available to fifteen new commercial customers who, prior to this facility, were probably discarding recyclables as trash.

The automatic tarper and plates are not eligible for certification because they make an insignificant contribution to the sole purpose of the facility according to ORS 468.155(3)(d). The automatic tarper covers the drop boxes more efficiently than the previous practice of manually tarping. The applicant claims that the efficiency of the automatic tarper causes the idle time of the diesel equipment to be less, thus releasing less diesel fumes into the air, however, the tarper does not make a significant contribution to material recovery.

**Method** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by the use of a  
 (1)(b)(D) material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

Applied to this Application

Discarded glass, metals and paper **meet the definition** of solid waste as defined in ORS 459.005.

OAR 340-016- Criteria

- 0010(7) The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.
- OAR 340-016-0060(4)(e) The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The drop boxes obtain glass, metals and paper from commercial customers. The recovered material is transported to recycling mills where it is made into competitive products with similar properties.

***Exclusions*** Criteria

- ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or
- OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

The automatic tarper and plates are not eligible for certification because they make an insignificant contribution to the sole purpose of the facility according to ORS 468.155(3)(d). The Department has subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Replacement*** Criteria

ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

***Maximum Credit*** Criteria

ORS 468.173(3)(d) The maximum tax credit available to the applicant is 35% if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and  
 ORS 468.170(10) construction of the facility commenced on or after January 1, 2001 and  
 ORS 468.165(6) construction was completed on or after January 1, 2002; and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35%** because purchase of the equipment commenced on **6/5/2002**, and was completed on **7/30/2002**, and the Department received the application on **11/18/2002**.

***Facility Cost***

Copies of invoices substantiated the claimed facility cost.

	Claimed Cost	\$45,516
Insignificant contribution to pollution control purpose :		
Automatic Tarper and Diamond Plates		-5,800
	<b>Eligible Cost</b>	<b>\$39,716</b>

***Facility Cost Allocable to Pollution Control***

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$39,716** and the facility is used **100%** of the time for pollution control.



***Compliance and Other Tax Credits***

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified three material recovery facilities at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Automotive Collision Repair**

Taxpayer ID: **93-0659902**

The applicant's address is:

**9350 SW Tigard St**

**Tigard, OR 97223**

#### ***Technical Information***

The applicant uses lacquer based solvent to clean paint guns used in the process of automotive collision repair. The solvent contains toluene, petroleum distillates, isopropyl alcohol and acetone. The applicant purchased a solvent recycling machine that reduced their consumption of new solvent and the amount of hazardous waste sent for disposal.

Director's Recommendation:	<b>Approve</b>
Applicant	<b>Tigard Auto Works Inc.</b>
Application No.	<b>6387</b>
Facility Cost	<b>\$4,730</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>5 years</b>

#### ***Facility Identification***

The certificate will identify the facility as:

**One - Omega Combo 3 Solvent**

**Recycler, Model # GWRS**

**3AS-B, Serial # 600-62-0147**

The applicant is the **owner and operator** of the facility located at:

**10925 SW Greenburg Rd**

**Tigard, OR 97223**

**Eligibility****Timely Filing** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>11/28/2000</b>
<i>Construction Completed</i>	<b>12/5/2000</b>
<i>Facility Placed into Operation</i>	<b>12/5/2000</b>
<i>Application Filed</i>	<b>11/22/2002</b>

**Purpose: Voluntary** Criteria

ORS 468.155  
(1)(a)(B)  
OAR 340-016-  
0060(2)(a)

The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste; or used oil.

Applied to this Application

The facility reduces a substantial quantity of hazardous waste because it recycles approximately 75% of its cleaning solvent per month from being sent to landfill. The applicant has additionally reduced their consumption of new solvent by 90%.

**Method** Criteria

ORS 468.155  
(1)(b)(D)

The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be hazardous waste as defined in ORS 466.005: Includes all of the following which are not declassified by the commission under ORS 466.015 (3):

- a. Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliant, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.
- b. Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the commission, after notice and public hearing. For purposes of classification, the commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

- A. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or:
  - B. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
- c. Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this subsection.

Applied to this Application

Cleaning solvent containing toluene, petroleum distillates, isopropyl alcohol and acetone **meets the definition** of hazardous waste as defined ORS 466.005.1(b).

OAR 340-016- Criteria

- 0010(7) The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.
- OAR 340-016-0060(4)(e) The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility recycles the solvent used to clean paint guns used for collision repair. The solvent is used in the same kind of application as its prior use.

**Exclusions** Criteria

- ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or
- OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

***Maximum Credit*** Criteria

ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because construction of the facility commenced on **11/28/2000**, construction was completed on **12/5/2000**, and the Department received the application on **11/22/2002**.

***Facility Cost***

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$4,730
<b>Eligible Cost</b>	<b>\$4,730</b>

***Facility Cost Allocable to Pollution Control***

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$4,730** and the facility is used **100%** of the time for pollution control.

***Compliance and Other Tax Credits***

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified no other facilities at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's  
Recommendation: **Approve @ Reduced Percentage**  
Applicant **Miller Associated Enterprises, Inc.**  
Application No. **6410**  
Facility Cost **\$178,637**  
Percentage Allocable **33%**  
Maximum Tax Credit **50%**  
Certificate Period **5 years**

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **S Corp**

Business: **Recycling collection and  
transportation**

Taxpayer ID: **93-0941217**

The applicant's address is:

**PO Box 40097  
Eugene, OR 97404**

#### ***Facility Identification***

The certificate will identify the facility as:

**One - 2000 Peterbilt Truck, Model 320,  
Serial # 1NPZLT9X5YD712405**

**One - 36-yd Bridgeport Front End  
Loader & Attachments, Serial #  
00-0353-10**

The applicant is the **owner and operator** of  
the facility located at:

**2399 Hwy 99 North  
Eugene, OR 97402**

#### ***Technical Information***

The applicant claims a Peterbilt Truck with Front End Loader and attachments. The applicant uses the truck and loader to collect recyclable cardboard and refuse from commercial customers. Prior to the facility, commercial customers provided their own cardboard collection containers of varying sizes which the applicant loaded manually. These customers did not have ample space to collect cardboard and the applicant's capacity to haul the material was limited. Having a front loading truck made it possible for the applicant to provide the commercial customers with larger cardboard collection containers.

**Eligibility****Timely Filing** Criteria

ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>1/2/2001</b>
<i>Construction Completed</i>	<b>3/31/2001</b>
<i>Facility Placed into Operation</i>	<b>4/1/2001</b>
<i>Application Filed</i>	<b>12/19/2002</b>

**Purpose: Voluntary** Criteria

ORS 468.155 (1)(a)(B) OAR 340-016-0060(2)(a) The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste; or used oil.

Applied to this Application

The facility reduces a substantial quantity of solid waste because it diverts an average of 44 tons of recyclable cardboard per month from being sent to landfill. Prior to this facility, the applicant was diverting an average of 32 tons per month of cardboard from being sent to landfill. This is an increase of 12 tons per month.

The claimed facility does not have an exclusive pollution control purpose. The other purpose is to collect non-recyclable refuse to be delivered to landfill. The applicant estimates that the facility is used 33% of the time for pollution control. This percentage is based on time in use and number of containers serviced. The facility collects 138 cardboard containers and 278 refuse containers per week.

**Method** Criteria

ORS 468.155 (1)(b)(D) The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

Applied to this Application

Cardboard **meets the definition** of solid waste as defined in ORS 459.005.

OAR 340-016-0010(7) Criteria  
 The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.

OAR 340-016-0060(4)(e) The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility obtains discarded cardboard by collecting from commercial sources. The recovered material is used in the production of a competitive end product with similar properties with real economic value.

**Exclusions** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
 OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans and applicant statements did not indicate that any ineligible costs were included.

The applicant uses the truck and loader attachment to collect non-recyclable refuse to deliver to landfill, and is not eligible for certification. The Department has subtracted the percent of associated costs from the claimed facility cost as shown under the Facility Cost Allocable to Pollution Control section below.

**Replacement** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.



**Maximum Credit Criteria**  
 ORS 468.173(1) The maximum tax credit available to the applicant is 50% if construction of the  
 OAR 340-016-0007 facility was completed on or before December 31, 2001 and the application was  
 filed on or before December 31, 2003.

Applied to this Application

The maximum tax credit is **50%** because the equipment was purchased and in use  
 by **3/31/2001** and the Department received the application on **12/19/2002**.

**Facility Cost**

Copies of invoices and a project summary report substantiated the claimed facility cost.

Claimed Cost	\$178,637
<b>Eligible Cost</b>	<b>\$178,637</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **33%** of the facility cost is allocable to pollution control.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces usable commodities by pre-segregating used cardboard for delivery to the recycling mill.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>5</b> years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> The applicant estimates that the facility is used 33% of the time for pollution control. This percentage is based on time in use and number of containers serviced. The facility collects 138 cardboard containers and 278 refuse containers per week.

**Compliance and Other Tax Credits**

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified one facility for material recovery at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **C Corp**

Business: **Financial institution**

Taxpayer ID: **93-068117**

The applicant's address is:

**6400 SW Corbett Avenue  
Portland, OR 97239-3558**

### ***Technical Information***

The applicant claims a John Deere wheel loader and a Hyster forklift leased to and operated by EcoSort. EcoSort is a material recovery facility that accepts dry waste loads from local haulers. The loader is used to stage and separate dry-mixed waste loads that consist of newspaper, mixed paper, cardboard, glass, wood, sheetrock, ferrous and non-ferrous metals, plastics, concrete and inert material. Prior to purchasing the new equipment, EcoSort processed the material using equipment that was incapable of handling the increasing volume of waste material. The new forklift is used exclusively to unload trucks and trailers of recyclable material from residential curbside collection. The new equipment is part of a process that recovers approximately 3,004 tons of material per month. The applicant transports the recovered materials to the respective recycling mills and they haul the residual waste to the landfill.

Director's Recommendation:	<b>Approve</b>
Applicant	<b>Centennial Bank</b>
Application No.	<b>6434</b>
Facility Cost	<b>\$191,398</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>7 years</b>

### ***Facility Identification***

The certificate will identify the facility as:

- One - John Deere 544H Wheel Loader  
with 3-yard grapple bucket,  
Serial # DW544HX583886**
- One - Hyster HBOXM Forklift, Serial  
#K005VO3433Z**

The applicant is the **owner but not the  
operator** of the facility located at:

**EcoSort, LLC  
3425 East 17th Avenue  
Eugene, OR 97403**

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>8/20/2002</b>
<i>Construction Completed</i>	<b>12/20/2002</b>
<i>Facility Placed into Operation</i>	<b>12/20/2002</b>
<i>Application Filed</i>	<b>1/22/2003</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be  
 (1)(a)(B) to prevent, control, or reduce a substantial quantity of solid waste, hazardous  
 OAR 340-016- waste; or used oil.  
 0060(2)(a)

Applied to this Application

The facility reduces a substantial quantity of solid waste because it diverts 3,004 tons of waste from the landfill every month.

**Method** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by the use of a  
 (1)(b)(D) material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

Applied to this Application

Plastic, glass, tin, paper and other recyclable materials **meet the definition** of solid waste as defined in ORS 459.005

OAR 340-016- Criteria  
 0010(7) The facility produces an end product of utilization that is an item of real  
 OAR 340-016- economic value and is competitive with an end product produced in another state.  
 0060(4)(e) The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility obtains recyclable material from dry-mixed waste loads and from curbside recycling collection. Paper, cardboard, glass, tin and plastic go to recycling mills where they are made into competitive products with similar properties. Wood, metals and concrete are reclaimed to make various other products. Sheetrock is processed and mixed with compost.

**Exclusions** Criteria

ORS 468.155 (3)  
OAR 340-016-  
0070(3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

**Replacement** Criteria

ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The forklift that was replaced was not previously certified as a Pollution Control Facility.

<b>Maximum Credit</b>	<b>Criteria</b>
ORS 468.173(3)(d)	The maximum tax credit available to the applicant is <b>35%</b> if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and construction of the facility commenced on or after January 1, 2001 and construction was completed on or after January 1, 2002; and the facility is used for material recovery or recycling, as those terms are defined in <u>ORS 459.005</u> .
ORS 468.170(10)	
ORS 468.165(6)	

Applied to this Application

The maximum tax credit is **35%** because the purchase of the equipment began on **8/20/2002**, and was completed on **12/20/2002**, and the Department received the application on **1/22/2003**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$191,398
<b>Eligible Cost</b>	<b>\$191,398</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility pre-segregates recyclable material which is usable by various recycling mills and reclamation centers to create salable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The facility has a negative cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

EcoSort states the facility and site are in compliance with Department rules and statutes and with EQC orders. The following DEQ permit has been issued to the site: NPDES Storm Water Permit, number 1200Z, expires 6/30/2007. The EQC has certified no facilities at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve</b>
Applicant	<b>Pacific Sanitation Inc.</b>
Application No.	<b>6474</b>
Facility Cost	<b>\$37,847</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>7 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Material Recovery**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Solid waste and recycling  
collector**

Taxpayer ID: **93-0924002**

The applicant's address is:

**PO Box 17669  
Salem, OR 97305**

#### ***Facility Identification***

The certificate will identify the facility as:

**Five - DeWald Northwest 2-yard front  
loading cardboard containers,  
Serial #'s 173557-173561.**

**Five - three-yard front loading  
cardboard containers, Serial #'s  
177696-177700**

**864 - Rehig 95 gallon recycling carts,  
Serial #'s 1-864**

The applicant is the **Owner/Operator** of the  
facility located at:

**3475 Blossom Drive NE  
Salem, OR 97305**

#### ***Technical Information***

Pacific Sanitation Inc. collects solid waste and recycling from residential and commercial customers. The applicant claims containers for collecting cardboard from commercial customers and mixed recycling carts for residential customers.

The cardboard collection containers are left with the commercial customer. Previously, these customers did not have the capacity to save and recycle the quantities of cardboard generated. The mixed recycling roll carts have increased residential participation in the recycling program, probably due to the convenience of the mixed recycling program. Previously, customers presorted recyclables at the curb.

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>3/29/2002</b>
<i>Construction Completed</i>	<b>10/18/2002</b>
<i>Facility Placed into Operation</i>	<b>11/4/2002</b>
<i>Application Filed</i>	<b>3/18/2003</b>

**Purpose: Voluntary** Criteria  
 ORS 468.155 The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be  
 (1)(a)(B) to prevent, control, or reduce a substantial quantity of solid waste, hazardous  
 OAR 340-016- waste; or used oil.  
 0060(2)(a)

Applied to this Application

The facility reduces, prevents, or controls a substantial quantity of solid waste because it diverts up to four (4) tons of cardboard per month and approximately five (5) tons of mixed recyclables per month from being sent to landfill. The cardboard recycling containers were installed with new commercial customers who previously did not have the capacity to store used cardboard. The change to mixed recycling containers has resulted in a 50% increase in the recycling volume.

The claimed containers are used exclusively for recycling.

**Method** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by the use of a  
 (1)(b)(D) material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005:

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

Applied to this Application

Cardboard and mixed recyclables **meets the definition** of solid waste as defined in ORS 459.005.

OAR 340-016-0010(7) Criteria  
The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state.

OAR 340-016-0060(4)(e) The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties and which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility obtains recyclable material from solid waste. The recovered material is used in a competitive end product with similar properties.

***Exclusions*** Criteria  
ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or  
OAR 340-016-0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

***Replacement*** Criteria  
ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.



**Maximum Credit** Criteria  
 ORS 468.173(3)(d) The maximum tax credit available to the applicant is 35% if the application was  
 ORS 468.170(10) filed between January 1, 2002 and December 31, 2008, inclusively; and  
 ORS 468.165(6) construction of the facility commenced on or after January 1, 2001 and  
 construction was completed on or after January 1, 2002; and the facility is used  
 for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35%** because construction of the facility commenced  
 on **3/29/2002**, construction was completed on **10/18/2002**, and the Department  
 received the application on **3/18/2003**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$37,847
<b>Eligible Cost</b>	<b>\$37,847</b>

**Facility Cost Allocable to Pollution Control**

ORS 468.190 (3) Criteria  
 If the cost of the facility (or facilities certified under one certificate) does not  
 exceed \$50,000, the portion of the actual costs properly allocable shall be in the  
 proportion that the ratio of the time the facility is used for prevention, control or  
 reduction of air, water or noise pollution or solid or hazardous waste or to  
 recycling or appropriately disposing of used oil bears to the entire time the  
 facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$37,847** and the facility is used **100%** of the time  
 for pollution control.

**Compliance and Other Tax Credits**

The applicant states the facility and site are in compliance with Department rules and statutes and with  
 EQC orders. No DEQ permits have been issued to the site. The EQC certified six material recovery  
 facilities at this location.

Reviewers: Maggie Vandehey, DEQ

## APPROVALS: Underground and Aboveground Tank Systems

The Department recommends that the Environmental Quality Commission approve 2 underground storage tank systems. The principal purpose of the upgrades to the retail gas stations is to meet the federal Environmental Protection Agency's requirements for underground storage tanks and DEQ's requirements under OAR Chapter 340, Division 150. The EQC's certification of these facilities could reduce taxes paid to the State of Oregon by a maximum of \$48,018.

### Summary of Tank Systems

App #	Applicant	Facility Cost	% Allocable	Maximum Tax Credit	EQC Action
6177	Truax Corporation	\$20,993	100%	50%	
6439	Cascade Energy LLC	\$107,205	100%	35%	
2					
<b>Apps</b>		<b>Sum</b>			
		<b>Average</b>			
		<b>\$128,198</b>			
		<b>\$ 64,099</b>			



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Truax Corporation</b>
Application No.	<b>6177</b>
Facility Cost	<b>\$20,993</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>8 years</b>

## Tax Credit Review Report

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**Pollution Control Facility: UST/AST**

**Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

***Applicant Identification***

Organized As: **S Corp**

Business: **Retail gas station**

Taxpayer ID: **93-0730691**

The applicant's address is:

**PO Box 3002  
Corvallis, OR 97339**

***Facility Identification***

The certificate will identify the facility as:

**Tank sumps, automatic shutoffs,  
and piping**

The applicant is the **Owner/Operator** of  
the facility located at:

**Junction City 76  
330 Ivy Street  
Junction City, OR 97448**

***Technical Information***

The applicant installed a new containment sump under the gasoline dispensers and replaced existing plumbing with 160 feet of non-corrosive double wall flexible fiberglass piping at their retail gas station.

***Eligibility***

***Timely Filing*** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>3/1/2000</b>
<i>Construction Completed</i>	<b>7/25/2000</b>
<i>Facility Placed into Operation</i>	<b>7/25/2000</b>
<i>Application Filed</i>	<b>5/28/2002</b>

***Purpose: Required*** Criteria

ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air or water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

Applied to this Application

The facility meets the federal Environmental Protection Agency's requirements for underground storage tanks and DEQ's requirements under OAR Chapter 340, Division 150. The DEQ February 2002 inspection noted the piping was rigid single-walled piping rather than non-corrosive piping. The NON has been corrected.

***Method*** Criteria

ORS 468.155 (1)(b)(A) The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

OAR-016-0025 (2)(g) The installation of this facility will be used to detect, deter, or prevent spills or unauthorized releases

Applied to this Application

Petroleum products **meet the definition** of industrial waste and the claimed facility **meets the definition of a treatment works**. The upgraded system helps prevent petroleum contamination to the surrounding soil and ground water.

***Exclusions*** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that  
 OAR 340-016- makes an insignificant contribution to the principal or sole purpose of the  
 0070(3) facility; or provides benefits of economic value; or where the costs are not  
 directly related to the operation of the industry or enterprise seeking the tax  
 credit but were installed as a result of the facility.

Applied to this Application

The applicant installed 160' of non-corrosive double-wall flexible fiberglass piping. The unprotected portion of the product piping makes an insignificant contribution to pollution control. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The claimed facility or any of its distinguishable parts were not previously certified as a Pollution Control Facility.

***Maximum Credit*** Criteria  
 ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

Construction of the facility commenced on **3/1/2000**, the applicant completed construction on **7/25/2000**, and submitted the application to the Department received on **5/28/2002**.

***Facility Cost***

Copies of invoices substantiated the claimed facility cost.

	Claimed Cost	\$21,255
Insignificant contribution to pollution control purpose:		
160' Equivalent Bare Steel Product Piping @ \$1.64 per foot		- 262
	<b>Eligible Cost</b>	<b>\$20,993</b>

***Facility Cost Allocable to Pollution Control***

ORS 468.190 (3)

Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$20,993** and the facility is used **100%** of the time for pollution control.

***Compliance and Other Tax Credits***

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. DEQ issued an NON for failure to provide corrosive protection for turbines in contact with soil. The applicant corrected the violation. On December 24, 2002, Dave Belyea, from DEQ's Northwest Region, notified the applicant that the facility is in Significant Operational Compliance with the UST Equipment Standards and Release Detection Requirements. The applicant operates under the UST General Permit 20-6970-1998-OPER issued on December 5, 1998. The applicant submitted the Notice of Intent to upgrade/retrofit the system to DEQ on March 31, 2000. No other tax credits were issued to the applicant at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Cascade Energy LLC</b>
Application No.	<b>6439</b>
Facility Cost	<b>\$107,205</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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**Pollution Control Facility: UST/AST**

**Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: LLC

Business: **Retail Gas Station**

Taxpayer ID: **93-1326652**

The applicant's address is:

**PO Box 607**

**Wilsonville, OR 97070**

### ***Facility Identification***

The certificate will identify the facility as:

**Double wall fiberglass storage tanks and  
fiberglass piping  
Automatic tank gauge to monitor  
Containment sumps  
Oil/water separator and drainage system  
Automatic shutoff devices and an overflow  
alarm  
Stage I Vapor Recovery**

The applicant is the **owner and operator** of the facility identified by number **7172** is located at:

**1720 North Hwy 99 West  
McMinnville, OR 97128**

### ***Technical Information***

The applicant owns a retail gas station and upgraded the facility to meet EPA standards for tank systems. This is the second phase of a two-phase project. The applicant installed:

- Double wall fiberglass storage tanks and 371 feet of fiberglass piping to provide secondary containment in preventing soil or groundwater contamination;
- An automatic tank gauge to monitor product inventory and perform daily tank leak tests;
- Containment sumps to capture possible leaks around turbines and dispensers from entering soil or groundwater;

- An oil/water separator and drainage system to capture surface spills, and prevent gas and oil from entering storm drains;
- Automatic shutoff devices and an overflow alarm to prevent surface spills while pumping gas; and
- Stage I vapor recovery to prevent releases into the atmosphere while pumping gas.

### ***Eligibility***

***Timely Filing*** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>11/11/2001</b>
<i>Construction Completed</i>	<b>3/5/2002</b>
<i>Facility Placed into Operation</i>	<b>3/5/2002</b>
<i>Application Filed</i>	<b>1/30/2003</b>

***Purpose: Required*** Criteria  
 ORS 468.155 (1)(a)(A) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ, EPA, or LRAPA to prevent, reduce, or control air pollution and water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.  
 OAR 340-016-0060(2)(a)

Applied to this Application

The facility meets the federal Environmental Protection Agency's requirements for underground storage tanks and DEQ's requirements under OAR Chapter 340, Division 150.

***Method*** Criteria  
 ORS 468.155 (1)(b)(A) The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.



ORS 468.155 (1)(b)(B) The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

Air contaminant, as defined in ORS 468A.005(2), means any dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

Air-cleaning device, as defined in ORS 468A.005(1), means any method, process or equipment which removes, reduces or renders less noxious air contaminants prior to their discharge to atmosphere.

OAR-016-0025 (2)(g) The installation of this facility will be used to detect, deter, or prevent spills or unauthorized releases

Applied to this Application

Petroleum products **meet the definition** of industrial waste and the upgrades that prevent soil and surface water contamination **meet the definition of a treatment works**. Petroleum vapors **meet the definition** of an air contaminant and the Stage 1 vapor recovery equipment **meet the definition** of an air cleaning device.

**Replacement** Criteria

ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The EQC issued Certificate Number 3388 to Truax Harris Energy Company on December 2, 1994 for a tank gauge with an alarm. The tank gauge and alarm are still in place. The applicant, however, replaced the previously certified probes with longer probes. The new probes are not eligible for certification.

The EQC issued Certificate Number 3721 to Truax Harris Energy Company on December 31, 1996 for plastic double-wall flexible piping, sumps and automatic shutoff valves. All equipment and piping is still in operation as Phase 1 of the company's update of the islands to meet EPA requirements.

<b>Maximum Credit</b>	<u>Criteria</u>
ORS 468.173(3)(f)	The maximum tax credit available to the applicant is <b>35%</b> if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and the certified facility <b>cost does not exceed \$200,000.</b>
ORS 468.170(10)	
ORS 468.165(6)	

Applied to this Application

The maximum tax credit is **35%** because the applicant filed the application on **1/30/2003** and the certified facility cost is **\$107,205.**

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

	Claimed Cost	\$128,768
Probes - previously certified		-4,304
Equivalent bare steel tank @ 50% of tank cost		-16,651
371' Equivalent Bare Steel Product Piping @ \$1.64 per foot		-608
	<b>Eligible Cost</b>	<b>\$107,205</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The claimed installation does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

DEQ's regional staff, Jim Parr, observed the installation process and stated it was well documented and installed in compliance with Department rules and statutes. The applicant claims the site is currently in compliance with DEQ regulations. The applicant holds three Underground Storage Tank Permits identified as BFGGJ, BFFHK, and BFFHA issued on February 20, 2002.

Reviewers: Maggie Vandehey, DEQ.

## APPROVALS: Water Pollution Control Facilities

The Department recommends that the Environmental Quality Commission approve **11** water pollution control facilities installed to dispose of or eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005. The Commission's certification of these facilities could reduce taxes paid to the State of Oregon by a maximum of **\$1,044,626**.

**Seven** applicants constructed facilities in response to a Department of Environmental Quality or a federal Environmental Protection Agency requirement. These **principal purpose** facilities' primary and most important purposes are to comply with requirements to prevent, reduce, control, or eliminate water pollution.

**Four** applicants voluntarily installed facilities to prevent, reduce, control, or eliminate substantial quantity water pollution. The **sole purpose** of these facilities is to control a substantial quantity of water pollution.

### Summary of Water Pollution Control Facilities

App #	Applicant	Facility Cost	% Allocable	Maximum Tax Credit	EQC Action
5856	Willamette Industries, Inc.	369,984	100%	50%	
6247	TDY Industries, Inc.	67,511	100%	50%	
6248	TDY Industries, Inc.	34,218	100%	50%	
6249	TDY Industries, Inc.	302,801	100%	50%	
6250	TDY Industries, Inc.	119,004	100%	50%	
6258	Michael M. Murray	10,905	100%	50%	
6292	Medallion Cabinetry, Inc.	61,526	100%	50%	
6374	Joel Price	8,406	100%	50%	
6437	Harmon & Son Dairy	42,558	100%	50%	
6447	C.H. Perrott, Inc.	29,513	100%	50%	
6452	Novellus Systems, Inc.	1,489,752	100%	35%	
<b>11</b>	<b>Sum</b>	<b>\$2,166,194</b>			
<b>Apps</b>	<b>Average</b>	<b>196,927</b>			
	<b>Minimum</b>	<b>8,406</b>			
	<b>Maximum</b>	<b>1,489,752</b>			



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Willamette Industries, Inc.</b>
Application No.	<b>5856</b>
Facility Cost	<b>\$369,984</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Water Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **C Corp**

Business: **Paper Mill**

Taxpayer ID: **93-0312940**

The applicant's address is:

**Weyerhaeuser Company  
Tax Department CH 1C28  
PO Box 9777  
Federal Way, WA 98063**

### ***Facility Identification***

The certificate will identify the facility as:

**Recovery Boiler Spill Containment &  
Sewer Upgrade**

The applicant is the **owner and operator** of  
the facility located at:

**Albany Paper Mill  
3251 Old Salem Road  
Albany, OR 97321**

### ***Technical Information***

Willamette Industry's Albany Paper Mill produces linerboard, corrugating medium, and bag paper. The applicant uses kraft and secondary fiber pulping processes in manufacturing these products.

The applicant claims a concrete spill containment area that includes dikes and curbs to hold the contents of the largest vessel in the South Boiler, Boiler, Precipitator, and Evaporator areas in the event of a spill. The largest vessels are 1.1 million gallons and they store the weak liquor, high solids liquor, and raw green liquor that the applicant used in the pulping process. Trenches direct any spill from these vessels to a central sump. The applicant monitors the central sump for contamination in order to properly dispose of any collected liquid. The applicant also claimed a Sewer Upgrade that includes a sump and 30 hp pump. Prior to installing the secondary containment system, any leaks or spilled hazardous liquors could flow directly into the sewer system.

**Eligibility****Timely Filing** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>6/1/1998</b>
<i>Construction Completed</i>	<b>3/31/2000</b>
<i>Facility Placed into Operation</i>	<b>3/31/2000</b>
<i>Application Filed</i>	<b>11/30/2001</b>

**Purpose: Required** Criteria

ORS 468.155  
(1)(a)(A)  
OAR 340-016-  
0060(2)(a)

The **principal purpose** of the claimed facility must be to comply with a requirement imposed by DEQ or EPA to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

Applied to this Application

The facility complies with the applicant's DEQ NPDES Wastewater permit. The claimed facility is necessary to prevent the leakage or spillage of hazardous liquors from the process tanks into the sewer and subsequently into the environment.

The primary and most important purpose of the sewer upgrade, other than the sump, is for the material handling of waste directed to the mill sewer, not to meet the requirements of the applicant's permit. The Department subtracted the associated cost under Facility Cost section.

**Method** Criteria

ORS 468.155  
(1)(b)(A)

The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Applied to this Application

The pulping liquors **meet the definition of industrial waste** and the Recovery Boiler Spill Containment **meets the definition of a treatment works**.

***Exclusions***  
ORS 468.155 (3)  
OAR 340-016-  
0070(3)

Criteria

Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The application included costs for a sewer upgrade, which make an insignificant contribution to the principal purpose of the facility. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Replacement***  
ORS 468.155 (3)(e)

Criteria

The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify secondary containment in the South Boiler, Boiler, Precipitator, and Evaporator areas.

***Maximum Credit***  
ORS 468.173(1)

Criteria

The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because the applicant began construction of the facility on **6/1/1998**, completed construction on **3/31/2000**, and filed the application on **11/30/2001**.

**Facility Cost**

The claimed facility was part of a larger construction project at the Albany Paper Mill. Project cost summaries identified the major cost categories for the entire project. An independent experienced engineering cost estimator determined the costs related to the portion of the project represented in this application.

	Claimed Cost	\$818,977
Sewer upgrade and related costs		- 448,993
	<b>Eligible Cost</b>	<b>\$369,984</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The percentage of the cost allocable to pollution control is 100% when calculated according to rule.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

The DEQ staff assigned to the source is Bill Perry of DEQ's Salem Office who confirmed the facility is in compliance with Department rules and statutes.

The following DEQ permits are issued to the site:

DEQ NPDES Stormwater Permit # 1200Z, issued 7/22/1997

NPDES Wastewater #101345, issued 11/30/1995

Title V Air Permit #22-0471, issued 4/26/2001.

The EQC has issued 52 certificates to facilities at this location: 33 for Air, 5 for Material Recovery, 13 for Water and 1 for Noise.

Reviewers: SJO Consulting Engineers  
Barrett MacDougall, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### Pollution Control Facility: Water

#### Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: **C Corporation**

Business: **Production, refinement, and forming of zirconium and other non-ferrous metals.**

Taxpayer ID: **95-2316677**

The applicant's address is:

**PO Box 460  
Albany, OR 97321**

Director's  
Recommendation  
Applicant

**Approve  
TDY Industries, Inc.  
dba Wah Chang**

Application No.  
Facility Cost  
Percentage Allocable  
Maximum Tax Credit  
Certificate Period

**6247  
\$67,511  
100%  
50%  
7 years**

### *Facility Identification*

The certificate will identify the facility as:

**Spill Collection Containment Tank and  
Chemical-Resistant Coating**

The applicant is the **owner and operator** of the facility located at:

**1600 Old Salem Road NE  
Albany, OR 97321**

### *Technical Information*

Teledyne Industries, Inc., dba Wah Chang (TDY), produces high purity zirconium ( $ZrO_2$ ) and hafnium ( $HfO_2$ ) metal products that are used in nuclear power generating plants. The production process uses hazardous chemicals to produce intermediate products of reactor-grade zirconium dioxide and high purity hafnium dioxide.

The applicant stores the chemical tanks in a containment area located outside. The containment area is not large enough to hold the contents of the largest tank, therefore, a gravity line allows spills to drain to a remote containment tank located in the Spill Treatment Area. The remote containment tank is large enough to hold the contents of a spill of the largest tank in the production process.

The claimed facility is a 7,500-gallon fiberglass tank that replaced the old containment tank, which was leaking and too corroded to repair. The applicant also claimed a chemical-resistant material applied to the inside of the Spill Treatment Area containment area.



**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed, if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>06/25/2001</b>
<i>Construction Completed</i>	<b>10/24/2001</b>
<i>Facility Placed into Operation</i>	<b>10/25/2001</b>
<i>Application Filed</i>	<b>08/12/2002</b>

**Purpose: Required** Criteria  
 ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ or EPA to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof. [ORS 468B.005]

Applied to this Application

The new containment tank and the spill containment coating complies with the applicant's NPDES General Permit-Storm Water No. 22-0547 to prevent process chemical pollutants from entering the storm water runoff.

***Method*** Criteria  
 ORS 468.155 (1)(b)(A) The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Applied to this Application

The hazardous chemicals used in the Separations Plant if spilled **meet the definition of industrial waste**. The containment tank and coating **meet the definition of a treatment works** because they hold and provide temporary containment of the storm water and process chemicals that leak from the Separations Plant.

***Exclusions*** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
 OAR 340-016-0070(3) an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify a containment system for the hazardous chemicals used in the Separations Plant.

***Maximum Credit*** Criteria  
 ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the  
 OAR 340-016-0007 facility was completed on or before December 31, 2001 and the application was filed on or before December 31, 2003.

Applied to this application

The maximum tax credit is **50%** because the applicant completed the construction of the facility on **10/24/2001** and filed the application on **08/12/2002**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	<b>\$67,511</b>
Eligible Cost	<b>\$67,511</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increased Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

The DEQ staff assigned to the source is Raghu Namburi from the Western Region Office. He affirmed the applicant's statement that the claimed facility is in compliance with Department rules and statutes and with EQC orders. DEQ issued the following permits to the applicant at the site:

Title V Air Contamination Discharge Permit No. 22-0547, issued September 12, 2001  
 NPDES General Permit – Storm Water Permit No. 1200-Z, issued July 22, 1997  
 NPDES Wastewater Discharge Permit No. 100522, issued September 30, 1988

The EQC certified 115 pollution control facility tax credits at this location.  
 60 for Water, 52 for Air, 2 for Material Recovery and 1 NPS

Reviewers: PBS Engineering and Environmental  
 Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### Pollution Control Facility: Water

#### Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### *Applicant Identification*

Organized As: **C Corp.**

Business: **Production, refinement, and forming zirconium and other non-ferrous metals.**

Taxpayer ID: **95-2316677**

The applicant's address is:

**PO Box 460  
Albany, OR 97321**

#### *Technical Information*

Teledyne Industries, Inc., dba Wah Chang (TDY), produces high purity zirconium dioxide ( $ZrO_2$ ) and hafnium dioxide ( $HfO_2$ ) that is then converted to pure zirconium and hafnium. The process involves the distillation of Methyl isoButyl Ketone (MIBK) and sulfuric acid. The applicant installed distillation equipment outside on a 30-year-old concrete containment pad surrounded by a berm. Over time, the protective coating inside the containment pad area wore away, exposing the concrete to highly corrosive process chemicals. These chemicals would then mix with storm water during heavy rains and could flow through the worn areas of the containment area into the groundwater. The claimed facility replaced the old protective coating with an Anchor-Lok membrane lining system manufactured by Atlas Mineral & Chemicals, Inc. The Anchor-Lok membrane linings must be embedded in two inches of fresh concrete. This required the existing berm and concrete equipment footings to be raised two inches.

Director's  
Recommendation  
Applicant

**Approve  
TDY Industries, Inc.  
dba Wah Chang**

Application No.  
Facility Cost  
Percentage Allocable  
Maximum Tax Credit  
Useful Life

**6248  
\$34,218  
100%  
50%  
10 years**

#### *Facility Identification*

The certificate will identify the facility as:

**Anchor-Lok Membrane Lining System**

The applicant is the **owner and operator** of the facility located at:

**1600 Old Salem Road NE  
Albany, OR 97321**

**Eligibility*****Timely Filing*** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The application must be filed within two years of the date that construction of the facility was completed, if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>09/24/2001</b>
<i>Construction Completed</i>	<b>10/05/2001</b>
<i>Facility Placed into Operation</i>	<b>10/12/2001</b>
<i>Application Filed</i>	<b>08/12/2002</b>

***Purpose: Required*** Criteria

ORS 468.155  
(1)(a)(A)  
OAR 340-016-  
0060(2)(a)

The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ or EPA to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof. ORS 468B.005

Applied to this Application

The Anchor-Lok lining and its installation complies with the applicant's NPDES General Permit-Storm Water No. 22-0547 to prevent process chemical pollutants from entering the storm water runoff.

**Method** Criteria  
 ORS 468.155 (1)(b)(A) The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Applied to this Application

The process chemicals Methyl isoButyl Ketone (MIBK) and sulfuric acid, mixed with storm water **meet the definition of industrial waste**. The membrane **meets the definition of a treatment works** because it holds and provides temporary containment of the storm water and process chemicals that leak from the distillation process.

**Exclusions** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
 OAR 340-016-0070(3)(j) an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

**Replacement** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify a secondary containment system under the distillation equipment.





State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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Director's Recommendation Applicant	<b>Approve @ Reduced Cost TDY Industries, Inc. dba Wah Chang</b>
Application No.	<b>6249</b>
Facility Cost	<b>\$302,801</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Useful Life	<b>7 years</b>

### **Pollution Control Facility: WATER**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corporation**

Business: **Production, refinement, and  
forming of zirconium and other non-ferrous  
metals.**

Taxpayer ID: **95-2316677**

The applicant's address is:

**PO Box 460  
Albany, OR 97321**

#### ***Technical Information***

Teledyne Industries, Inc., dba Wah Chang (TDY) produces pure zircon metal ( $ZrSiO_4$ ) from a naturally occurring zirconium ore. The purification process produces a dilute solution of ammonium chloride ( $NH_4Cl$ ) as a waste stream. The claimed facility is a system for containing the dilute  $NH_4Cl$  solution.

The applicant formerly sprayed the exterior surfaces of the old tank with the dilute  $NH_4Cl$  solution to keep the wooden staves wet, thereby preventing the tank from bulging and the wood from deteriorating. In July 2001, the Oregon Department of Environmental Quality (DEQ) expressed concern that the overspray and the deteriorating 125,000-gallon bermed containment area were impacting the groundwater and surface water quality in Truax Creek. The berm was undersized for the wooden tank and did not satisfy rules for secondary containment that require a minimum holding capacity of 110% of the capacity of the largest tank.

The applicant replaced the 200,000-gallon wooden storage tank with three 25,000-gallon fiberglass reinforced plastic (FRP) tanks. TDY transfers the waste solution from the new storage tanks to the

#### ***Facility Identification***

The certificate will identify the facility as:

**Three 25,000-gallon ammonium  
chloride storage tanks and  
containment berm**

The applicant is the **owner and operator** of  
the facility located at:

**1600 Old Salem Road NE  
Albany, OR 97321**



ammonia distillation plant for treatment before it is discharged to Truax Creek. The applicant restored the integrity of the 4,200-square foot containment pad and the 4-foot berm by applying a chemical-resistant epoxy resin to their surfaces. The claimed facility also includes one rebuilt Durco 3 x 2 transfer pump and a rebuilt Gallagher sump pump.

**Eligibility**

**Timely Filing** Criteria

ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>07/26/2001</b>
<i>Construction Completed</i>	<b>10/19/2001</b>
<i>Facility Placed into Operation</i>	<b>11/26/2001</b>
<i>Application Filed</i>	<b>08/12/2002</b>

**Purpose: Required** Criteria

ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ or EPA to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

Applied to this Application

DEQ prohibits the discharge of dilute NH<sub>4</sub>Cl into surface waters. The **principal purpose** of the tanks is to comply with the applicant's NPDES Wastewater Discharge Permit No. 100522 issued on 09/30/1988. The permit requires the removal of ammonia prior to discharge to Truax Creek. The reconstruction of the pad and berm provides secondary containment that complies with the requirements imposed by the applicant's NPDES General Storm Water Permit No. 22-0547 issued 07/22/1997.

The primary and most important purpose of the non-skid additive to the epoxy surface coating and the access structure is for personnel safety during maintenance operations. The associated cost is reduced from the claimed facility cost.

**Method** Criteria

ORS 468.155 (1)(b)(A) The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

“Industrial waste” means any liquid, gaseous, radioactive, or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade, or business, or from the development or recovery of any natural resources.

“Treatment works” means any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

Applied to this Application

The dilute NH<sub>4</sub>Cl solution **meets the definition of industrial waste**. The storage tanks and the containment area **meet the definition of a treatment works** because they are used to hold industrial wastes rather than allowing them to leave the area during a storm event.

***Exclusions*** Criteria

ORS 468.155 (3)  
OAR 340-016-0070(3)(j)

Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The **non-skid additive to the epoxy surface coating and the access structure** is for personnel safety during maintenance operations and makes an insignificant contribution to the principal purpose of the facility. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Replacement*** Criteria

ORS 468.155 (3)(e)

The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify a system for containing the dilute NH<sub>4</sub>Cl solution at this location.

***Maximum Credit*** Criteria

ORS 468.173(1)  
OAR 340-016-0007

The maximum tax credit available to the applicant is **50%** if construction of the facility was completed on or before December 31, 2001 and the application was filed on or before December 31, 2003.

Applied to this Application

The maximum tax credit is **50%** because the applicant completed construction of the facility on **10/19/2001** and filed the application on **8/12/2002**.

***Facility Cost***

Copies of invoices and a project summary report substantiated the claimed facility cost.

	Claimed Cost	\$325,016
Restocking Fee for unused items		-887
Berm/Tank Access Structure		-11,378
Non-skid Grit		-9,950
	<b>Eligible Cost</b>	<b>\$302,801</b>

***Facility Cost Allocable to Pollution Control***

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 7 years. The claimed facility does not have a return on the investment; therefore, <b>100%</b> of the facility cost is allocable to pollution control.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increased Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

***Compliance and Other Tax Credits***

Raghu Namburi, the DEQ staff member in the Western Region Office assigned to the source, affirmed the applicant's statement that the facility and site are in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to the site:

Title V Air Contamination Discharge Permit No. 22-0547, issued September 12, 2001  
 NPDES General Permit – Storm Water Permit No. 1200-Z, issued July 22, 1997  
 NPDES Wastewater Discharge Permit No. 100522, issued September 30, 1988.

The EQC certified 115 pollution control facility tax credits at this location.  
 60 for Water, 52 for Air, 2 for Material Recovery and 1 NPS

Reviewers: PBS Engineering and Environmental  
 Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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Director's Recommendation Applicant	<b>Approve @ Reduced Cost TDY Industries, Inc. dba Wah Chang</b>
Application No.	<b>6250</b>
Facility Cost	<b>\$119,004</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Useful Life	<b>10 years</b>

### **Pollution Control Facility: Water Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **C Corporation**  
Business: **Production, refinement, and  
forming of zirconium and  
other non-ferrous metals**  
Taxpayer ID: **95-2316677**

The applicant's address is:

**PO Box 460  
Albany, OR 97321**

### ***Facility Identification***

The certificate will identify the facility as:

### **Spill Treatment Drain Upgrade**

The applicant is the **owner and operator** of  
the facility located at:

**1600 Old Salem Road NE  
Albany, OR 97321**

### ***Technical Information***

Teledyne Industries, Inc., dba Wah Chang (TDY), produces pure zirconium dioxide ( $ZrO_2$ ) and hafnium dioxide ( $HfO_2$ ) powders that are converted to metal products. The Zirconium/Hafnium Separations Plant utilizes hazardous and flammable chemicals and solutions in this process. The process equipment in the plant is installed on curbed pads that are lined or coated with chemical resistant materials. The pads drain to the claimed Spill Treatment Drain System for collection and treatment.

The applicant inspected the underground drain pipe, manholes and catch basins from the Separations Plant to the collection treatment system using a small video camera. The lining of the pipe and manholes were worn. The applicant was concerned further deterioration of the lining would allow the unprotected pipe to leak hazardous chemicals into the surrounding soil. The applicant was unable to replace the piping with a protected non-corrosive pipe, so they inserted an epoxy resin lining in approximately 433 feet of the deteriorated piping. They also lined the catch basins and four manholes with epoxy resin.

***Eligibility******Timely Filing*** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant completed within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>08/20/2001</b>
<i>Construction Completed</i>	<b>09/04/2001</b>
<i>Facility Placed into Operation</i>	<b>09/06/2001</b>
<i>Application Filed</i>	<b>08/12/2002</b>

***Purpose: Required*** Criteria

ORS 468.155  
(1)(a)(A)  
OAR 340-016-  
0060(2)(a)

The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ or EPA to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

Applied to this Application

The applicant installed the spill treatment drain system upgrade to prevent hazardous chemical leakage into the groundwaters of the state. The claimed facility complies with the applicant's NPDES General Permit-Storm Water No. 22-0547 issued 07/22/1997.

The applicant also claimed the costs incurred for engineering and safety orientation that occurred more than six months after the claimed construction completion date. The primary and most important purpose of the safety orientation is to meet Oregon OSHA requirements. The primary and most important purpose of the additional engineering charges beyond the scope of the project period is unknown. The Department subtracted these costs under the Facility Cost section.

***Method*** Criteria  
 ORS 468.155  
 (1)(b)(A) The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and by the use of a treatment works for industrial waste as defined in ORS 468B.005.

Industrial waste, as defined in ORS 468B.005(2), means any liquid, gaseous, radioactive, or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade, or business, or from the development or recovery of any natural resources.

Treatment works, as defined in ORS 468B.005(6), means any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

Applied to this Application

The Sulfuric Acid, Thiocyanic Acid, Hydrochloric Acid, Ammonium Chloride, Ammonium Hydroxide, Ammonium Thiocyanate, and Ferric Chloride solutions and the Methyl Isobutyl Ketone **meet the definition of industrial waste** because they are generated from a zirconium manufacturing facility.

The catch basins, drain lines, and manholes **meet the definition of a treatment works** because they are used to hold industrial wastes.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify a protected spill treatment drain system for the process equipment in the Separations Plant.

***Exclusions*** Criteria  
 ORS 468.155 (3)  
 OAR 340-016-  
 0070(3)(j) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The applicant included costs for engineering and orientation incurred outside of the scope of the project completion date. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

**Maximum Credit** The maximum tax credit available to the applicant is **50%** if construction of the facility was completed on or before December 31, 2001 and the application was filed on or before December 31, 2003.

ORS 468.173(1)  
OAR 340-016-0007

Applied to this Application

The applicant completed construction of the facility on **09/04/2001** and filed the application on **08/12/2002**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

	Claimed Cost	\$125,455
Safety Orientation		-800
Engineering work performed 03/02/02 - 03/29/02 Inv. #0002118		-1,863
Engineering work performed 03/02/02 - 03/20/02 Inv. #0004395		-2,501
Engineering work performed 03/30/02 - 04/26/02 Inv. #0006473		-1,287
	<b>Eligible Cost</b>	<b>\$119,004</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increased Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

***Compliance and Other Tax Credits***

The DEQ staff assigned to the source is Raghu Namburi for water quality from the Western Region Office. Mr. Namburi has affirmed that the claimed facility is in compliance with its NPDES General Permit – Storm Water Permit No. 1200-Z.

The following DEQ permits have been issued to the site:

Title V Air Contamination Discharge Permit No. 22-0547, issued September 12, 2001;  
NPDES General Permit – Storm Water Permit No. 1200-Z, issued July 22, 1997;  
NPDES Wastewater Discharge Permit No. 100522, issued September 30, 1988

The EQC certified 115 pollution control facility tax credits at this location.  
60 for Water, 52 for Air, 2 for Material Recovery and 1 NPS

Reviewers: PBS Engineering and Environmental  
Maggie Vandehey, DEQ





State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve</b>
Applicant	<b>Michael M. Murray</b>
Application No.	<b>6258</b>
Facility Cost	<b>\$10,905</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>5 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Water Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **S Corp**

Business: **Pretreatment of metal**

Taxpayer ID: **544-72-8985**

The applicant's address is:

**7288 Park Terrace Drive NE  
Keizer, OR 97303**

### ***Facility Identification***

The certificate will identify the facility as:

**Chrome Treatment System and  
Phosphate Alkaline Rinse Treatment  
System**

The applicant is the **owner and operator** of  
the facility located at:

**Ektron Industries  
9610 Mill Creek Road  
Aumsville, OR 97325**

### ***Technical Information***

Ektron Industries pretreats and cleans metal parts. This process produces wastewater containing chromate that the applicant previously discharged into the City of Aumsville's sewer treatment facility. The applicant claims a closed-loop chrome treatment system and phosphate alkaline rinse treatment system. The systems circulate the chromate rinses through a cationic and anion exchange media. The applicant no longer discharges chrome into the city's sewer system as a result of the claimed facility.

### ***Eligibility***

#### ***Timely Filing*** Criteria

ORS 468.165 (6) and  
OAR 340-016-007

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>10/1/2000</b>
<i>Construction Completed</i>	<b>11/4/2001</b>
<i>Facility Placed into Operation</i>	<b>12/1/2001</b>
<i>Application Filed</i>	<b>8/27/2002</b>

***Purpose: Required*** Criteria

ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ or EPA to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

Applied to this Application

The City of Aumsville was in violation of its wastewater discharge permit as a direct result of Ektron Industries discharge. The City issued Ordinance No. 374 that prohibits the applicant from discharging any iron, chromium, copper, zinc, any similar objectionable or toxic substances, or wastes exerting an excessive chlorine requirement. The applicant is in compliance with the ordinance.

***Method*** Criteria

ORS 468.155 (1)(b)(A) The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Applied to this Application

Rinse water containing chromate **meets the definition of industrial waste** and the Chrome Treatment System and Phosphate Alkaline Rinse Treatment System **meets the definition of a treatment works.**

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify a chemical treatment system at this location or to this applicant.

***Maximum Credit*** Criteria  
 ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because the applicant began construction of the facility on **10/1/2000**, completed construction on **11/4/2001**, and filed the application on **8/27/2002**.

***Facility Cost***

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$10,905
<b>Eligible Cost</b>	<b>\$10,905</b>

***Facility Cost Allocable to Pollution Control***

ORS 468.190 (3) Criteria  
 If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$10,905** and the facility is used **100%** of the time for pollution control.

***Compliance and Other Tax Credits***

The applicant states that the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified no facilities at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Medallion Cabinetry, Inc.</b>
Application No.	<b>6292</b>
Facility Cost	<b>\$61,526</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Water Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **C Corp**

Business: **Wood finishing cabinets**

Taxpayer ID: **41-1507499**

The applicant's address is:

**180 Industrial Blvd.  
Waconia, MN 55387**

### ***Facility Identification***

The certificate will identify the facility as:

**Stormwater containment system--  
detention pond**

The applicant is the **owner and operator** of  
the facility located at:

**625 Hoffman Rd.  
Independence, OR 97351**

### ***Technical Information***

Medallion Cabinetry, Inc constructed a new cabinet manufacturing facility. As part of the new construction, they installed a storm water containment system to collect surface run-off and reduce debris and suspended sediment discharges from parking lot and traffic activities into the city storm water system. By the time the storm water exits the pond to the city sewer system, more than 99% of collected material settles out and stays in the collection pond. The applicant claims a 50,000 square foot storm water detention pond and the cost of the land allocated to the detention pond.

**Eligibility****Timely Filing**

ORS 468.165 (6) and  
OAR 340-016-007

Criteria

The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>12/18/2000</b>
<i>Construction Completed</i>	<b>10/8/2001</b>
<i>Facility Placed into Operation</i>	<b>10/5/2001</b>
<i>Application Filed</i>	<b>10/7/2002</b>

**Purpose: Voluntary**

ORS 468.155  
(1)(a)(B)  
OAR 340-016-  
0060(2)(a)

Criteria

The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of water pollution.

"Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

Applied to this Application

The storm water detention pond reduces, prevents, or controls more than 99% of sediment from surface runoff that would otherwise be discharged to the city sewer.

The applicant claimed piping that is used for material handling rather than exclusively to control a substantial quantity of water pollution.

**Method** Criteria  
 ORS 468.155 (1)(b)(A) The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Applied to this Application

The debris and sediments **meet the definition of industrial waste**. The storm water detention pond **meets the definition of a treatment works** because it reduces suspended sediment discharges into the city storm water sewer and drainage system by more than 99%.

**Exclusions** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
 OAR 340-016- an insignificant contribution to the principal or sole purpose of the facility; or  
 0070(3) provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The storm water drain piping makes an insignificant contribution in the reduction of debris and sediments that are discharged to the City sewer system. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

**Replacement** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify any stormwater controls at this site.

**Maximum Credit Criteria**

ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

**Applied to this Application**

The maximum tax credit is **50%** because the applicant began constructing the facility on **12/18/2000**, completed construction on **10/8/2001**, and filed the application on **10/7/2002**.

**Facility Cost**

Copies of invoices substantiated the claimed facility cost.

Claimed Cost	\$156,579
Piping	-95,053
<b>Eligible Cost</b>	<b>\$61,526</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

**Factor****Applied to This Facility**

- | Factor            | Applied to This Facility  |
|-------------------|---|
| ORS 468.190(1)(a) | <b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.  |
| ORS 468.190(1)(b) | <b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The facility does not have a positive cash flow. |
| ORS 468.190(1)(c) | <b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.  |
| ORS 468.190(1)(d) | <b>Savings/Increase Costs:</b> No savings or increases in costs were identified.  |
| ORS 468.190(1)(e) | <b>Other Relevant Factors:</b> No other relevant factors were identified.   |

**Compliance and Other Tax Credits**

Western Region DEQ staff assigned to the source is Tim McFetridge in the Salem Office. He affirmed the applicant's statement that the facility is in compliance with Department rules and statutes. No EQC orders have been issued for this facility. The following DEQ permits have been issued to the site:

Air Contaminant Discharge Permit Number 27-005 issued January 30, 2001  
 Hazardous Waste Permit Number ORQ000019729 issued February 4, 2002.

The EQC has not certified any pollution tax credit applications at this location.

Reviewers: PBS Engineering  
 Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's Recommendation:	<b>Approve</b>
Applicant	<b>Joel Price</b>
Application No.	<b>6374</b>
Facility Cost	<b>\$8,406</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Water Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### ***Applicant Identification***

Organized As: **Sole Proprietor**

Business: **Farmer/feeder**

Taxpayer ID: **542-52-8914**

The applicant's address is:

**2551 Norwood Drive  
Nyssa, OR 97913**

### ***Facility Identification***

The certificate will identify the facility as:

**Stormwater and industrial waste  
separation system, including:  
Drain ditch pipeline, Header, Dike,  
Fencing**

The applicant is the **owner and operator** of  
the facility located at:

**Joel Price Feedlot  
2551 Norwood Dr  
Nyssa, OR 97913**

### ***Technical Information***

Joel Price Feedlot installed a stormwater and industrial waste separation system to prevent manure run-off from entering into a drain ditch, considered Oregon State waters. The open drain ditch carries irrigation water ran along the bottom of the applicant's livestock pens. The pens slope toward the drainage ditch so stormwater mixed with manure from the pens and carried it into the drain ditch. The applicant installed 600 feet of 30 inch pipe that is contained in a concrete header to carry the irrigation water from one side of the livestock pens to the other. The drain ditch enters the pipeline on the west side of the feedlot and exits several feet beyond the east side of the feedlot. The applicant then laid 6" Hancor perforated pipe along the bottom of an old existing drain ditch bed and plumbed the feedlot tank to overflow into it. Both pipelines discharge several feet beyond the last pen. A dike was built across both ends of the pipeline. The feedlot is 13 acres and was built to accommodate over a thousand head of cattle. The applicant only has 200 head of cattle. The natural bowl at the bottom of the feedlot and the dike act as a containment



pond for the manure. In the drier months, the applicant applies the manure to the fields. The end of the pipeline was fenced to keep the cattle off. The plan was engineered and monitored by the United States Department of Agriculture, NRCS Milheur County, Oregon.

### ***Eligibility***

***Timely Filing*** Criteria  
 ORS 468.165 (6) and The application must be filed within two years of the date that construction of the  
 OAR 340-016-007 facility was completed if construction was completed on or before December 31,  
 2001.

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>3/26/2001</b>
<i>Piping Completion</i>	<b>4/11/2001</b>
<i>Fencing Completed</i>	<b>7/19/2001</b>
<i>Facility Placed into Operation</i>	<b>4/11/2001</b>
<i>Application Filed</i>	<b>11/14/2002</b>

***Purpose: Voluntary*** Criteria  
 ORS 468.155 The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be  
 (1)(a)(B) to prevent, control, or reduce a substantial quantity of water pollution.  
 OAR 340-016-

0060(2)(a) Applied to this Application

The separation of stormwater and animal waste reduces a substantial quantity of water pollution.

***Method*** Criteria  
 ORS 468.155 The prevention, control, or reduction must be accomplished by disposal or  
 (1)(b)(A) elimination of industrial wastewater and the use of a treatment works for  
 industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating; stabilizing or holding wastes.

Applied to this Application

Manure runoff **meets the definition of industrial waste** and the drainage pipeline **meets the definition of a treatment works** because it diverts state waters away from possible manure run off.

***Exclusions*** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
 OAR 340-016- an insignificant contribution to the principal or sole purpose of the facility; or  
 0070(3) provides benefits of economic value; or where the costs are not directly related to  
 the operation of the industry or enterprise seeking the tax credit but were installed  
 as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously  
 been certified as a pollution control facility under ORS 468.170 is not eligible for  
 the tax credit with two exceptions: 1) the facility was replaced due to a  
 requirement imposed by DEQ or EPA that is different than the requirement to  
 construct the original facility; or 2) the facility was replaced before the end of its  
 useful life.

Applied to this Application

The State of Oregon did not previously certify a system to prevent stormwater and animal waste from mixing.

***Maximum Credit*** Criteria  
 ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the  
 OAR 340-016-0007 facility was completed on or before December 31, 2001 and the application was  
 filed on or before December 31, 2003.

Applied to this application

The maximum tax credit is **50%** because the applicant completed construction of the facility on **7/19/2001** and filed the application on **11/14/2002**.

***Facility Cost***

Copies of invoices and a project summary report substantiated the claimed facility cost.

Claimed Cost	\$8,406
Eligible Cost	<u>\$8,406</u>

***Facility Cost Allocable to Pollution Control***

ORS 468.190(3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$8,406** and the facility is used **100%** of the time for pollution control.

***Compliance and Other Tax Credits***

The applicant states that the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified no facilities at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### Pollution Control Facility: Water Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: LLC

Business: Dairy

Taxpayer ID: 93-0664492

The applicant's address is:

6124 New Hope Road  
Grants Pass, OR 97527

### *Technical Information*

Harmon & Son Dairy claims an animal waste lagoon and a separation system for liquid manure and runoff from the dairy corrals. The applicant scrapes the manure into an underground pit every day during the wet weather seasons. A vertical wet well chopper pump is installed in the pit to pump the waste slurry over a separator screen. The applicant stores the solids on a cement pad and pumps the liquids into the lagoon until the weather becomes drier and there is less likelihood of run-off. When plants are best able to use the nutrients, the applicant pumps the liquid from the lagoon onto the pastures with the floating manure pump that is docked in the lagoon. The applicant sells a small amount of the solids for soil

Director's Recommendation:	<b>Approve @ Reduced Cost</b>
Applicant	<b>Harmon &amp; Son Dairy, LLC</b>
Application No.	<b>6437</b>
Facility Cost	<b>\$42,558</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>50%</b>
Certificate Period	<b>10 years</b>

### *Facility Identification*

The certificate will identify the facility as:

**Animal waste lagoon and separation system consisting of:**

**One - Vaughan Vertical Wet Well**

**Chopper Pump, Model V4K-070**

**One - APBS7250 Separator.040" Screen**

**One - Vaughan Floating Manure Pump,  
Stem Assembly Model V102-541-  
080, Coupling Model V900-054,  
Motor Model V3500-020**

The applicant is the **owner and operator** of the facility located at:

6124 New Hope Road  
Grants Pass, OR 97527

sells a small amount of the solids for soil ammendments and they apply the remainder onto their fields. The applicant previously stored the manure in an underground tank that needed to be pumped outside about every three days causing runoff when the ground was saturated during wet weather conditions.

### ***Eligibility***

#### ***Timely Filing*** Criteria

ORS 468.165 (6) and OAR 340-016-007 The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.

#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>2/25/2000</b>
<i>Construction Completed</i>	<b>1/31/2001</b>
<i>Facility Placed into Operation</i>	<b>2/16/2001</b>
<i>Application Filed</i>	<b>1/21/2003</b>

#### ***Purpose: Voluntary*** Criteria

ORS 468.155 (1)(a)(B) The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of water pollution.

OAR 340-016-0060(2)(a)

#### Applied to this Application

The sole purpose of the lagoon and the separation system is to reduce a substantial quantity of manure run-off during the rainy seasons.

#### ***Method*** Criteria

ORS 468.155 (1)(b)(A) The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

#### Applied to this Application

Manure run-off **meets the definition of industrial waste** and the manure lagoon, storage and separation system **meets the definition of a treatment works** because it contains the manure during the rainy season when there is the potential for significant run-off.

***Exclusions*** Criteria  
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes  
 OAR 340-016- an insignificant contribution to the principal or sole purpose of the facility; or  
 0070(3) provides benefits of economic value; or where the costs are not directly related  
 to the operation of the industry or enterprise seeking the tax credit but were  
 installed as a result of the facility.

Applied to this Application

The applicant claimed fencing that makes an insignificant contribution to the pollution control purpose of the facility though it is necessary for safety. The Department subtracted the associated costs from the claimed facility cost as shown under the Facility Cost section below.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously  
 been certified as a pollution control facility under ORS 468.170 is not eligible  
 for the tax credit with two exceptions: 1) the facility was replaced due to a  
 requirement imposed by DEQ or EPA that is different than the requirement to  
 construct the original facility; or 2) the facility was replaced before the end of  
 its useful life.

Applied to this Application

The State of Oregon certified another animal waste treatment system to the applicant at a site next to this one. The lagoon and the separation system at this site do not replace that system.

***Maximum Credit*** Criteria  
 ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the  
 facility commenced prior to January 1, 2001, construction was completed prior  
 to January 1, 2004, and the application was filed on or before December 1,  
 2004.

Applied to this Application

The maximum tax credit is **50%** because the applicant began construction of the facility on **2/25/2000**, completed construction on **1/31/2001**, and filed the application on **1/21/2003**.

***Facility Cost***

Copies of invoices and a project summary report substantiated the claimed facility cost.

	Claimed Cost	\$43,543
Fencing		-985
	<b>Eligible Cost</b>	<b>\$42,558</b>

***Facility Cost Allocable to Pollution Control***

ORS 468.190 (3)

Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$42,558** and the facility is used **100%** of the time for pollution control.

***Compliance and Other Tax Credits***

The applicant states that the facility and site are in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the site. The EQC certified no facilities at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

Director's  
Recommendation: **Approve @ Reduced Cost**  
Applicant **C.H. Perrott, Inc. & Subsidiaries**  
Application No. **6447**  
Facility Cost **\$29,513**  
Percentage Allocable **100%**  
Maximum Tax Credit **50%**  
Certificate Period **7 years**

## Tax Credit Review Report

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### **Pollution Control Facility: Water**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **C Corp**

Business: **Manufacturing of metal  
plumbing products**

Taxpayer ID: **93-0871345**

The applicant's address is:

**7021 NE 79th Court  
Portland, OR 97218**

#### ***Facility Identification***

The certificate will identify the facility as:

**Parts washer with integrated  
containment and treatment system;  
auxilliary treatment system**

The applicant is the **owner and operator** of  
the facility located at:

**7021 NE 79th Court  
Portland, OR 97218**

#### ***Technical Information***

C.H. Perrot, Inc. and its subsidiaries manufacture metal plumbing products. The applicant claims an aqueous parts washer located at their Northwest Automated subsidiary. The applicant also claims an auxilliary treatment system located next door at their Precision Plumbing subsidiary.

The parts washer treats and recycles the wastewater generated from cleaning the product after the soldering and brazing processes. The parts washer pumps the wastewater to an auxilliary 200-gallon treatment tank manufactured by Ringwood Environmental, Inc. An agitator in the tank runs as a hopper adds chemicals to capture the metals and stabilize the sludge. The sludge settles to the bottom of the tank while the water flows onto a disposable bandfilter that traps any unsettled particles. After the cleaned water flows into the filtrate tank, the system discharges the sludge onto the bandfilter and through double filters to extract excess water; it then bags the sludge for disposal in the landfill. The system pumps the clean water to a storage tank for reused in the parts washing process.



Prior to installing the new parts washer and the auxillary treatment system, the applicant discharged unacceptable amounts of copper, lead and zinc into the City of Portland's sewer system. The claimed facility replaced a non-recycling aqueous parts washer that discharged directly into the sanitary sewer system.

### ***Eligibility***

<b><i>Timely Filing</i></b> ORS 468.165 (6) and OAR 340-016-007	<u>Criteria</u> The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.
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#### Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	<b>6/10/2001</b>
<i>Construction Completed</i>	<b>12/1/2001</b>
<i>Facility Placed into Operation</i>	<b>12/1/2001</b>
<i>Application Filed</i>	<b>2/6/2003</b>

<b><i>Purpose: Required</i></b> ORS 468.155 (1)(a)(A) OAR 340-016-0060(2)(a)	<u>Criteria</u> The <b>principal purpose</b> of the claimed facility must be to comply with a requirement imposed by DEQ or EPA to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.
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"Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

#### Applied to this Application

The facility complies with the City of Portland Wastewater Discharge Permit, No. 433.036 issued on 11/7/2001. The permit prohibits the applicant from discharging industrial waste into the sewer system. Metal contaminants dropped well below the discharge limits set by the City of Portland when the new system began operating and the applicant recycles most of the water used in the parts cleaning process.

The following components have a principal purpose other than the principal purpose of the facility:

- The two-stage conveyor washer (with the exception of the filter vessels and the containment pans), the electric hoist and its related parts, the 65-gallons of detergent, and the parts baskets and coverings, are used to wash the new plumbing parts in the manufacturing process.
- The two 55-gallon drums used to transport oil and solvents for hazardous waste disposal are used for material handling and do not contribute to a reduction in water pollution.
- The clean water storage tank holds the water for reuse.
- The analysis and monitoring were conducted before the scope of the project.

The Department subtracted the claimed cost under the Facility Cost section.

<i>Method</i>	<u>Criteria</u>
ORS 468.155 (1)(b)(A)	The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Applied to this Application

The metal contaminants, most prominently copper, lead and zinc, **meet the definition of industrial waste** and the containment and the auxilliary wastewater treatment system **meets the definition of treatment works**.

<i>Exclusions</i>	<u>Criteria</u>
ORS 468.155 (3) OAR 340-016- 0070(3)	Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The applicant included costs for maintenance, operation, or repair of a facility, including spare parts, which are excluded under ORS 468.155(3).

The applicant claimed components that make an insignificant contribution to the principal purpose of the facility as described under the Purpose section above. The Department subtracted the associated costs from the claimed facility as shown under the Facility Cost section below.

***Replacement*** Criteria  
 ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify a wastewater treatment facility to this applicant or to this site.

***Maximum Credit*** Criteria  
 ORS 468.173(1) The maximum tax credit available to the applicant is **50%** if construction of the  
 OAR 340-016-0007 facility was completed on or before December 31, 2001 and the application was filed on or before December 31, 2003.

Applied to this application

The maximum tax credit is **50%** because the applicant completed construction of the facility on **12/1/2001** and filed the application on **2/6/2003**.

***Facility Cost***

Copies of invoices substantiated the claimed facility cost.

	Claimed Cost	\$83,083
Detergent		-1,845
Two stage conveyor washer, related costs, except filter vessel and related costs		-46,587
Two 55-gallon drums		- 250
Metal screens and baskets		-1,158
Electric hoist and related parts		-1,705
Clean water storage tank		-396
Lab analysis and monitoring		-1,367
Wastewater holding tanks purchased 2/21/2002 after completion date of project.		-450
Omitted two 16-gallon containment pans		+188
	<b>Eligible Cost</b>	<b>\$29,513</b>

***Facility Cost Allocable to Pollution Control***

ORS 468.190 (3) Criteria  
 If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to

recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$29,220** and the facility is used **100%** of the time for pollution control.

***Compliance and Other Tax Credits***

The City of Portland's Environmental Services affirmed the applicant's statement that the facility and site are in compliance with Department rules and statutes and with EQC orders. The following permits have been issued to the site: Wastewater Discharge Permit, No. 433.036, issued by the City of Portland on 11/7/2001. The EQC certified no facilities at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon  
Department of  
Environmental  
Quality

## Tax Credit Review Report

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### Pollution Control Facility: Water Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

### *Applicant Identification*

Organized As: **C Corp**

Business: **Manufacturer of chemical vapor  
depositions systems**

Taxpayer ID: **77-0024666**

The applicant's address is:

**11155 SW Leveton Drive  
Tualatin, OR 97062**

### *Technical Information*

Novellus manufactures chemical vapor deposition systems, physical vapor deposition, copper electrofill systems, and surface preparation/cleaning systems used in fabricating integrated circuits. The applicant claims an acid waste neutralization (AWN) system used to neutralize acids in wastewater generated from the air scrubbers. The applicant installed the treatment system in conjunction with a new building and process. The AWN system, installed by Kinetic Systems, consists of an Equalization Tank, three stages of Neutralization Tanks, a Collection Water Tank, an Acid Lift Station Tank and various piping, pumps, agitators and controls. Novellus' industrial wastewater discharge permit, issued by CleanWater Services, specifies that the waste water pH must be between 6 and 11. The AWN system runs continually and neutralizes the wastewater to pH 7.6.

Director's Recommendation:	<b>Approve</b>
Applicant	<b>Novellus Systems, Inc.</b>
Application No.	<b>6452</b>
Facility Cost	<b>\$1,479,752</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Certificate Period	<b>10 years</b>

### *Facility Identification*

The certificate will identify the facility as:

**AWN Wastewater Treatment System**

The applicant is the **owner and operator** of  
the facility located at:

**11155 SW Leveton Drive  
Tualatin, OR 97062**

**Eligibility**

**Timely Filing** Criteria  
 ORS 468.165 (6) The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.

Applied to this Application

The applicant filed the application within the one-year timing requirement provided by law.

<i>Construction Started</i>	<b>3/1/2001</b>
<i>Construction Completed</i>	<b>4/1/2002</b>
<i>Facility Placed into Operation</i>	<b>6/1/2002</b>
<i>Application Filed</i>	<b>2/12/2003</b>

**Purpose: Required** Criteria  
 ORS 468.155 (1)(a)(A) The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ or EPA to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.  
 OAR 340-016-0060(2)(a)

"Water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof. ORS 468B.005

Applied to this Application

The facility complies with Industrial Wastewater Discharge Permit No. 111272, issued by CleanWater Services, September 30, 2002. Without the system in place, the plant's wastewater would have an approximate pH of 4. Novellus' industrial wastewater discharge permit, issued by CleanWater Services, specifies that the waste water pH must be between 6 and 11. The new AWN neutralizes the wastewater to pH 7.6.

**Method** Criteria  
 ORS 468.155 (1)(b)(A) The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry,

manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Applied to this Application

Untreated, the acidic wastewater from the air scrubbers has a pH of 4 that **meets the definition of industrial waste** and the Awn wastewater treatment system **meets the definition of a treatment works** because it neutralizes the pH of the wastewater prior to discharge.

***Exclusions***

ORS 468.155 (3)  
OAR 340-016-  
0070(3)

Criteria

Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility; or provides benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

Invoices, project plans, and applicant statements did not indicate that any ineligible costs were included.

***Replacement***

ORS 468.155 (3)(e)

Criteria

The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify an Awn wastewater treatment system at this location.

***Maximum Credit***

ORS 468.173(3)(a)  
ORS 468.170(10)  
ORS 468.165(6)

Criteria

The maximum tax credit available to the applicant is **35%** if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and the applicant is certified under International Organization for Standardization standard **ISO 14001**.

Applied to this Application

The maximum tax credit is **35%** because the applicant filed the application on **2/12/2003** and the applicant is certified under International Organization for Standardization standard ISO 14001 as shown on the attachment to this report.

**Facility Cost**

Copies of invoices and a project summary report substantiated the claimed facility cost.

Claimed Cost	\$1,489,752
<b>Eligible Cost</b>	<b>\$1,489,752</b>

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The facility produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is 10 years. The facility does not have a positive cash flow.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

Peter Gayeskin of CleanWater Services affirmed the applicant's statement that the facility and site are in compliance with Department rules and statutes and with EQC orders. The following permits have been issued to the site:

Industrial Wastewater Discharge Permit No. 111272, Issued September 30, 2002.

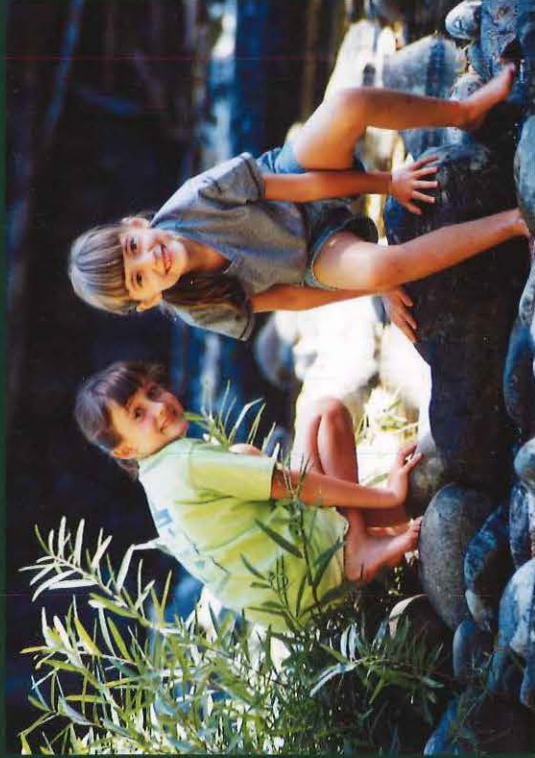
Air Contaminant Discharge Permit, Number 34-0063, Issued March 27, 2002 by DEQ.

The EQC certified two facilities at this location: One for treating air and one for treating wastewater.

Reviewers: Maggie Vandehey, DEQ



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The Oregon Watershed Enhancement Board is proud to present *Investments In Oregon's Future* -- a compilation of our most important, difficult, and best work. We encourage you to read each unique story. This publication was developed so that you will understand a little more about OWEB, the projects it funds and, most importantly, the people who make the daily, consistent effort to leave a better world than they found.

A handwritten signature in black ink that reads "Geoff Huntington". The signature is fluid and cursive, with a long horizontal line extending to the right.

Geoff Huntington  
Executive Director



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# BASIN INVESTMENTS



## DESCHUTES BASIN

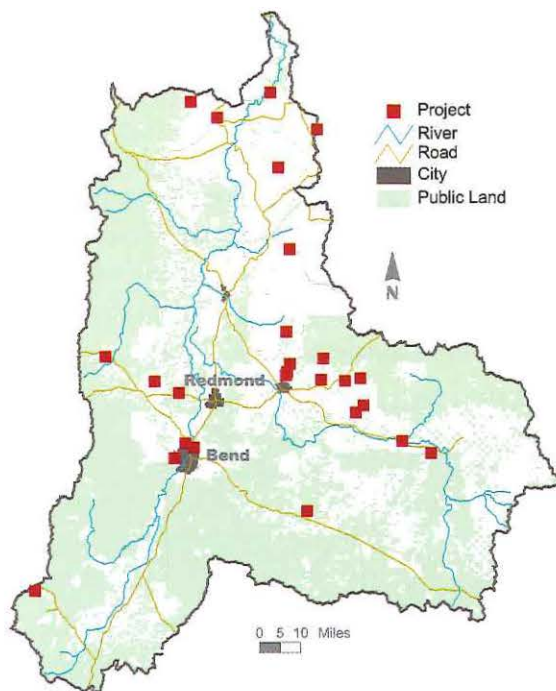
Bordered by the Cascade Range to the west, the Deschutes Basin is noted for its Lava Lands, high Cascade lakes, wild and scenic waterways, and a rapidly growing human population. Tourism, agriculture, forestry, ranching, and high technology dominate the basin's economy. The Deschutes River hosts world famous trout and steelhead fisheries. The Confederated Tribes of the Warm Springs Reservation operate Kah-Nee-Ta Resort, a lumber mill, and other tribal enterprises. Pelton, Round Butte, Ochoco, and Prineville dams generate electricity and block fish runs to the upper basin. Bull trout and steelhead are listed under the federal Endangered Species Act. Fed by snowfields of the Cascade and Ochoco ranges, the basin's headwaters flow through high-elevation wet meadows and lava plains before dropping through scenic canyons and shrub steppe. Irrigated agriculture, rangeland, and wheatlands lie along the Lower Deschutes.

### Basin Facts

Population (2000) .....	159,047
Cities over 10,000 .....	2
Area (square miles) .....	6,886,142
Watershed Councils.....	7
SWCD's .....	6

### State or Federal Listed

Plants Species .....	7
Animals Species .....	3



## NEIGHBORS UNITE TO RESTORE WATERSHED

### Buck Hollow Watershed Enhancement

Native grasslands that covered Buck Hollow until the mid 1800s protected soils from erosion, kept fish streams healthy, and stored water for slow release through the dry summer months. One hundred and fifty years later, now aware of the harmful impacts of 19th century sheep and cattle grazing practices, the landowners of Buck Hollow joined with the Wasco County Soil and Water Conservation District (SWCD) in an ambitious effort to restore the entire watershed. The main catalyst for the Buck Hollow Watershed Enhancement Project was stopping the periodic flash floods that occurred in the disturbed landscape. The flash floods eroded hillsides, damaged remaining native vegetation, destroyed fish habitat, and drained the uplands that would otherwise store and slowly release water through late summer, when it is most needed.

With a series of grants from state and federal agencies including \$440,355 from OWEB and its predecessor, GWEB, and financial and in-kind contributions from more than 50 participating landowners, the Wasco County SWCD worked with Buck Hollow landowners to restore proper watershed function, reduce runoff and erosion, lower peak flows, and increase water quantity late in the season. In less than 15 years the project has made remarkable progress toward improving water quality and restoring watershed function. The most gratifying sign may be that every year since the project began, steelhead spawning counts have increased, holding the promise of flashing fish, instead of flash floods, for the next generation of Buck Hollow's families.



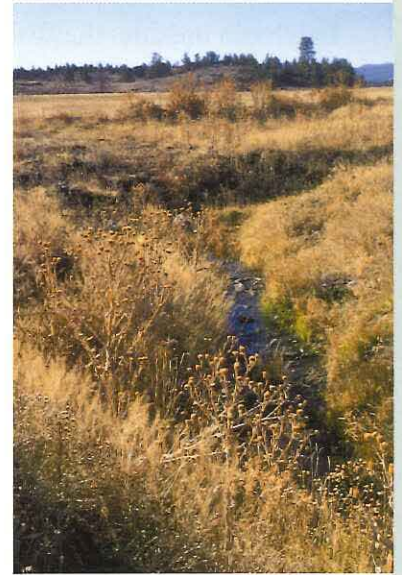


# STOPPING INVASIVE WEEDS IN THEIR TRACKS

## Crooked River Weed Management

In the Crooked River Basin, Scotch thistle, Spotted knapweed, and other alien plants have little or no natural biological controls to keep them in check. In natural areas weeds crowd out the indigenous grasses and shrubs that provide food for native animals, stabilize soils, and recharge groundwater supplies through their root systems. On agricultural lands the invaders rob precious irrigation water and force farmers and ranchers to use additional herbicides, resulting in untold financial and environmental

costs. OWEB's grant of \$19,948 will enable the Crooked River Weed Management Association to launch an aggressive weed management strategy and involve willing landowners in the Oregon Department of Agriculture's grant program that pays for noxious weed control on private lands. Farmers and conservationists agree that the timely action made possible in part by OWEB's investment will save money, effort, and the environment by preventing a weed crisis before it gets out of control.



Weeds like Scotch thistle can degrade water quality and reduce water quantity in streams.

"We have been very pleased with the technical and cost-share assistance that we have received through this coordinated weed management effort. Without this assistance, we would not have succeeded to the degree that we have, but would have been years further behind trying to control noxious weeds on our land. We plan to continue giving a 110% effort to eradicating noxious weeds and getting the land back to a more productive use."

- Phil Moerschell, Project landowner

# SMART WATERING TO SAVE A STREAM

## Fryrear and Cloverdale Irrigation

OWEB's investment of \$220,983 helped a partnership of farmers and conservationists advance their goal of maintaining year-round stream flows while improving water quantity and reliability for agriculture. The Squaw Creek Irrigation District, Deschutes Resources Conservancy (DRC), and Deschutes Soil and Water Conservation District (SWCD) installed irrigation pipe to replace the Fryrear and Cloverdale irrigation ditches. A majority of the water used in the Deschutes Basin supports agriculture. The Squaw Creek Irrigation District diverted water from Squaw Creek into earthen ditches to irrigate crops and water livestock. An estimated 35 to 45 percent of the water diverted was lost to evaporation and seepage, a problem that is particularly acute because of the fractured basalt underlying much of central Oregon. In some cases, farmers must divert 50 percent more water than they need to ensure that the right amount of water eventually reaches their fields. For Squaw Creek, which runs through the town of Sisters, this meant that by late summer the creek would run low, even going completely dry in some reaches.

Thanks to this project, six cubic feet per second of water previously lost to seepage is now available for fish and farmers to share. Under OWEB's agreement with the irrigation district, the DRC, and the Deschutes SWCD, three additional cubic feet per second (cfs) of water will stay in Squaw Creek to ensure that fish have enough water to survive, and the irrigation district has an additional three cfs of water for farmers.

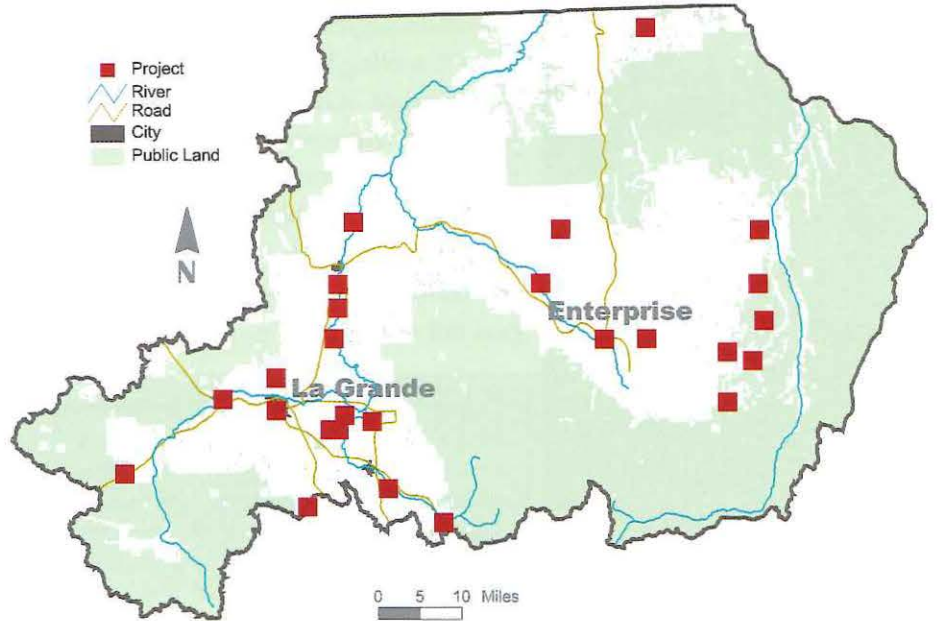






# GRANDE RONDE BASIN

This basin includes the Wallowa, Grande Ronde, and Imnaha rivers, flowing from the majestic Wallowa Mountains to the Snake River. Ranching, agriculture, and forestry are key to the economy. Wallowa Lake and the Wallowa Mountains frame the Grande Ronde Valley. This basin is the historic homeland of the Nez Perce Tribe. Nestled between the Imnaha and Grande Ronde rivers, Zumwalt Prairie supports the highest density of raptors in Oregon. Spring chinook salmon and summer steelhead in this basin are listed as threatened under the federal Endangered Species Act. Mountain headwaters amidst pine forests transition through deep canyons and meander through agricultural communities in the lowlands before flowing through deep canyons to join the Snake River.



#### Basin Facts

Population (2000) .....	30,971
Cities over 10,000 .....	1
Area (square miles).....	3,125,912
Watershed Councils.....	1
SWCD's .....	2

#### State or Federal Listed

Plants Species .....	9
Animals Species .....	5

## MAKING A DIFFERENCE WITHOUT MAKING THE NEWS

### Rock Creek Sediment Reduction

Most large OWEB investments end up making the news. It may be a notice in a community newsletter, a write-up in the local press, or a feature on the evening news. But there is a category of smaller projects that often don't get the attention they deserve. These are efforts like the Rock Creek Sediment Reduction and Road Rehabilitation Project. Fairly small in size and scope, such projects create a positive environmental impact that, if duplicated around the state, would be very newsworthy. OWEB's 1999 grant of \$7,565 to the Wallowa Soil and Water Conservation District paid to relocate part of a landowner's road from the bottom of a draw and away from Dry Creek, a main tributary to the Wallowa River. The entire road was engineered to control erosion and the abandoned road was allowed to revegetate. Less sediment now enters the stream, and overall water quality and fish habitat are improving. When you imagine hundreds of projects like this around the state, the cumulative benefit to water quality and human health is striking.



# TEACHING THE NEXT GENERATION

## La Grande High School Project

La Grande High School students took their schoolroom skills into the outdoors, and the Grande Ronde watershed has benefited. Students investigated the biological, social, and political issues involved in watershed and forest management using survey data from Sheep Creek and pre-reforestation data from Rebarrow Experimental Forest. Sheep Creek flows into Rock Creek, which in turn flows into the Grande Ronde River. After designing restoration and enhancement plans for the watershed and forest study sites, they implemented and monitored projects over a two-year period. Successive classes of students will evaluate the effectiveness of the enhancement projects each school year in the fall and spring. Students will develop outreach materials and possibly a web page to describe the project's history, methods, data analysis, and findings. The 1998 grant of \$9,960 by OWEB's predecessor, the Governor's Watershed Enhancement Board, will yield dividends far into the future, as a new generation of students takes an understanding of watershed health into their careers and community.



La Grande Middle School students planting native trees.

"In the 7th grade, we helped preserve and save the Sheep Creek environment. It felt good to know that I did something for our community and the Earth."

-Cyndi Carter (7th Grade Student at La Grande Middle School)

# TARGETING WATER POLLUTION

## Yost Water Quality Improvement Project

The Yost family ranch was already an active participant in conservation practices when the family decided it was time to address a problem common to many waterways in Oregon: pollution of Oregon rivers by animal waste carried by runoff water and snowmelt into nearby streams. On the Yost property, runoff was carried from a hilltop feedlot to nearby Farmers Ditch, which conveys water flows around the valley for downstream users of stockwater before the outfall enters Prairie Creek, a tributary of the Wallowa River. The Wallowa County/Nez Perce Tribes Salmon Recovery Plan identifies changes to animal feeding operations as a high priority in order to reduce high coliform bacteria counts and related sediment in area waterways. The Yost Ranch had already installed riparian fencing to control livestock grazing where Prairie Creek runs through the property, planted streamside vegetation to reduce

erosion, and installed sprinkler systems to improve water efficiency. While the landowner wanted to move the feeding operation away from the ditch, that would mean developing an alternative source of water, as well as extending an access road and installing new watering and feeding infrastructure. In 2001, with the help of the Wallowa Soil and Water Conservation District, a \$57,981 OWEB grant, federal agency support, and \$43,000 of the landowner's own cash and in-kind investment, the Yost Ranch feedlots found a new home nearby, and brought improved watershed health to the area.



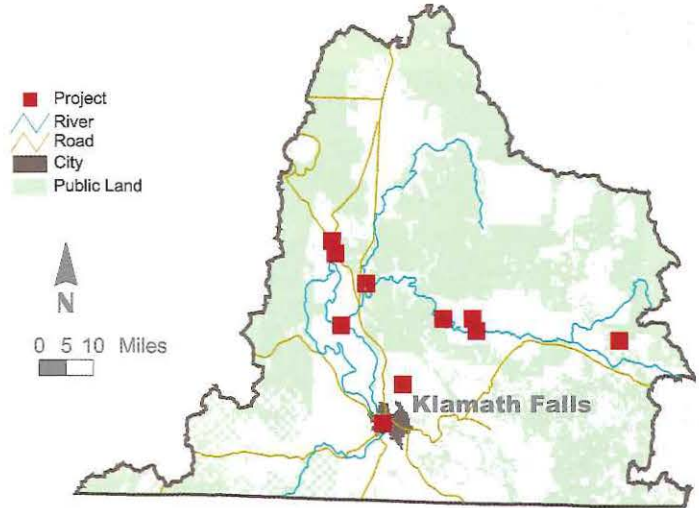
The Yost feedlot on Farmers Ditch prior to relocation away from the waterway.





# KLAMATH BASIN

The Klamath Basin has been the focus of national attention following the drought of 2000 and continuing water allocation issues. Flowing south from Crater Lake National Park, the streams and springs that form Upper and Lower Klamath Lake exit Oregon through California as the Klamath River. Extensive lakes and wetlands along the Sycan, Sprague, Williamson, and Wood rivers dominate the basin. Numerous bald eagles and immense numbers of waterfowl overwinter in the basin. Irrigated agriculture, ranching, forestry, and recreational tourism are primary elements of the economy here.



### Basin Facts

Population (2000) .....	61,712
Cities over 10,000 .....	1
Area (square miles).....	3,627,446
Watershed Councils.....	6
SWCD's .....	1

### State or Federal Listed

Plants Species .....	12
Animals Species .....	4

## MANAGING THE LAND FOR LIVESTOCK AND NATURE

### Upper Sycan Watershed Restoration

The wetlands of the Sycan Marsh drain the eastern mountain slopes of Winema National Forest, and are one of the largest wetland meadow regions in the Pacific Northwest. In 1980, when The Nature Conservancy purchased the ZX Ranch in Sycan Marsh, among its goals was determining whether cattle ranching and a healthy ecosystem could coexist. Today, the Conservancy and ZX Ranch jointly manage the land for restoration and cattle grazing. Controlled cattle grazing and other restoration projects have succeeded in bringing back these extraordinary wetlands.



Protected wetlands in the Sycan Marsh, headwaters to the Klamath Basin.

OWEB's grant of \$278,355 is helping to restore the historic hydrologic function to approximately 5,000 acres of the marsh by filling and revegetating an enormous ditch built to drain the wetlands. The restoration is expected to benefit the entire 25,000-acre wetland, with significant improvements to wildlife habitat, enhanced natural filtering functions, and increased late-season water flows in the Sycan River. This will, in turn, benefit water quality and quantity in Sprague River and Upper Klamath Lake.



# OPENING THE WAY TO THE RIVER AND RECREATION

## Agency Creek Dam Removal

The Wood River is one of the most productive watersheds for redband trout in the Klamath Basin. Due to the removal of Agency Creek Dam, native fish now have access to spawning and rearing habitat in the upper third of Agency Creek. Not only did the dam pose a barrier to fish passage, its partial failure years ago sullied the water and habitat with sediment and threatened more discharges during periods of high water flows. OWEB's \$95,040 grant in 2001 helped the landowner, Fort Klamath Properties, fund the removal of this primary fish passage barrier in the Wood River system. The project also returned the historic stream channel to its natural meander, restored fringe wetland and riparian habitat, increased water holding capacity, and helped strengthen the economic diversification that has added recreation and tourism to the region's agricultural base.



The Wood River.

# RESTORING RIVERSIDE WOODLANDS AND WETLANDS

## Ridgeway Wetlands Restoration

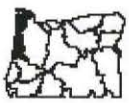
Dan and Kathy Ridgeway don't consider themselves environmentalists. They simply saw a problem on their land and decided to do something about it. Decades of intensive agriculture and livestock grazing along the Sprague River eliminated almost all of the original riverside woodlands and wetlands. Sediment from eroding river banks and animal waste runoff significantly affected water quality, while levees and drainage ditches prevented the re-establishment of wetland habitat. The Ridgeways enrolled their land in the federal Wetlands Reserve Program, which provides financial assistance to farmers who place environmentally sensitive acreage under conservation easements. With that step, they eliminated grazing from 80 acres of floodplain habitat. They needed additional funding to undertake an ambitious effort to restore two and one-half miles of riparian habitat and 130 acres of wetlands. A \$73,150 grant from OWEB in 1999 supported the first phase of the project, with several federal agencies providing additional financial and technical assistance, and high school students volunteering for tree planting. OWEB contributed an additional \$359,000 to the project in 2002 to support re-establishment of 80



Aerial photo of Ridgeway wetlands project.

acres of wetlands along this stretch of the Sprague River. The wetlands will capture and filter sediments and nutrients, reduce flooding by accommodating higher flows, absorb water that slowly releases during the dry season, and raise groundwater tables, lessening the need for pasture irrigation. As the Ridgeway's project has taken shape, neighboring landowners are starting to express interest in undertaking similar efforts. The significant improvements to wildlife habitat on the Ridgeway's land may soon be evident through much of the Sprague River watershed.





# NORTH COAST BASIN

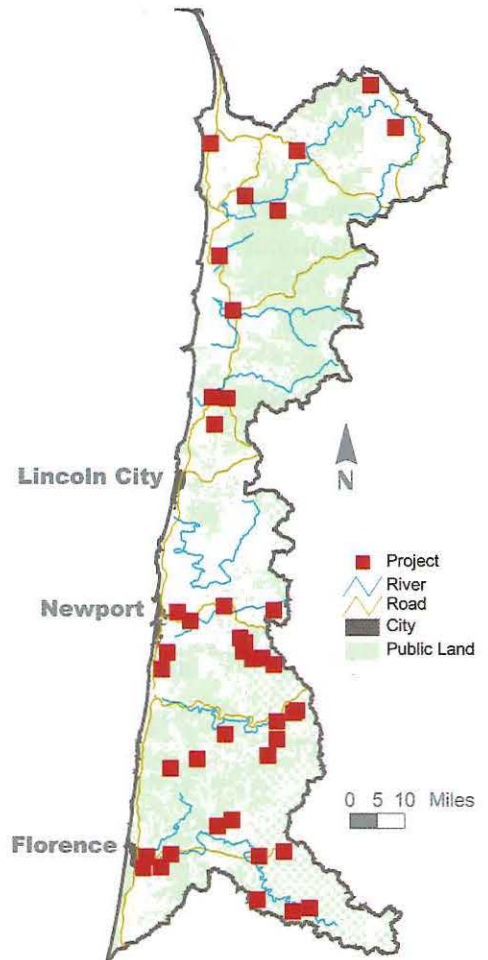
Through its eight modestly sized, unobstructed tributaries to the Pacific Ocean, the North Coast Basin supports coho and chinook salmon, cutthroat trout, and steelhead. Coho salmon in this basin are currently listed as threatened under the federal Endangered Species Act. Fall chinook runs are relatively healthy and support world famous fisheries. Douglas fir and western hemlock forests of the coast range support a strong forest industry. The Tillamook State Forest, site of the legendary 1933 Tillamook Burn has largely recovered. Rivers in this basin are underlain by basalt or sandstone geology with lush forest cover, and are primarily privately managed. The Tillamook County Creamery supports a strong dairy industry in the Tillamook Bay and Nestucca drainages. Estuaries often host recreational fishing and some are a home base for commercial fishing fleets.

### Basin Facts

Population (2000) .....	103,224
Cities over 10,000 .....	0
Area (square miles) .....	2,759,108
Watershed Councils .....	8
SWCD's .....	8

### State or Federal Listed

Plants Species .....	10
Animals Species .....	6



## MAKING DOLLARS COUNT

### Mid-Coast Rapid Bio-Assessment

A hallmark of Oregon's salmon recovery program is its emphasis on grounding salmon protection and restoration efforts in science. For the Mid-Coast Watersheds Council, this meant implementing a carefully designed snorkel survey of juvenile salmonid abundance and distribution in the Yachats, Alsea, Yaquina, Siletz, and Salmon rivers. The survey focused on threatened coastal coho salmon that spend the first 18 months of their lives in freshwater. Systematic snorkel surveys of 400 miles of streams in the five watersheds identified the most viable populations of salmon and steelhead, assessed the quality and use of habitat and located barriers to fish passage. With a total of \$265,346 in funding provided in 1998 and 1999 by OWEB and its predecessor, the Governor's Watershed Enhancement Board, results from the council's Mid-Coast Rapid Bio-Assessment are helping to focus recovery dollars where they will have the most benefit to salmon.



# MAKING THE CREEK'S ACQUAINTANCE AGAIN

## Boxler Creek Fish Passage



Fish passage was blocked on Boxler Creek by two culverts.

Thirty-five years ago, a road was built over Boxler Creek. Two undersized culverts were laid side-by-side to pass the creek under the road. Looking like the business end of a double-barreled shotgun from a fish eye perspective, the culverts shot Boxler Creek's flow downstream, eroding the streambed and creating a five-foot drop to the streambed, a barrier returning salmon found to be impassable. Restoring fish passage to high-value salmon habitat is identified as a high priority in the Upper Nehalem Watershed Council's Action Plan. In consultation with a local timber company and state and federal agencies, the council worked with the community of Fishhawk Lake to design and implement a solution to the fish passage barrier created by the culverts. In 1999, OWEB provided \$38,740 in funding to the council for a project to restore fish passage to Boxler Creek. The group determined that replacing the existing road and culverts with a bridge would be the most cost-effective long-term solution, and the best way to restore the creek to its naturally functioning condition. The council and its community partners installed a railcar

bridge and restored the stream's historic contour and riparian vegetation. The result is a naturally flowing stream that, within months of project completion, welcomed home its first coho in decades. Every year since, 30-40 adult coho have been observed spawning above the bridge. Having started restoring Boxler Creek's salmon, the community went a step further to celebrate their accomplishment by constructing a park around the bridge where they gather to watch coho and steelhead pass through once impassable waters.



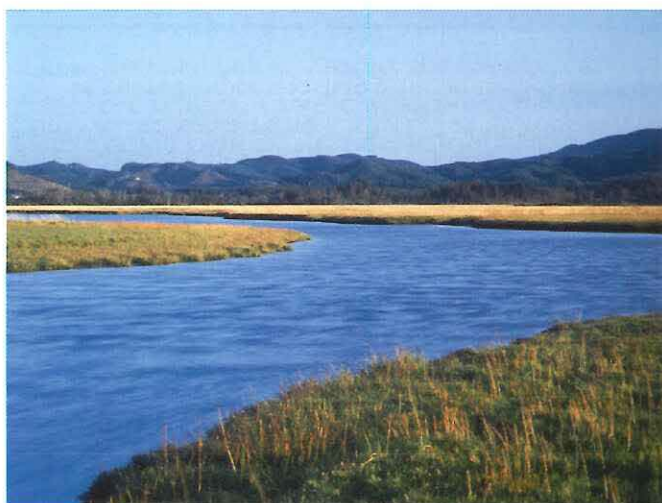
Boxler Creek now provides fish passage after installation of a bridge.

# ENGAGING CITIZENS IN CIVICS AND THE ECOSYSTEM

## Seaside Estuary and Watershed Discovery Program

The City of Seaside has an inventive way of communicating the wonders and challenges of its coastal environment to residents and visitors while giving its citizens the information they need to participate in important land use decisions. Since its inception in 1996, the city's Estuary and Watershed Discovery Program has developed a comprehensive education program that includes sites for hands-on activities around the Necanicum watershed. The program includes a walking trail with interpretive signs in the 50-acre Neawanna Natural History Park, canoe tours, plankton and invertebrate sampling stations, and onsite and classroom presentations. These activities educate participants about the plant, fish, and animal resources in the watershed, from upland forests to salt

marshes. By providing the scientific information required to make informed decisions about growth and development in the region, the City of Seaside is achieving several state and local planning goals. The goals target effective citizen involvement, protection and restoration of natural resources, and cooperation among local jurisdictions in managing the estuary. OWEB's 2001 grant of \$22,600 allowed Seaside to expand the program from several days a week during the summer, to a year-round program that will reach 2,000 participants in formal school settings and 3,000 participants through its informal education and outreach program. For the residents of Seaside, a walk in the park is more than exercise - it is an exercise in civic and environmental involvement.



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their community, and by restoring their own land they demonstrate to their neighbors that successful ranching operations can contribute to good stewardship of the valuable natural resources in the Owyhee Basin.



Landowner Jesse White with his sign describing the support he received to relocate his feedlot away from the Owyhee River.

INVESTMENTS IN OREGON'S FUTURE · 25





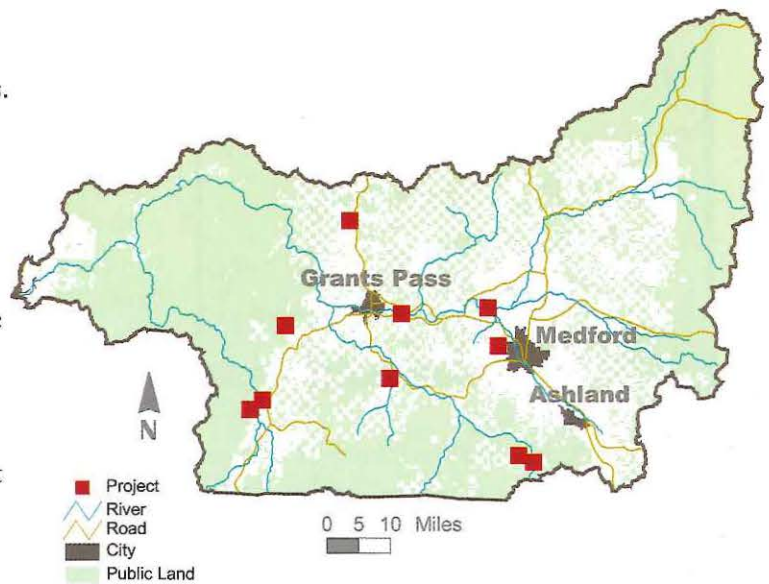
# OWYHEE-MALHEUR BASIN

The upper Owyhee and Malheur River drainages are lightly populated portions of the state. The lower Malheur Basin supports productive irrigated agriculture and is particularly known for its



# ROGUE BASIN

Headwaters of the Rogue River flow from the west slopes of Crater Lake and the southern Cascades to the Pacific Ocean. This basin has an extremely complex geologic structure and corresponding vegetation patterns. From the lava and pumice of the southern Cascade volcanoes, the Middle Rogue River flows through the relatively populated Medford-Ashland area with its orchards and irrigated agriculture. Mining and forestry are also significant economic sectors in the basin. Fisheries for chinook salmon and steelhead in the Rogue are world famous. Coho salmon in the Rogue are listed as threatened under the federal Endangered Species Act. The Rogue River cuts through the Coast Range and enters the Pacific Ocean at Gold Beach, where mail boat tours take visitors upriver and salmon fishing is a yearly ritual.



### Basin Facts

Population (2000) .....	257,914
Cities over 10,000 .....	4
Area (square miles).....	3,210,948
Watershed Councils.....	9
SWCD's .....	4

### State or Federal Listed

Plants Species .....	10
Animals Species .....	13



## BUILDING COMMUNITY AND CONSERVATION

### Illinois Valley Tree Planting

Hundreds of community volunteers have gathered annually for the last 10 years to plant native trees along the Illinois River and its tributaries. These native plantings improve riparian health and streambank stability by filtering pollutants and sediment from water draining into creeks and rivers, and by providing wildlife habitat, and shade. After the plantings, the volunteers celebrate with a chili dinner, and make signs to inform passersby about the project. The community looks forward to this annual event, and each year new volunteers take part, learning about the importance of native riparian vegetation. In 2001, over 100 private landowners participated in the planting project. OWEB's \$65,510 grant to the Illinois Basin Interest Group for this effort leveraged four times this amount in in-kind contributions and matching funds from community volunteers, the Oregon Department of Fish and Wildlife, U.S. Forest Service, Illinois Valley Soil and Water Conservation District, American Forests, Rough and Ready Lumber Company, Illinois Valley Watershed Council, and the Surdna Foundation.



# SWIFT ACTION SAVES A RIVERBANK

## Rogue River Restoration Project



In 2000, an exemplary public/private partnership, operating as the Rogue River Stakeholders Group, mobilized to avert a major long-term threat to the Rogue River. Thirty years of gravel mining left legally abandoned pits along a three-mile stretch of the Rogue River vulnerable to "capture" by the river during periods of high water. This process, known as avulsion, can cause rapid dewatering of natural channels, increase erosion and sedimentation, destroy riparian and fish habitat, strand fish, and flood downstream agricultural and orchard lands. From 2000-2002, the group launched an accelerated effort to take emergency actions to stabilize the riverbank. In 2002, another series of abandoned pits became threatened with capture, with the same possible destructive results. In 2002, OWEB authorized a \$283,780

grant to enable stabilization of the threatened riverbank. Once the bank is stabilized, the group will turn to implementing long-term protective actions and restoration. For this stretch of the Rogue, swift action and a strong partnership are making the difference for the river, its salmon, and the people who live, work, and play along its banks.

# RESTORING A HISTORIC WATERWAY

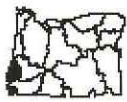
## Savage Rapids Dam Removal

For more than 20 years community and statewide advocacy groups have argued heatedly over removal of the Savage Rapids Dam on the Rogue River. The dam inhibited access to 500 miles of upstream habitat for five species of salmon and steelhead. Owned and operated by the Grants Pass Irrigation District for over 70 years, the dam is the source of irrigation water for an area transitioning from agriculture to rural residential development. After years of negotiations, the district, community and advocacy groups, and state and federal agencies reached an agreement to remove the dam, while allowing the irrigation district to continue drawing water from the Rogue using pumps. In 2002, OWEB became the first to commit funding toward the project by awarding a \$3 million challenge grant to the district for the removal of the dam and restoration of this stretch of the river. This early commitment of state funds will enable the group to more successfully pursue private and federal funding for the overall project. OWEB's investment will leverage this rare opportunity to dramatically improve returning salmon populations on the Rogue River while maintaining the community water source.



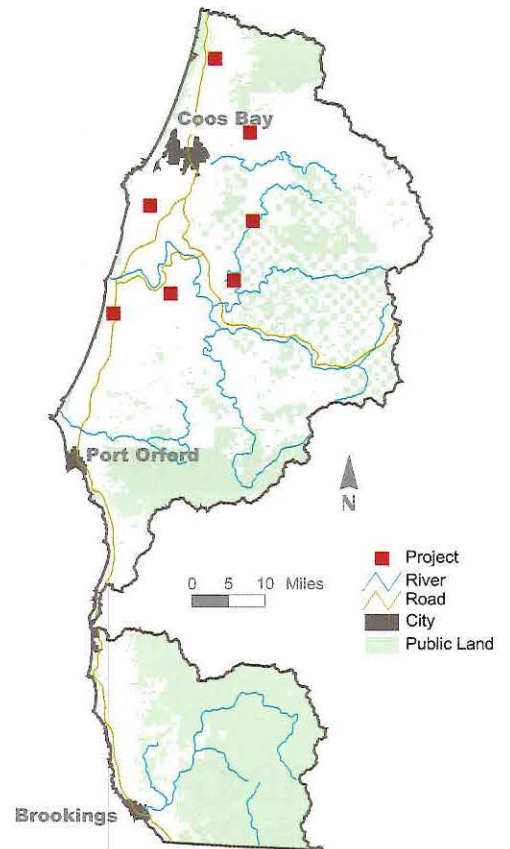
Removal of Savage Rapids Dam would improve fish passage to over 500 miles of upstream habitat.





# SOUTH COAST BASIN

Two types of drainages lie in the South Coast Basin. At the north end of the basin, the medium-sized Coos and Coquille rivers begin in the Coast Range and flow to the ocean across the Coos Bay dunes. Farther south, a number of relatively smaller streams (the Floras and Hunter creeks, and the Sixes, Elk, Winchuck, Chetco, and Pistol rivers) begin primarily in the Klamath Mountains. Forestry, ranching, agriculture, commercial and recreational fishing, and tourism are significant contributors to the basin's economy. Significant portions of marine terraces in this basin have been converted to cranberry or lily production. The Coquille Valley is a cattle and dairy producing region. Several of the watersheds in the southern part of this basin were affected by large-scale wildfires during the summer of 2002.



### Basin Facts

Population (2000) .....	83,402
Cities over 10,000 .....	1
Area (square miles) .....	1,901,048
Watershed Councils .....	10
SWCD's .....	2

### State or Federal Listed

Plants Species .....	8
Animals Species .....	7

## BUILDING BRIDGES FOR FISH

### Tenmile Lakes Fish Passage and Sediment Abatement Project



Looking to make the best use of scarce funds for an expensive undertaking, the Tenmile Lakes Basin Partnership made a persuasive case in 2002 for replacing six undersized or failing culverts with new bridges. While building bridges is more expensive than replacing culverts in the short term, in the long-term costs are lower because culverts have a shorter life span and a higher potential for failure. The long-term benefit of bridges to habitat and watershed function is also greater because they allow the stream to return to natural, free-flowing conditions. Careful site-by-site evaluations by a multi-disciplinary team consisting of watershed council members, state and federal agencies, local government, and

project-site owners determined the priority locations where improvements would have the biggest impact on opening fish passage and reducing erosion. Two additional sites were identified where a new and a repaired culvert were the best solution to impaired fish passage. In all, OWEB's grant of \$278,731 to the partnership will help improve fish access to 20 miles of habitat on Adams, Benson, Eel, Noble, Robertson, and Wilkins creeks in the Tenmile Lakes watershed.



# MORE SALMON AND STEELHEAD, STEP BY STEP

## Pistol River Salmon Recovery Project

The South Coast Watershed Council is a cooperative organization encompassing nine watershed groups on Oregon's south coast between Cape Blanco and the California border and inland to the mountains of the Siskiyou National Forest. One of the oldest councils in the state, it is a model for consensus-based decision making in the community. In a region historically dependent on the timber and fishing industries, the South Coast Watershed Council hires displaced fisherman and timber workers to implement its restoration projects. Projects benefit from the workers' intimate knowledge of the area, and the community benefits from increased employment. The council's Pistol River Comprehensive Salmon Recovery Project, which OWEB funded with a \$145,500 grant in 1997, typifies the way change happens on the ground in many Oregon watersheds. The council's watershed assessment and action plan identified the Pistol River system as a place where a concerted effort could reverse declines in chinook, steelhead, and trout populations and even potentially re-establish coho salmon. They recruited partners, including private landowners, the Curry County Commission and



Culvert blocking fish passage on Deep Creek prior to installation of a bridge.



Deep Creek restored to its natural flow after installation of a bridge.

Road Department, the local soil and water conservation

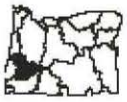
district, Oregon State University Extension Service, and several state agencies. Then came the thoughtfully designed array of actions, ranging from replacing a failing culvert on Deep Creek with a bridge, to placing boulders and trees for instream habitat creation, to fencing stream banks, to publicly showcasing state-of-the-art restoration through a permanent demonstration site visible and easily accessible from Highway 101. The work isn't glamorous, but these steady efforts to reduce erosion, improve fish passage, enhance habitat, educate the community, make a difference for the natural resources in this watershed, and for the people who depend on and care about them.

## LINING UP TO IMPROVE HABITAT

### Coquille Watershed Improvement Management Plan

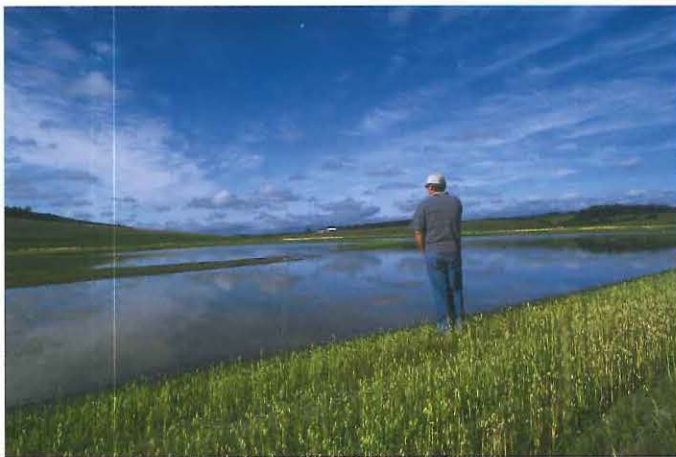
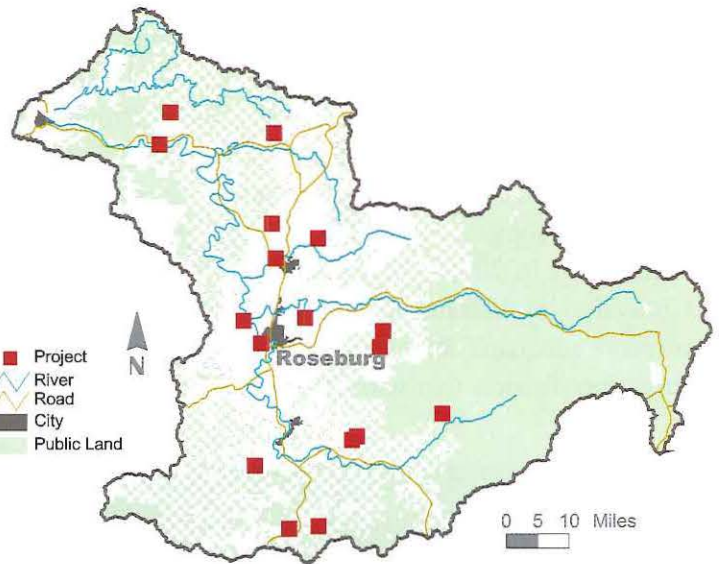
Since its inception, the Coquille Watershed Association has made it a priority to enlist the assistance of landowners in restoring degraded riparian zones. The overwhelming response has resulted in a waiting list of landowners wanting to do watershed improvement projects on their land. In 1998, with a \$271,653 grant from OWEB, the association and landowners started implementing a new round of measures to restore degraded riparian vegetation, reduce erosion along the riverbanks, prevent the discharge of untreated animal waste, and address sediment runoff from roads and landings. With the association's support, landowners voluntarily fenced their cattle away from sensitive riparian areas, and volunteers and displaced timber and fishing industry workers planted stream banks with native trees and vegetation. Roads were upgraded or decommissioned, and an off-channel pond was created to provide overwintering habitat for coho salmon. These improvements along 26 miles of river and up to 40 road sites will improve habitat and water quality for fish, provide off-channel watering facilities for cattle, and reduce landowners' road maintenance costs.





# UMPQUA BASIN

The Umpqua River is one of only two Oregon rivers having headwaters in the Cascade Mountains and cutting through the Coast Range to the Pacific Ocean. The river enters the Pacific Ocean in the center of Oregon's dune country near Reedsport. Douglas fir forests of the basin are legendary for their productivity, and provide a foundation for the timber industry, and local economies. Spring chinook and summer steelhead runs to the North Umpqua River are relatively healthy and support world-famous fisheries. Lowland, meandering interior valleys support considerable ranching activity. Whitetail deer have recovered from low numbers and are proposed for removal from federal protection.



### Basin Facts

Population (2000) .....	99,525
Cities over 10,000 .....	1
Area (square miles).....	3,000,643
Watershed Councils .....	3
SWCD's .....	2

### State or Federal Listed

Plants Species .....	7
Animals Species .....	5

## MAKING AN EARLY OREGON PLAN COMMITMENT

### Lane and Judd Creek Stream Enhancement

In early 1998, both the Umpqua Basin Watershed Council and the Oregon Plan for Salmon and Watersheds were new. OWEB had not been created, but its predecessor, the Governor's Watershed Enhancement Board (GWEB), awarded competitive grants for watershed enhancement. In this context, the two major landowners on Lane and Judd creeks wanted to demonstrate industrial timber's commitment to the new statewide effort to restore salmon and watersheds. Working through the council, C&D Lumber and Silver Butte Timber, along with a tenant who leased grazing land from C&D, agreed to improve water quality in the creeks by increasing riparian vegetation and reducing erosion in the lowland grazing areas and the forested uplands. GWEB's grant of \$51,980, together with in-kind support from the landowners and state and federal agencies, made possible the fencing of sensitive riparian areas on either side of each creek to exclude livestock and the planting of native vegetation in the newly protected areas. Project partners constructed several hardened, designated stream crossings and constructed off-stream water troughs for livestock to limit stream bank erosion and destruction of the riparian vegetation. The council, working with the Oregon Department of Fish and Wildlife, placed 85 large logs and 35 root wads, donated by the timber landowners, instream to improve fish habitat, slow water velocity during high flows, and trap gravel to create spawning areas. The benefits of the work became evident a year after project completion. A snorkel survey of coho salmon in the creeks on the first anniversary of the project found that coho presence had increased threefold.

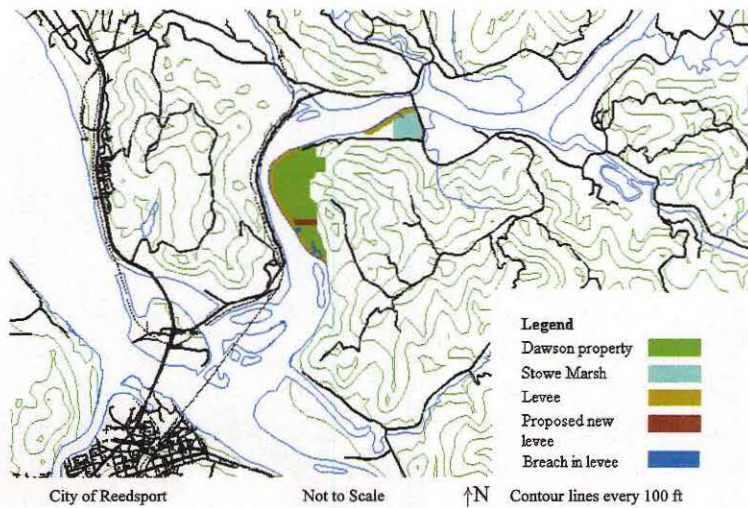


# BRINGING BACK THE ESTUARY

## Dawson Marsh Restoration

Carl and Lucille Dawson decided not to fight Mother Nature. The levees protecting the southern portion of their 100-acre parcel from the waters of the Smith River began to fail after the major winter storms and flooding of 1996-1997. Twenty-five acres of their property, in family ownership since 1905 and located a mile from both the river's confluence with the Umpqua River and the City of Reedsport, were being tidally inundated on a daily basis. Facing prohibitive costs to repair the levee, the Dawsons decided to donate the property to the Oregon Department of Fish and Wildlife (ODFW) for restoration to estuarine wetlands, in exchange for construction of a new levee to protect the family's remaining 75 acres for pasture and a homestead. The agency needed funding to build the new levee and to breach the old levees to restore the wetland hydrology on the donated 25 acres. A \$177,600 grant from

OWEB to the Umpqua Soil and Water Conservation District in 1999 paid for most of the work, with remaining funds and in-kind contributions coming from federal, state, and private entities and local volunteers. The project provided needed habitat for salmon smolts making their transition from river to ocean, added floodplain habitat with its ability to absorb and hold sediment and floodwaters, generated construction jobs in a hard-hit economy, and made it possible for the next generation of Dawsons to live and work on their property. Bringing back the estuary made good sense for fish, wildlife, and people.



# IMPROVING WATERSHED HEALTH

## Clover Creek Riparian Restoration

During the 1960s and 1970s, the uplands around Clover Creek, a tributary of the lower North Umpqua River east of Roseburg, were converted from forest to grazing land. Over time, land use practices resulted in a decrease in and simplification of riparian vegetation. Absent sufficient vegetation to hold the soil and take up water, and trees to shade and provide riparian habitat, Clover Creek's water quality and fish populations suffered. An old water tank culvert that blocked fish passage didn't help. But the 5,400-acre watershed did have some advantages. One was that relatively few individuals owned all the land in the watershed. The other was the landowners' growing interest in finding ways to use their land productively, while improving their watershed's health. With the help of the Umpqua Basin Watershed Council, federal and state agencies, conservation organizations, and private funders, the landowners have undertaken a series of projects to stop erosion and lay the groundwork for improving fish habitat. A 2001 OWEB grant of \$67,930 helped underwrite the most recent activities, including placing large wood and boulders back in the stream to slow water velocity, accumulate spawning gravel, create additional scour holes for fish, and increase cover. Project partners replaced the old water tank culvert with one that allows fish passage, constructed riparian fencing on both sides of the creek to exclude livestock, and planted native vegetation in the fenced-off riparian areas. Through a common vision, the landowners of the Clover Creek watershed have demonstrated that working landscapes and healthy watersheds can exist side-by-side.







## THE AGENCY

The Oregon Watershed Enhancement Board (OWEB) supports Oregon's efforts to restore salmon runs, improve water quality and quantity, and strengthen ecosystems that are critical to healthy watersheds and sustainable communities.

The Oregon Watershed Enhancement Board was created in 1999 by the Oregon Legislature to continue and expand the mission of the Governor's Watershed Enhancement Board, which since 1987 had funded voluntary restoration and education projects on a demonstration scale.

OWEB administers a competitive grant program that awards more than \$20 million annually to support voluntary efforts by Oregonians seeking to create and maintain healthy watersheds. OWEB provides grants to develop the capacity of citizen groups to assess watershed health, then to plan, design, and undertake successful restoration projects. OWEB encourages projects that foster cooperation, secure matching funds, provide for local involvement, include youth and volunteers, and promote public understanding of the role of watersheds in the lives of people and wildlife. OWEB also channels funds to state agencies with the expertise to deliver technical assistance in project design and implementation, conduct research to better understand watershed function, and monitor outcomes to evaluate project effectiveness.

### FUNDING SOURCES

OWEB's investments in watersheds are funded by a variety of sources, including:

#### Measure 66 – Oregon Lottery

OWEB receives seven and one-half percent of Oregon Lottery revenues as a consequence of a 1998 voter-approved initiative, Ballot Measure 66. OWEB receives approximately \$18 million annually from this source.

#### Salmon License Plates

Since 1997, Oregonians who pay an added \$30 for a salmon license plate for their vehicle have contributed approximately \$300,000 a year toward OWEB investments. These funds are used to support watershed restoration projects that improve transportation-related impacts to a watershed.

#### Pacific Coastal Salmon Recovery Funds (PCSRF)

Due to the significant impacts of the listings of many species of Pacific salmon under the federal Endangered Species Act, Oregon and other western states sought and obtained this federal funding to help recover native salmonid species. Oregon now receives approximately \$15 million from the PCSRF annually.

#### Other Federal Grants

State agencies are often in the best position to find local projects that meet federal goals for watershed restoration and conservation. OWEB receives approximately \$2 million in these types of funds annually, particularly from the U.S. Fish and Wildlife Service.

In addition to these existing sources of funding, OWEB is undertaking a new initiative to secure funding for the watershed restoration program from private foundations.

### STAFF

The agency's executive director is appointed by Oregon's governor subject to confirmation by the Oregon Senate, and is a member of the governor's natural resources cabinet. OWEB maintains field staff in eastern Oregon, central Oregon, the north coast, southwest Oregon, and the Willamette Basin to assist project sponsors, ensure that local realities inform OWEB Board policy making, and track OWEB investments. OWEB central office staff handle the agency's grants management, monitoring program, policy development, and fiscal controls.



# THE BOARD

The Oregon Watershed Enhancement Board is a state agency led by a policy oversight board (Board). The Board's 17 members are drawn from the public at large, tribes, state natural resource agency boards and commissions, and federal natural resource agencies. The Board brings together a diverse range of interests to decide grant awards and set a vision for watershed restoration in Oregon.

## VOTING BOARD MEMBERS

Of the Board's 17 members, 11 are voting members. At least one voting member is a tribal representative, and five others are citizen representatives. The remaining five voting members are drawn from the governing boards and commissions of five state agencies: the Board of Forestry, Board of Agriculture, Environmental Quality Commission, Fish and Wildlife Commission, and Water Resources Commission.

## NON-VOTING BOARD MEMBERS

Of the six non-voting Board members, five represent federal natural resource agencies with expertise in forest and agricultural land management, water quality, and salmon recovery, and one is a representative of the Oregon State University Extension Service.

## OWEB BOARD MEMBERS IN 2002

**MARK REEVE** (Board Co-Chair) serves as representative from the Environmental Quality Commission. He is an attorney and lives in Portland.

**MARK SUWYN** (Board Co-Chair) is chairman of the Board and CEO for Louisiana Pacific Corporation Portland Division. He serves as a public member of OWEB, and resides in Portland.

**GEORGE BROWN** is Dean emeritus of the Oregon State University College of Forestry in Corvallis, Oregon. He retired in August 1999 after 33 years of service to OSU including the past 10 years as Dean. He serves as a public member of OWEB, and resides in Corvallis.

**BOBBY BRUNOE** is Head of the Natural Resources Division for the Confederated Tribes of the Warm Springs Indian Reservation. He serves as the tribal representative on the OWEB Board, and lives in Bend.

**RON NELSON** is Secretary-Manager of the Central Oregon Irrigation District, in Redmond Oregon. He serves as a public member of OWEB.

**JANE O'KEEFE** is a Lake County Commissioner and serves on the Southeastern Oregon Resource Advisory Council for BLM. She serves as a public member of OWEB, and lives in Adel.

**JACK SHIPLEY** serves as chair of the North Applegate Watershed Protection Association and is a board member of the Applegate Partnership. He is a private landowner in Medford, and serves as a public member of OWEB.

**ZANE SMITH** serves as representative from the Fish and Wildlife Commission. He is currently a forester and international natural resource policy consultant in Springfield, where he lives.

**DAN THORNDIKE** is General Counsel for Medford Fabrication. He serves as the representative from the Water Resources Commission, and lives in Medford.

**BRAD WITT** is secretary-treasurer of the Oregon AFL-CIO. He serves as the representative from the Oregon Board of Forestry, and lives in Clatskanie, Oregon.

**PAT WORTMAN** serves as the representative from the Board of Agriculture. He runs a cattle ranch near Enterprise, Oregon. He is also a former Wallowa County Commissioner.

**HUGH BARRETT\*** is the Rangeland Management Specialist for the Oregon/Washington State Office of the BLM, and serves as the representative of the U.S. Bureau Land Management.

**PETER BLOOME\*** is Associate Director of the Oregon State University Extension Service in Corvallis, Oregon. He serves as representative of OSU Extension Administration.

**ALAN CHRISTENSEN\*** is the Regional Environmental Coordinator at the Forest Service Regional Office in Portland, Oregon, and serves as representative of the U.S. Forest Service.

**GAYLE NORMAN\*** is the Partnership Liaison with the U.S. Department of Agriculture Natural Resource Conservation Service, and represents them on the OWEB Board.

**DAVE POWERS\*** is a Senior Policy Advisor for Natural Resources at the U.S. EPA in Portland, Oregon, and represents them on the OWEB Board.

**MICHAEL TEHAN\*** is the Oregon State Branch Chief for the Habitat Conservation Division of the National Oceanic and Atmospheric Administration, and represents them on the OWEB Board.

\* non-voting members



# ACKNOWLEDGMENTS

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Every landowner, individual, and conservation group who shared their stories of working to improve their watershed, Kari Seely, Bonnie King, Linda Burnett, Gabriela Goldfarb, Tom Shafer, Vivienne Torgeson, Rick Craiger, Karen Leindecker, Mark Grenbemer, Doug Terra, Wendy Hudson, Ken Bierly, Geoff Huntington, Cindy Barnes, Ellie Larsen, Allison Hensey, and Matt Sykes.





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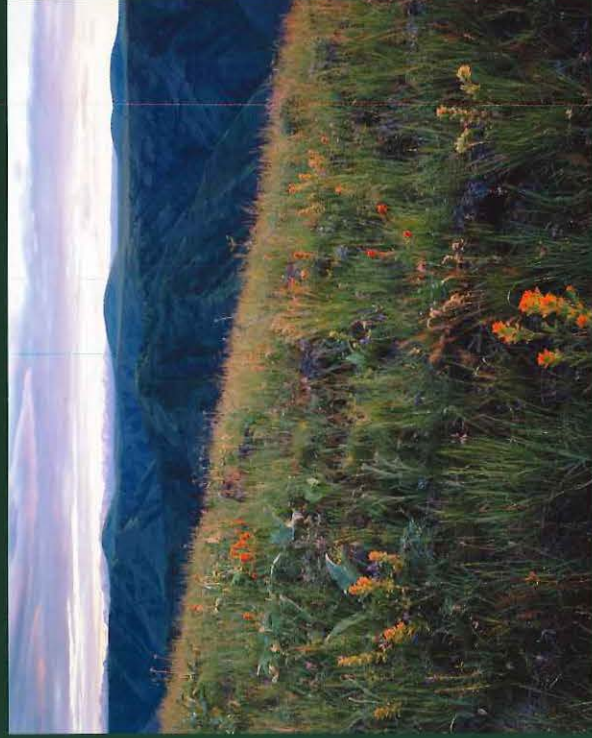
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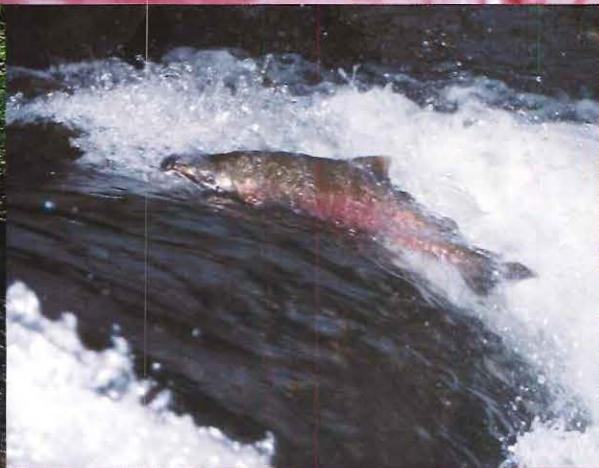
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The  
**Oregon  
Plan**  
for Salmon  
and Watersheds  
2001 - 2003  
Biennial  
Report

Oregon Watershed Enhancement Board



# The Oregon Plan for Salmon and Watersheds

## Biennial Report

2001 - 2003

### **The Oregon Plan for Salmon and Watersheds Mission:**

To restore the watersheds of Oregon and to recover the fish and wildlife populations of those watersheds to productive and sustainable levels in a manner that provides substantial environmental, cultural, and economic benefits.

This is the fourth report on the Oregon Plan for Salmon and Watersheds. The first three reports focused on people – their stories and their efforts to restore watershed health and recover listed fish species. While these earlier reports contained what little information was available regarding the quantitative aspects of Oregon Plan work and investments, this document is quite different. This document provides the first template for a detailed account, on basin and statewide scales, of numbers, kinds, locations and values of work and investments related to watershed restoration, water quality enhancements, and fish recovery.

This first effort to meet the Oregon Legislature's charge to OWEB to assess ongoing Oregon Plan implementation efforts represents a huge step forward – a summary of place-based accomplishments, investments, restoration issues, and challenges. It also lays the groundwork for more precisely defined restoration and investment priorities for each basin based on broad community and technical agreement. Future reports will be presented in the context of these agreed upon priorities, and we hope will provide continuity for judging Oregon's progress in this important endeavor we call The Oregon Plan for Salmon and Watersheds.

Thanks are due to the many Oregonians who have helped provide information, time, and support developing this report – and to all those who have supported the Oregon Plan.



Geoff Huntington  
Executive Director  
Oregon Watershed Enhancement Board

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## In Part I

Pages 4 - 37

In Part I the reader will find a two page layout for each basin, including a map showing locations of restoration projects and a variety of public and private investments in restoration. At the end of this section (pp. 36 - 37) restoration investments by NRCS, BPA, USFS and BLM are highlighted.

### *Establishing Common Basins for the Oregon Plan*



*Oregon Plan Basin Map*

ORS 541.405 requires that the Oregon Plan Biennial Report address each drainage basin in the state but it does not specify which of many existing basin classification systems should be used for reporting. The Oregon Plan for Salmon and Watersheds (Oregon Plan) has brought renewed attention to the need to standardize basin boundaries and names in order to facilitate sharing and analysis of natural resource and investment data and to help evaluate the effectiveness of implementation efforts.

Many alternative basin reporting systems were reviewed before selecting the basin delineation used here. Ultimately, a model developed by the United States Geological Survey (USGS) was chosen because it adequately represents physical and biological conditions throughout Oregon and allows for aggregation of watershed information at different geographic scales. The Oregon Plan basins are at the 3<sup>rd</sup> field Hydrologic Unit Classification (HUC) level. We subdivided one of the USGS 3<sup>rd</sup> field basins in southwestern Oregon into three separate basins because of the area's tremendous physical and biological diversity. We also modified several basin names to provide a more familiar frame of reference to Oregonians. On the whole, however, basin boundaries are consistent with the USGS model.

In Part II the reader will find observations, accomplishments, and challenges related to implementation of the Oregon Plan.

## *The Four Elements of the Oregon Plan*

**T**he Oregon Plan for Salmon and Watersheds provides the foundation for tackling Oregon's natural resource challenges in a coordinated, sustainable fashion. Success depends upon implementing four key parts of the initiative that together can provide innovative solutions supporting salmon recovery, water quality improvements, and restoration of watersheds that support the economy and quality of life of Oregon. The four key elements of the Plan addressed in this implementation report are as follows:

*see pages 38 - 41*

**A**gency actions that are both coordinated and integrated to better implement existing programs are a critical component of Oregon Plan success. When effectively implemented, state agency regulatory programs provide the foundation for addressing natural resources issues. Likewise, land management decisions of federal and state agencies have significant impacts on the health of Oregon watersheds, recovery of salmonids, and improvement of water quality.

*see pages 42 - 45*

**V**oluntary restoration action on privately owned lands is the essence of the Oregon Plan. Private landowners – individuals and industries, rural and urban – are conducting essential restoration work with the support of citizen groups, businesses, and local government. Sustained investment and assistance from OWEB and other state and federal agencies is key to successful voluntary restoration.

*see pages 46 - 49*

**M**onitoring under the Oregon Plan includes documenting the current condition of watershed health, evaluating changes over time, and determining the effectiveness of actions and programs. OWEB is charged by statute to coordinate Oregon Plan Monitoring Program activities among natural resource agencies to answer a variety of questions related to watershed health, water quality, and salmon recovery. This requires an interdisciplinary approach to tracking trends of key indicators over time so that implementation efforts can be adapted to maintain progress towards watershed protection and restoration goals.

*see pages 50 - 53*

**S**cience oversight includes independent analysis and evaluation of Oregon Plan activities as well as a commitment to support needed research. This element of the Plan requires a strong team of independent scientists and investments in targeted research. Objective evaluation and ongoing research are critical to ensuring the best available science is incorporated into decision making and actions.



# Key to Basin Layouts

These two pages explain the material reported for each of the 15 Oregon basins represented in this report.

## John Day Basin

This basin includes the Painted Hills, John Day Fossil Beds National Monument, and Strawberry Mountain Wilderness, and contains one of the most significant undammed stream systems in the West. The economy is dependent on natural resource in steelhead and salmon. The basin is characterized by riparian forest, pine forest, and meadow through open meadow and prairie ranch land. The mainstem of the river below Spray flows through an incised canyon that bisects shrub-steppe and wheat ranches in the uplands before flowing into the Columbia River at the eastern end of its dramatic gorge.

This section provides a little background on the geologic, cultural, economic, and biologic character of the basin.

Basin Facts	
Population (2000)	11,690
Cities over 10,000	0
Area (acres)	5,076,758

Watershed Councils	6
SWCD's	5
State or Federal Listed	
Plant Species	6
Animal Species	5



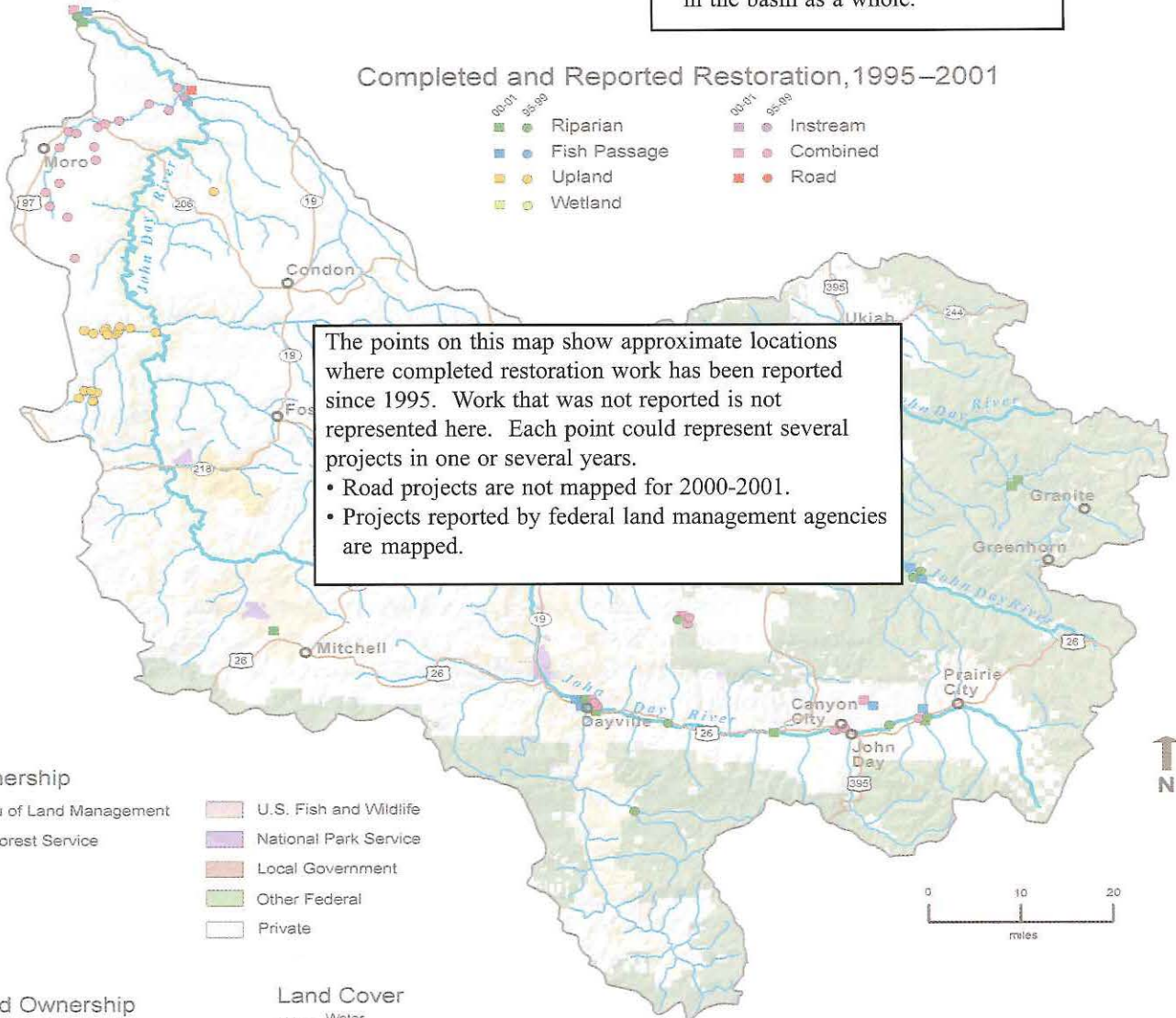
### Restoration Issues

- Restore
- Improve
- manage

This section provides a few priorities with scientific and community recognition. Certainly, this is not a comprehensive representation suitable to subbasins, but is thought to have broad validity in the basin as a whole.

Restoration condition, mentation

### Completed and Reported Restoration, 1995-2001



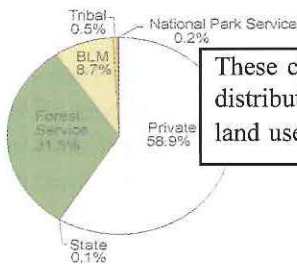
The points on this map show approximate locations where completed restoration work has been reported since 1995. Work that was not reported is not represented here. Each point could represent several projects in one or several years.

- Road projects are not mapped for 2000-2001.
- Projects reported by federal land management agencies are mapped.

### Land Ownership

Bureau of Land Management	U.S. Fish and Wildlife
U.S. Forest Service	National Park Service
State	Local Government
Tribal	Other Federal
	Private

### Land Ownership



### Land Cover

Urban	0.2%	Water	0.1%	Alpine	0.4%
Agriculture	0.4%				

These charts illustrate the distribution of land ownership and land use in the basin.

### Funding for Completed and Reported Restoration by Activity Type, 2000 and 2001

This section reports dollar values represented by completed restoration work that was reported in 2000 or 2001. Values for individual basins do not include all BPA or federal land management agency investments. See page 43 for a statewide summary that includes all available federal data and pages 36-37 for a summary of federal investments.

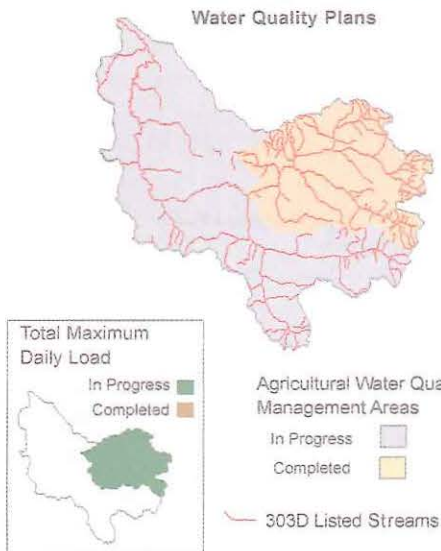
(Note: spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections))



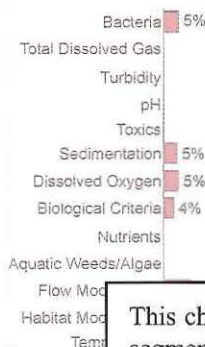
## Stressors



## Water Quality Concerns



## 303d Listed Streams by Standard



This chart refers only to stream segments shown on the map at the left that are currently listed as water quality impaired. It shows the reason that the segment was listed.

## Investments

Public Investment in Federal and State Projects

OWEB	.....
NRCS	.....
BPA	.....
USFS	.....
EPA/DEQ 319	.....

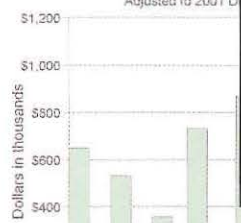
The information here refers to projected Federal and State commitments made this biennium to spend money on restoration work. We refer to these commitments as investments. This work may or may not be complete in the next two years. Some projects take years to complete.

## OWEB Investment in Restoration and Capacity 2001-2003 Biennium



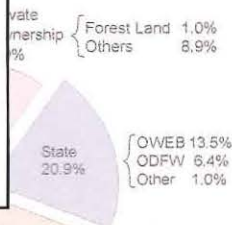
## Accomplishments

### Funding for Completed Restoration by Year



Unlike "Investments" reported above, these two figures refer only to restoration that was complete, reported, and accessible to OWEB. Values for individual basins do not include all BPA or federal land management agency work. See page 43 for a statewide summary that includes all available state and federal data.

### Completed and Reported 2000 and 2001



Total reported funds for restoration for this basin, 1995-2001. Values for individual basins do not include all BPA or federal land management agency investments.

Source of funds for restoration projects that were complete and reported, in 2000 and 2001 only. Values for individual basins do not include all BPA or federal land management agency investments.

## Accomplishments

- 49 completed restoration projects were reported in 2000-01; 37 of these were on private lands.
- 46 OWEB completed restoration projects in 2000-01.
- Fish passage improvements in 10 basins.
- Grant County SWCD established as a leader in partnering on fish passage improvements.

This section notes a few restoration accomplishments that deserve broad recognition. In every basin, these are just the tip of the iceberg.

## Challenges

This section provides a few challenges to implementation of the Oregon Plan for Salmon and Watersheds. Truly, there are many economic, social, scientific, and organizational challenges to restoring watersheds while supporting thriving economies and communities – challenges listed here are thought to deserve special recognition.

Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



# Umpqua Basin

The Umpqua is one of only two Oregon rivers that have headwaters in the Cascade mountains and cut through the Coast Range to the Pacific Ocean. Douglas fir forests of the Umpqua basin are legendary for their productivity and provide a foundation for the timber industry, local economies, and strong communities in this basin. Spring chinook and summer steelhead runs to the North Umpqua River are relatively healthy and support world famous fisheries. Lowland meandering interior valleys support considerable ranching activity. Whitetail deer have recovered from low numbers and are proposed for removal from the federal Endangered Species Act protection in this basin. The Umpqua River enters the Pacific Ocean in the center of Oregon's dune country near Reedsport.

### Basin Facts

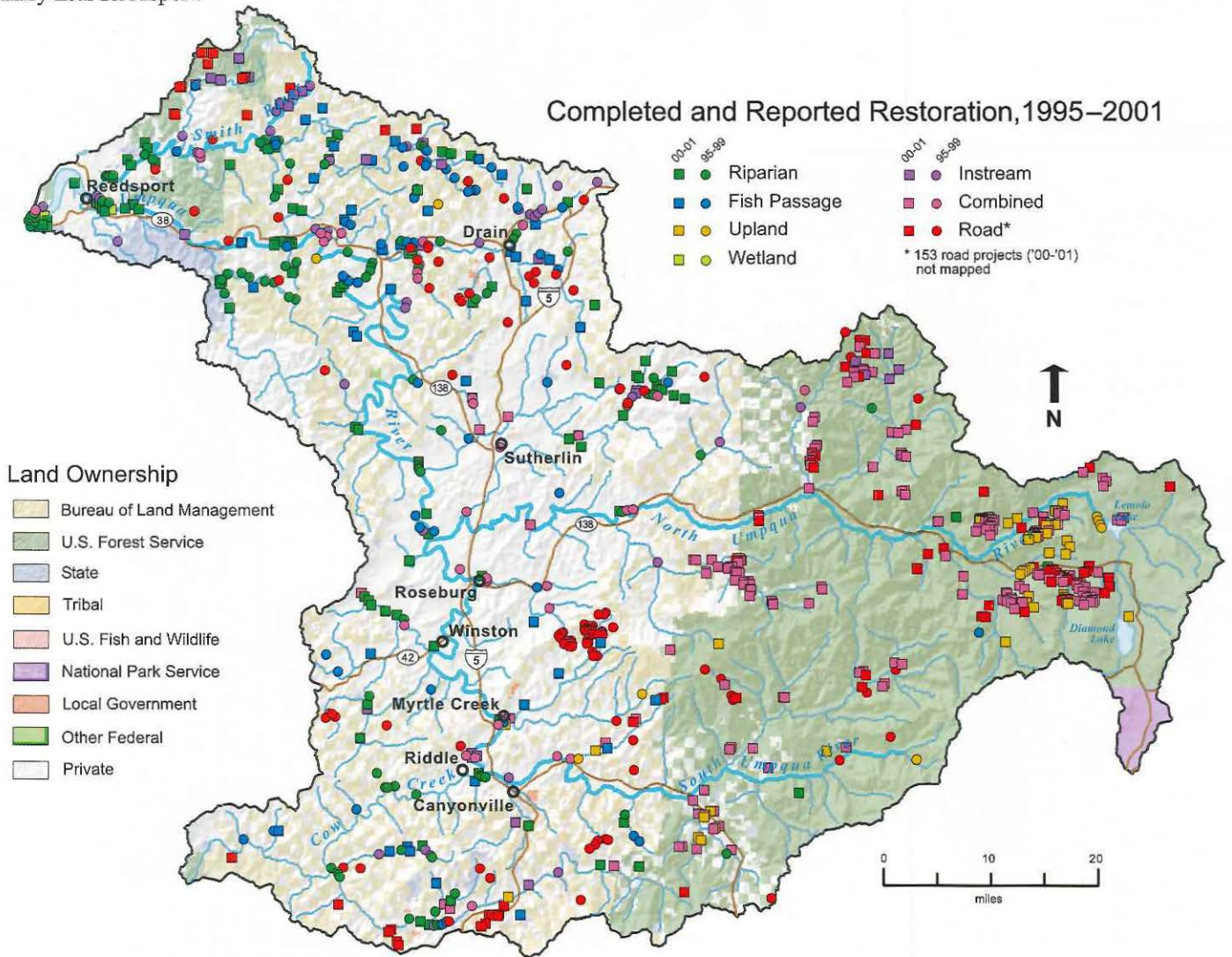
Population (2000) .....	99,525	Watershed Councils.....	3
Cities over 10,000 .....	1	SWCD's .....	2
Area (acres).....	3,000,653	<b>State or Federal Listed</b>	
		Plant Species .....	7
		Animal Species .....	5



### Restoration Issues

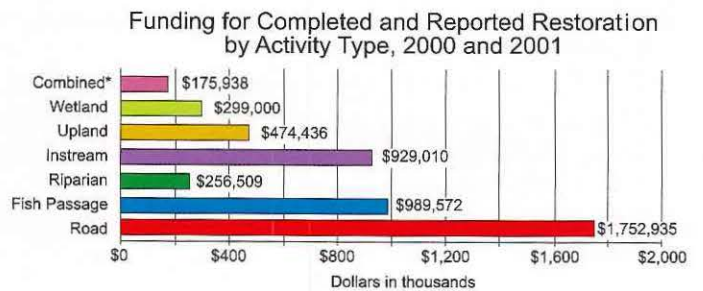
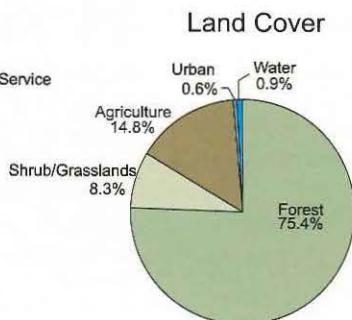
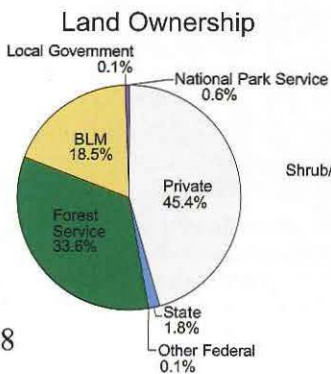
- Increase stream complexity and coho over-winter habitat
- Restore fish passage at culverts, dams, and dikes
- Improve access to spawning habitat
- Improve productivity of estuarine, diked, and lowland areas for salmonids

### Completed and Reported Restoration, 1995-2001



#### Land Ownership

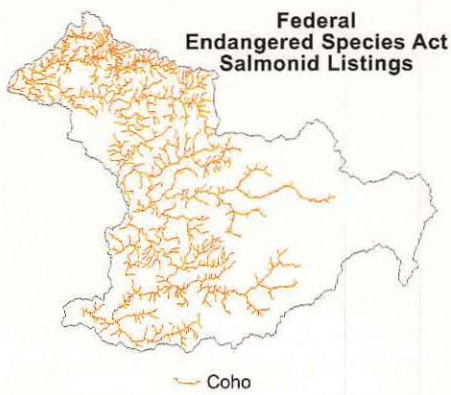
	Bureau of Land Management
	U.S. Forest Service
	State
	Tribal
	U.S. Fish and Wildlife
	National Park Service
	Local Government
	Other Federal
	Private



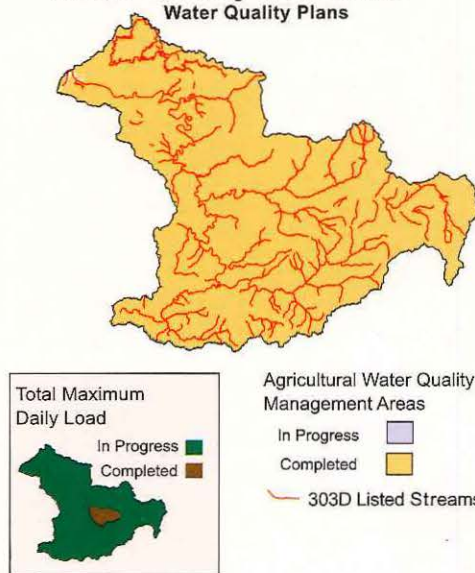
Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



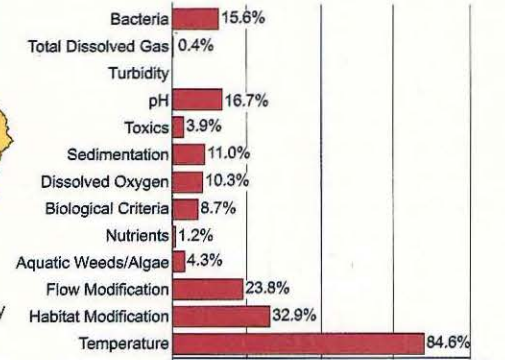
## Stressors



## Water Quality Concerns



## 303d Listed Streams by Standard



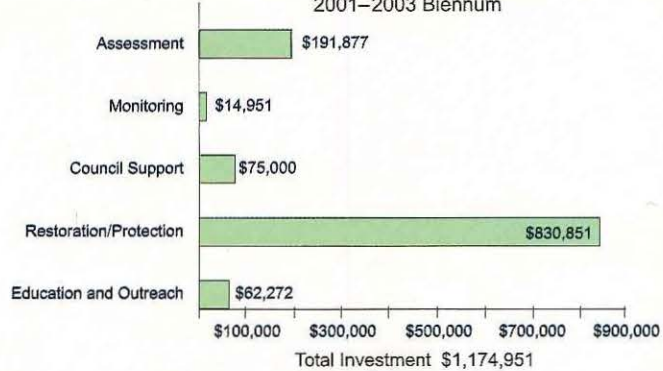
Note: Each value represents a percentage of total surveyed stream length in violation of the 303d water quality standard. Multiple violations can occur for the same length of stream.

## Investments

### Public Investment in Restoration/Conservation Projected State or Federal 2001–2003 Biennia

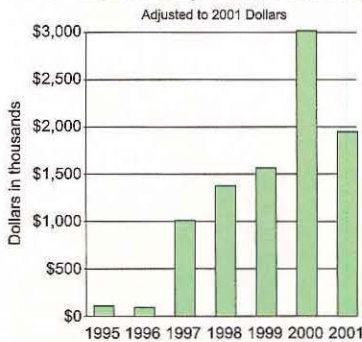
OWEB	\$1,174,951
NRCS	44,603
BPA	0
USFS	13,000,000
EPA/DEQ 319	327,800

### OWEB Investment in Restoration and Capacity 2001–2003 Biennium

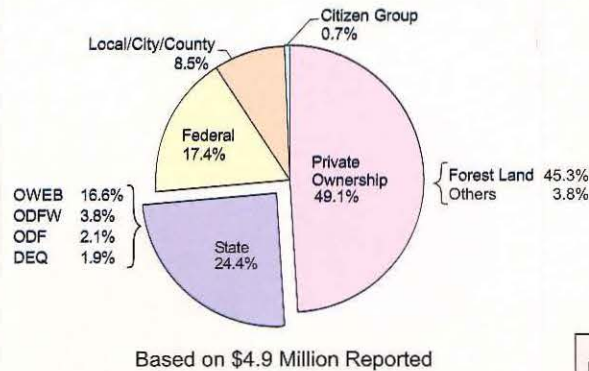


## Accomplishments

### Funding for Completed and Reported Restoration by Year, 1995-2001



### Source of Funding for Completed and Reported Restoration, 2000 and 2001



### Accomplishments

- 430 completed restoration projects were reported in 2000-01; 275 of these were on private lands
- 33 OWEB grants for \$2,173,205 remain open (work not completed)
- Clover Creek fish passage and flood control project
- Cavitt Creek multi-stakeholder effort will address fish passage
- Smith River project initiated, will open 19 miles of prime coho habitat
- Initiated basin-wide fish passage survey

### Challenges

- The intricate mix of private and public land ownership in many parts of the basin complicates management and restoration
- Strife over development of Agricultural Water Management Plans has detracted from community appreciation of significant restoration work accomplished on private and public lands in basin
- Restoration of diked tidal areas may affect management practices of many landowners

Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



# Rogue Basin

Headwaters of the Rogue River flow from the west slopes of Crater Lake and the southern Cascades to the Pacific Ocean. This basin has an extremely complex geologic structure and corresponding vegetation patterns. From the lava and pumice of the southern Cascade volcanoes, the Middle Rogue River flows through the relatively populated Medford-Ashland area with its orchards and irrigated agriculture. Mining and forestry are also significant economic sectors in the basin. Fisheries for chinook salmon and steelhead in the Rogue are world famous. Coho salmon in the Rogue are listed as threatened under the federal Endangered Species Act. The Rogue River cuts through the Coast Range and enters the Pacific Ocean at Gold Beach, where mail boat tours take visitors upriver and salmon fishing is a yearly ritual.

### Basin Facts

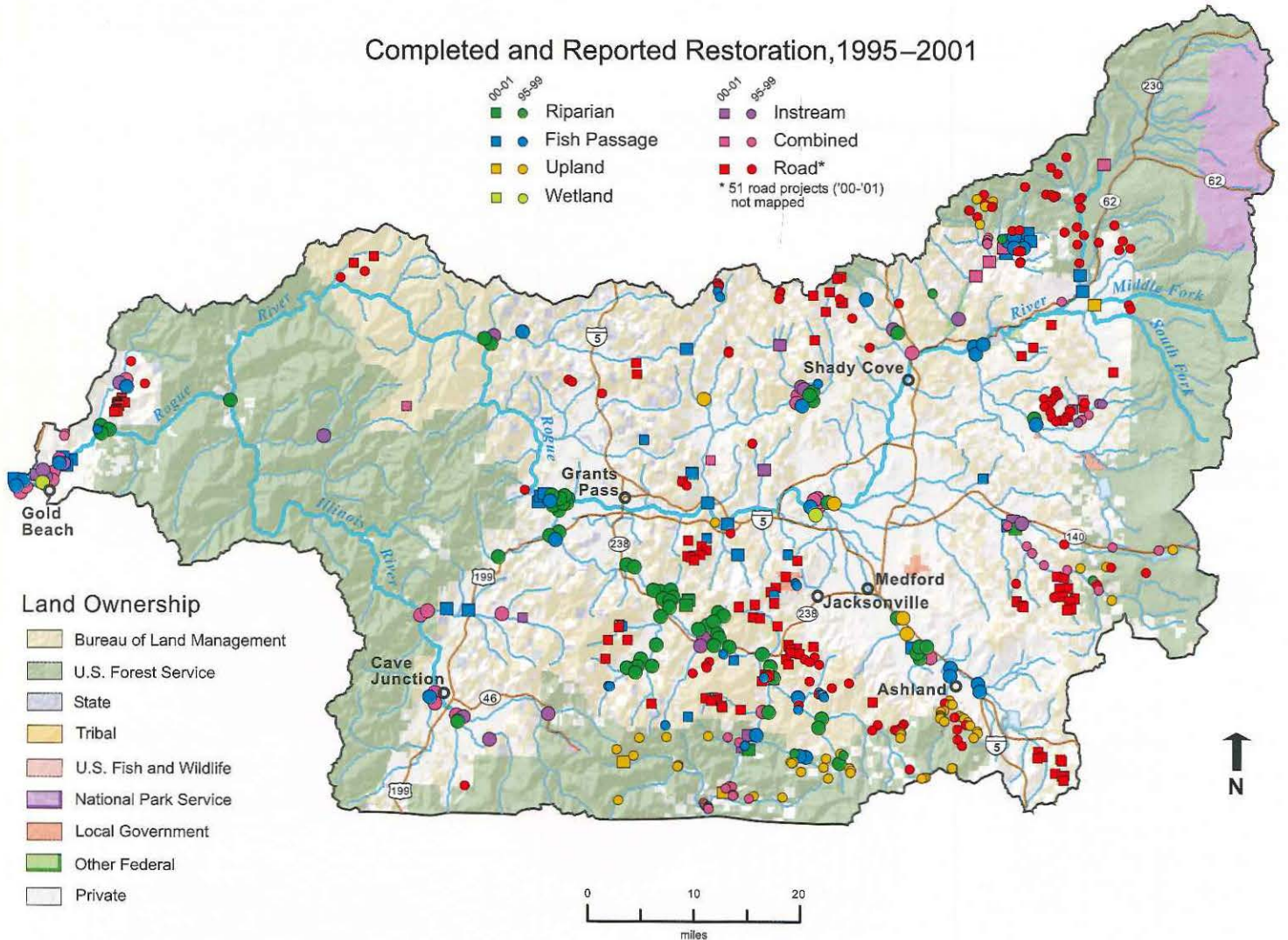
Population (2000) .....	257,914	Watershed Councils.....	9
Cities over 10,000 .....	4	SWCD's .....	4
Area (acres).....	3,210,948	<b>State or Federal Listed</b>	
		Plant Species .....	10
		Animal Species .....	13



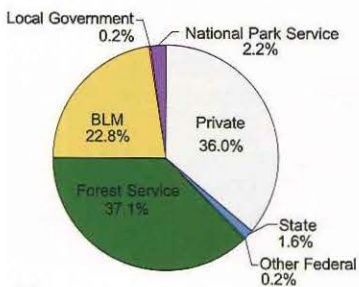
### Restoration Issues

- Protect habitat in urbanizing areas
- Improve productivity of lowland areas for salmonids
- Restore fish passage at culverts & dams
- Improve range & forest health to enhance riparian condition, manage fuel loads and exotic species, and reduce sedimentation

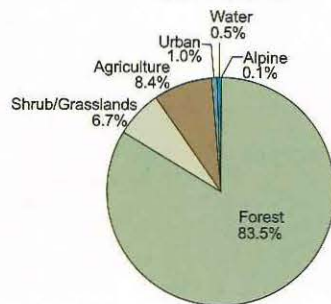
### Completed and Reported Restoration, 1995-2001



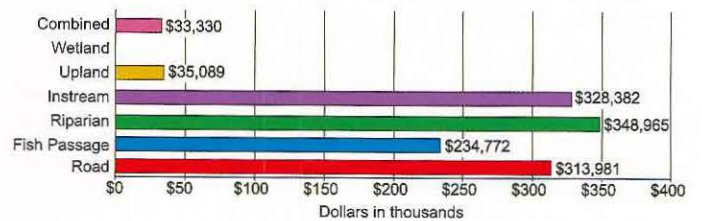
### Land Ownership



### Land Cover



### Funding for Completed and Reported Restoration by Activity Type, 2000 and 2001

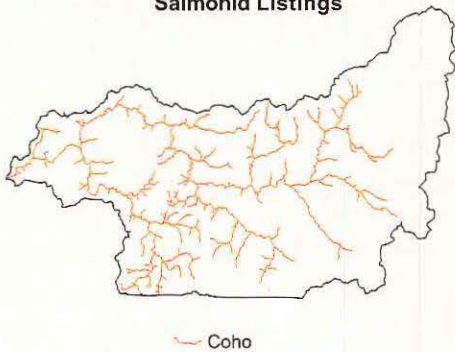


Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



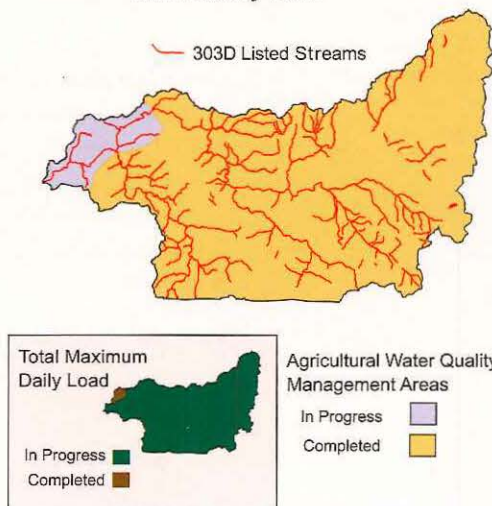
## Stressors

### Federal Endangered Species Act Salmonid Listings

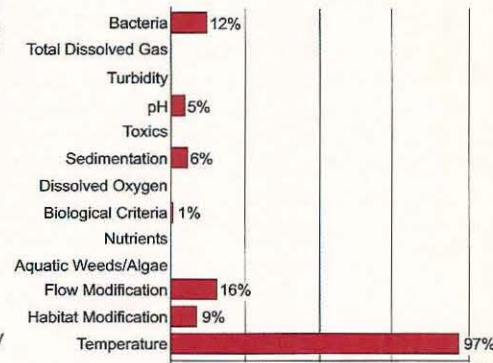


## Water Quality Concerns

### Water Quality Plans



### 303d Listed Streams by Standard



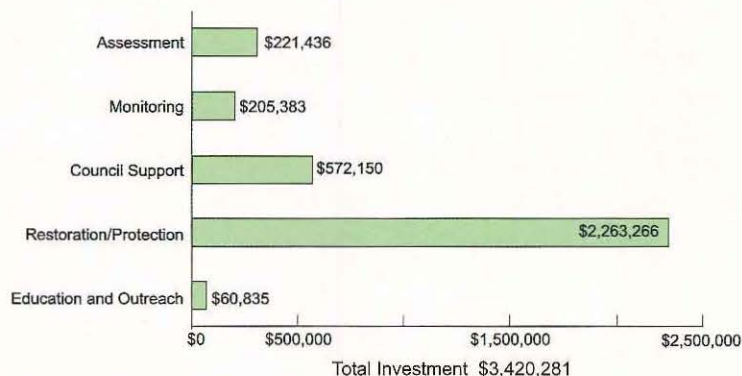
Note: Each value represents a percentage of total surveyed stream length in violation of the 303d water quality standard. Multiple violations can occur for the same length of stream.

## Investments

### Public Investment in Restoration/Conservation Projected State or Federal 2001–2003 Biennia

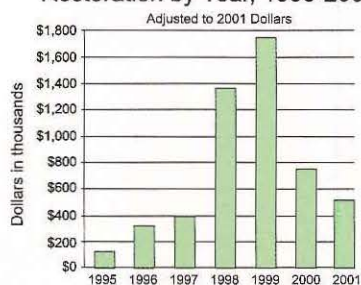
OWEB	\$3,420,281
NRCS	462,781
BPA	0
USFS	4,800,000
EPA/DEQ 319	435,664

### OWEB Investment in Restoration and Capacity 2001–2003 Biennium

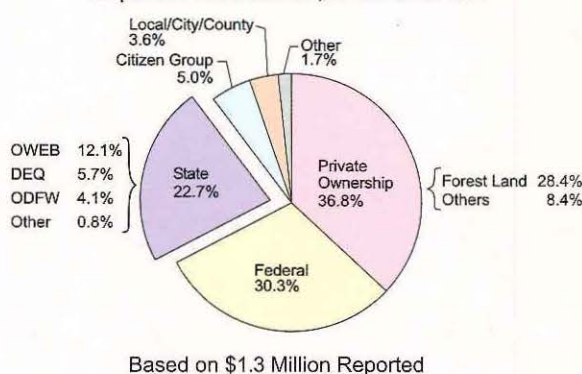


## Accomplishments

### Funding for Completed and Reported Restoration by Year, 1995-2001



### Source of Funding for Completed and Reported Restoration, 2000 and 2001



## Accomplishments

- 163 completed restoration projects were reported in 2000-01; 73 of these were on private lands
- 86 OWEB grants for \$6,660,603 remain open (work not completed)
- Plan to address private land management that integrates ESA & Clean Water Acts in Little Applegate
- Prioritized action plan to resolve passage problems at over 1,000 barriers
- OWEB grant to support consensus based plan to remove Savage Rapids dam and preserve water needs of irrigation district and community

## Challenges

- Impact of rapid urban development in lowland areas on rearing salmonids
- Implementation of stakeholder-sponsored fire management plan in Applegate; development of similar plans to reduce risk of catastrophic fire in remainder of basin
- Evaluation of traditional water distribution systems and identification of opportunities to help preserve water for salmonids in key stream reaches

Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



# Lakes Basin

Waters that flow in the desert country of Lake, southern Harney, and southwestern Malheur counties drain toward lakes like Warner, Malheur, Abert, Goose, Silver, and Summer. These waterbodies and associated wetlands are remnants of ancient Pleistocene lakes that filled the basin. Scenic mountains rise abruptly from the valley floors. Streams that drain the uplifted ranges support Lahontan cutthroat trout, redband trout, Tui chub, Alvord chub, and Borax Lake chub. Hart Mountain and Malheur National Wildlife Refuges and the Steens Mountain Wilderness Area provide wildlife viewing and scenic vistas. Fort Rock and the Alvord Desert are home to antelope and sage grouse. Diamond Craters, the historic Round Barn of the P Ranch and the Burns Paiute tribal lands are in this basin. Ranching and forest products principally support communities in this basin.

### Basin Facts

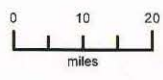
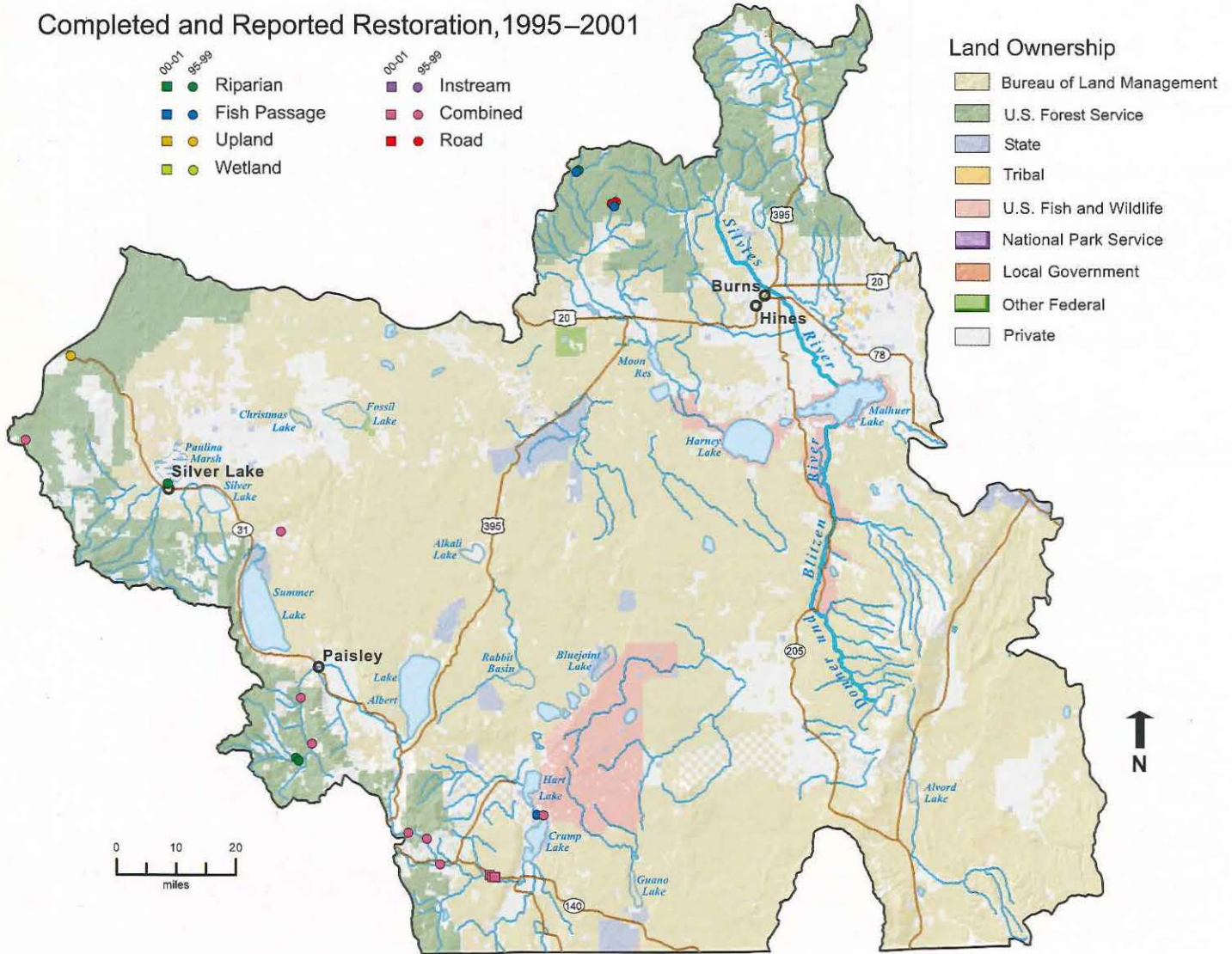
Population (2000) .....	10,098	Watershed Councils.....	5
Cities over 10,000 .....	0	SWCD's .....	3
Area (acres).....	11,638,073	<b>State or Federal Listed</b>	
		Plant Species .....	12
		Animal Species .....	8



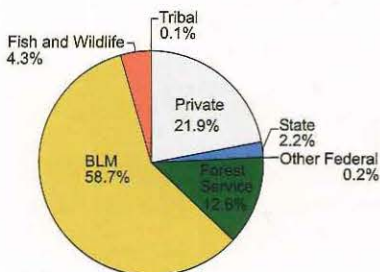
### Restoration Issues

- Relocating feedlots to reduce impacts on streams, riparian, and wetland habitat
- Wetland restoration/protection
- Restore fish passage at culverts, dams, and diversions
- Improve range & forest health to enhance riparian condition, manage fuel loads and exotic species, and reduce sedimentation

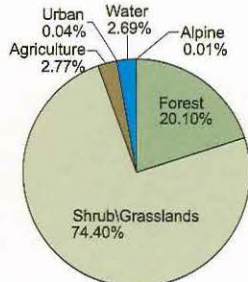
### Completed and Reported Restoration, 1995-2001



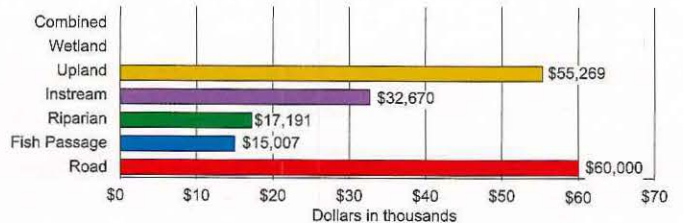
### Land Ownership



### Land Cover



### Funding for Completed and Reported Restoration by Activity Type, 2000 and 2001

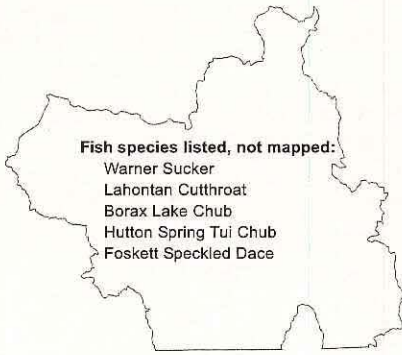


Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



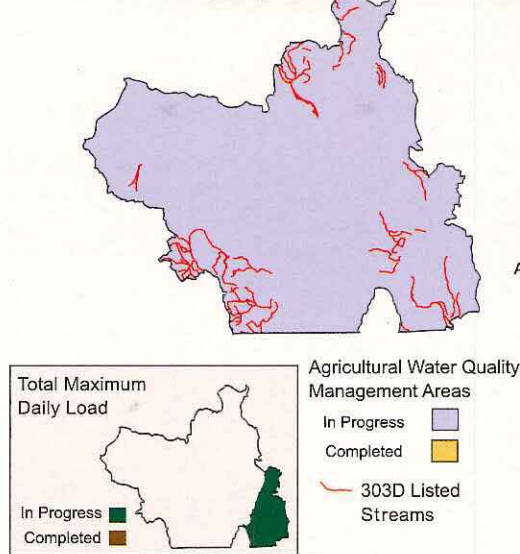
## Stressors

### Federal Endangered Species Act Listings

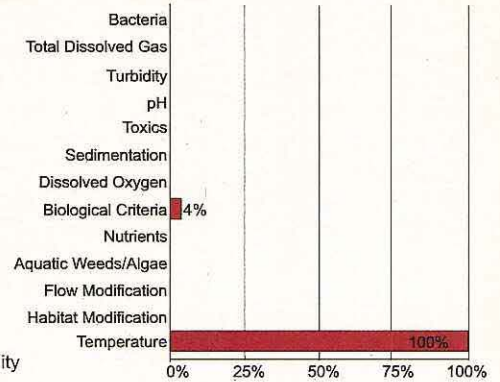


## Water Quality Concerns

### Water Quality Plans



### 303d Listed Streams by Standard



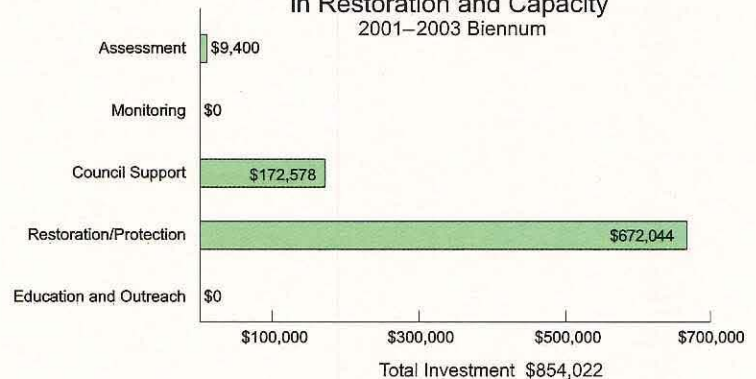
Note: Each value represents a percentage of total surveyed stream length in violation of the 303d water quality standard. Multiple violations can occur for the same length of stream.

## Investments

### Public Investment in Restoration/Conservation Projected State or Federal 2001-2003 Biennia

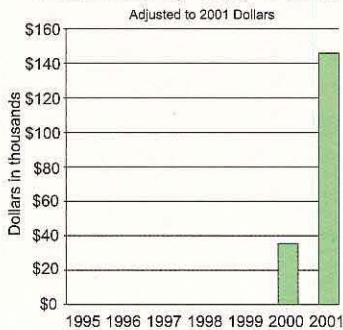
OWEB	\$854,022
NRCS	2,119,150
BPA	0
USFS	1,600,000
EPA/DEQ 319	69,867

### OWEB Investment in Restoration and Capacity 2001-2003 Biennium

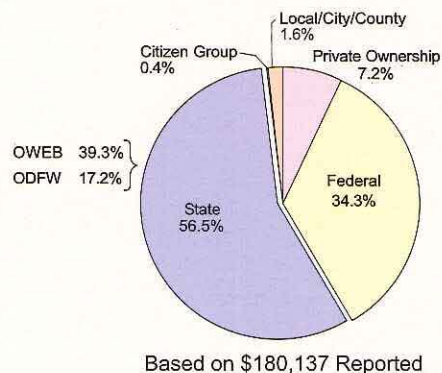


## Accomplishments

### Funding for Completed and Reported Restoration by Year, 1995-2001



### Source of Funding for Completed and Reported Restoration, 2000 and 2001



## Accomplishments

- 11 completed restoration projects were reported in 2000-01; 6 of these were on private lands
- 18 OWEB grants for \$967,204 remain open in this basin (work not completed)
- Steens Mountain Wilderness Act provided some certainty to landowners and consolidated management of lands with unique ecological values
- Comprehensive population assessment of Redband trout supported a no-list decision by USFWS

## Challenges

- Developing restoration plans appropriate to unique local conditions
- Restoring wetlands is particularly complicated by arid conditions and existing land use
- Conserving and restoring important Redband habitat

Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



# Powder Basin

Draining south and east from the Blue Mountains, the Powder and Burnt Rivers flow to the middle Snake River. This ranching country contains remnants of the original Oregon Trail traveled by settlers in covered wagons. Mining is still important in this basin, but agriculture and ranching are the key elements of the economy. Bull trout in this basin are listed as threatened under the federal Endangered Species Act. The Baker Valley has been identified as a conservation opportunity area where riparian thickets and wetlands could be enhanced for native species.

### Basin Facts

Population (2000)	17,901
Cities over 10,000	1
Area (acres)	2,207,865

Watershed Councils	1
SWCD's	5
<b>State or Federal Listed</b>	
Plant Species	6
Animal Species	6

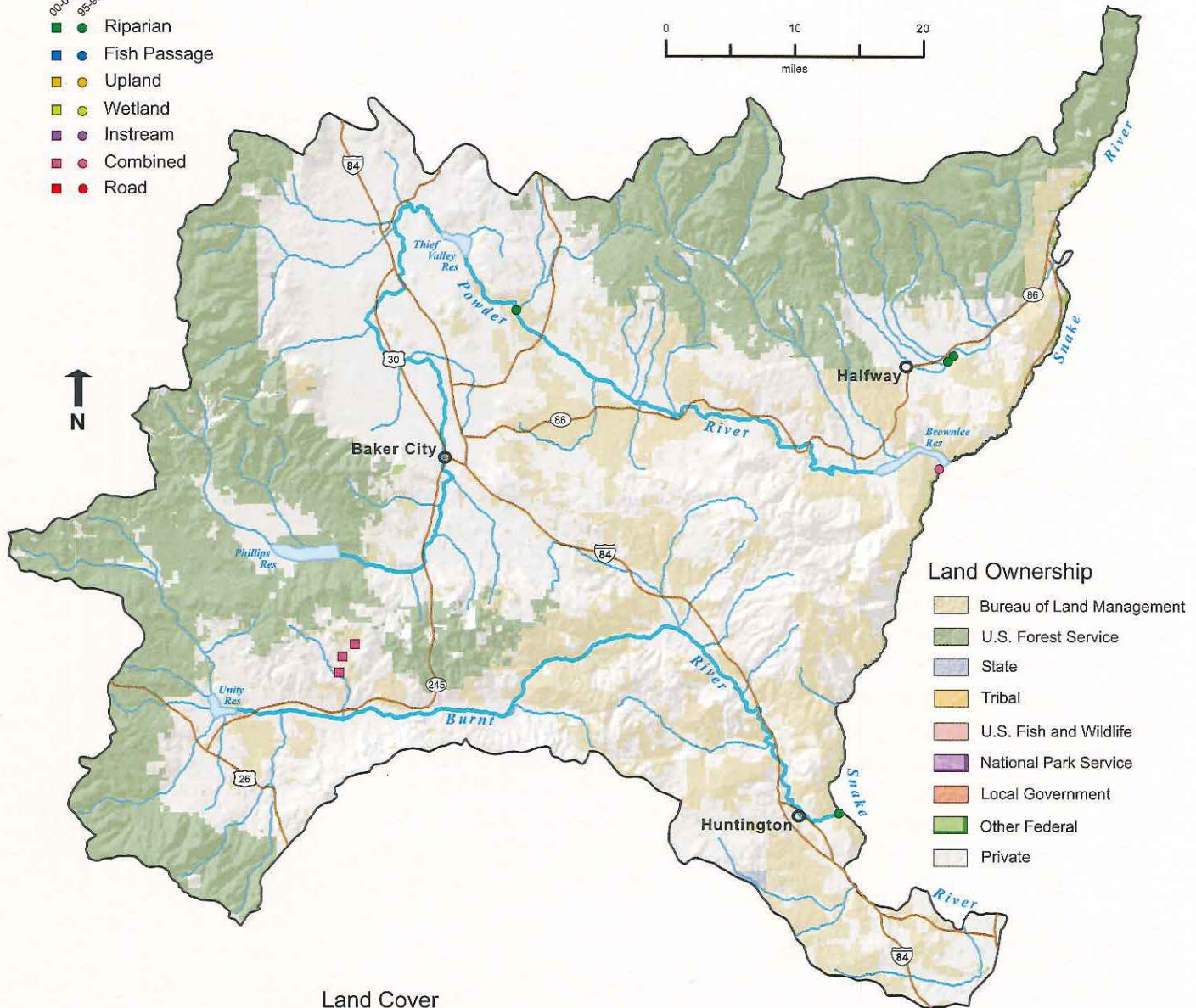
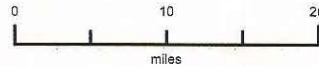


### Restoration Issues

- Issues related to Bull trout ESA recovery planning and implementation
- Restoration of cattle wintering areas adjacent to streams
- Fish passage at select locations
- Improve range & forest health to enhance riparian condition, manage fuel loads and exotics, and reduce sedimentation

### Completed and Reported Restoration, 1995-2001

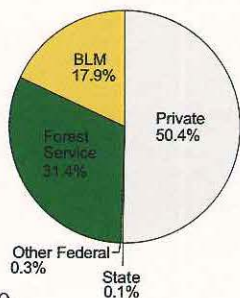
- 00-01
- 95-99
- Riparian
- Fish Passage
- Upland
- Wetland
- Instream
- Combined
- Road



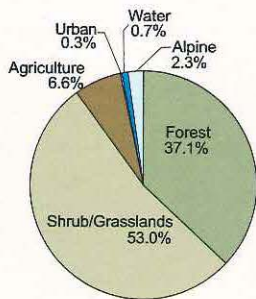
### Land Ownership

- Bureau of Land Management
- U.S. Forest Service
- State
- Tribal
- U.S. Fish and Wildlife
- National Park Service
- Local Government
- Other Federal
- Private

### Land Ownership



### Land Cover



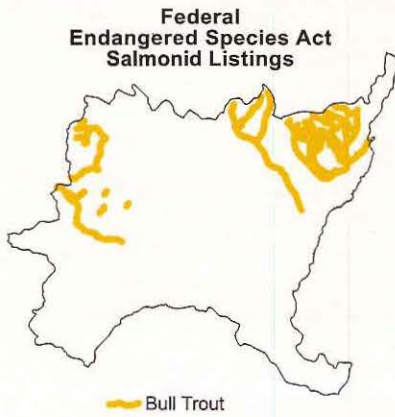
### Funding for Completed and Reported Restoration by Activity Type, 2000 and 2001



Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



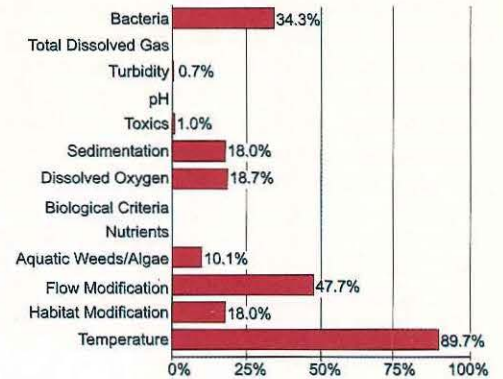
## Stressors



## Water Quality Concerns



## 303d Listed Streams by Standard



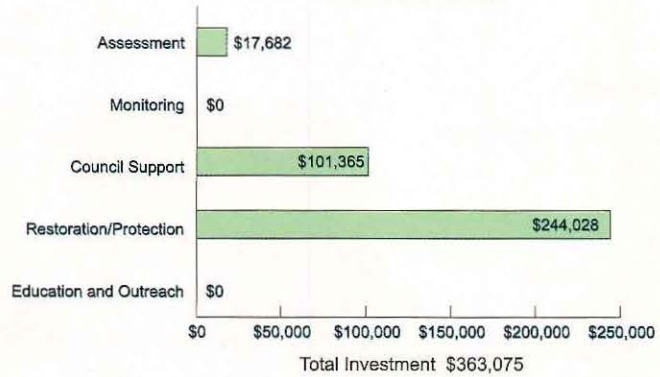
Note: Each value represents a percentage of total surveyed stream length in violation of the 303d water quality standard. Multiple violations can occur for the same length of stream.

## Investments

### Public Investment in Restoration/Conservation Projected State or Federal 2001–2003 Biennia

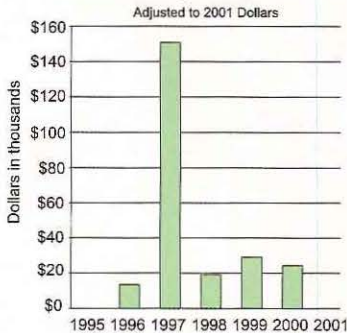
OWEB	\$363,075
NRCS	227,846
BPA	0
USFS	220,000
EPA/DEQ 319	0

### OWEB Investment in Restoration and Capacity 2001–2003 Biennium

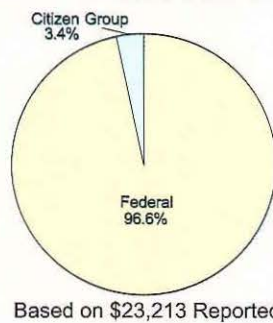


## Accomplishments

### Funding for Completed and Reported Restoration by Year, 1995–2001



### Source of Funding for Completed and Reported Restoration, 2000 and 2001



### Accomplishments

- 1 completed restoration project was reported in 2000-01
- 17 OWEB grants for \$569,749 remain open (work not completed)
- Community-based watershed assessments have fostered collaborative relations
- Powder River instream enhancement project
- Off-stream watering, fencing, and wetland work to improve riparian conditions
- Fish screen project on Pine Creek
- Historic mine-site reclamation project was funded and is ongoing

### Challenges

- Significant disagreement on the existence and nature of watershed restoration issues
- Impacts from historic mining continue to impact water quality
- Funds for restoration may be limited because anadromous fish do not occur in basin

Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)

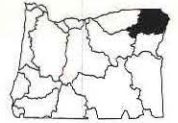


# Grande Ronde Basin

This basin includes the Willowa, Grande Ronde, and Imnaha rivers, flowing from the majestic Willowa Mountains to the Snake River. Ranching, agriculture, and forestry are key to the economy. The Willowa Mountains frame the Grande Ronde Valley. This basin is the historic homeland of the Nez Perce Tribe. Nestled between the Imnaha and Grande Ronde rivers, Zumwalt Prairie supports the highest density of raptors in Oregon. Bull trout, spring chinook salmon and summer steelhead in this basin are listed as threatened under the federal Endangered Species Act. Mountain headwaters in pine forests transition through deep canyons and meander through agricultural communities in the lowlands before flowing through deep canyons to join the Snake River.

### Basin Facts

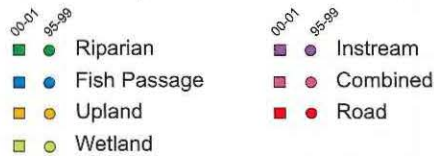
Population (2000) .....	30,971	Watershed Councils.....	1
Cities over 10,000 .....	1	SWCD's .....	2
Area (acres).....	3,125,912	<b>State or Federal Listed</b>	
		Plant Species .....	9
		Animal Species .....	5



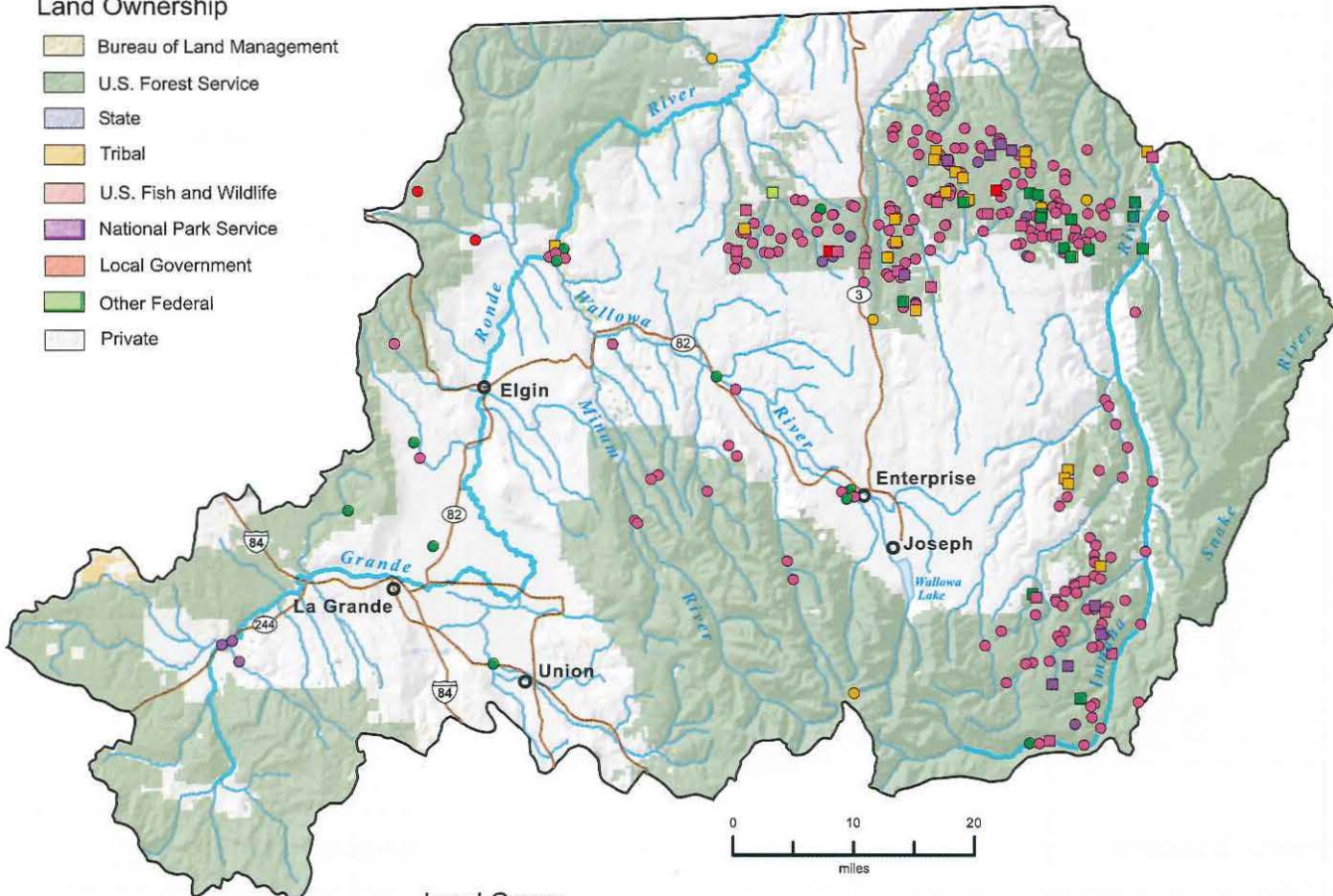
### Restoration Issues

- Restore wetlands, stream complexity and connections between river and floodplains in select areas
- Restore fish passage at culverts, dams, and diversions
- Improve range & forest health to enhance riparian condition, manage fuel loads and exotics, and reduce sedimentation
- Improve water management to enhance instream flows in key areas

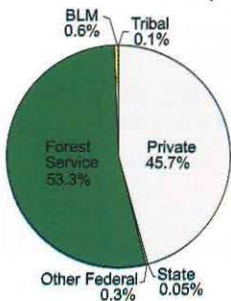
### Completed and Reported Restoration, 1995-2001



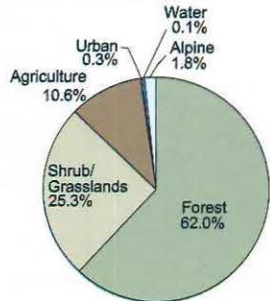
### Land Ownership



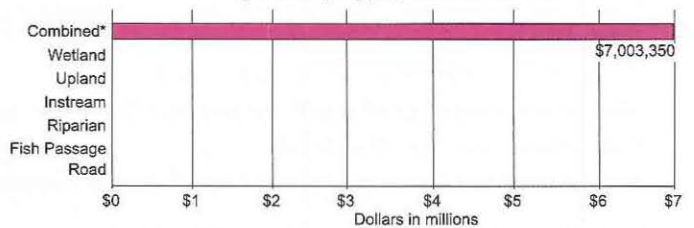
### Land Ownership



### Land Cover



### Funding for Completed and Reported Restoration by Activity Type, 2000 and 2001



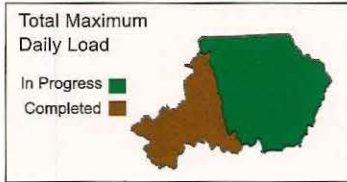
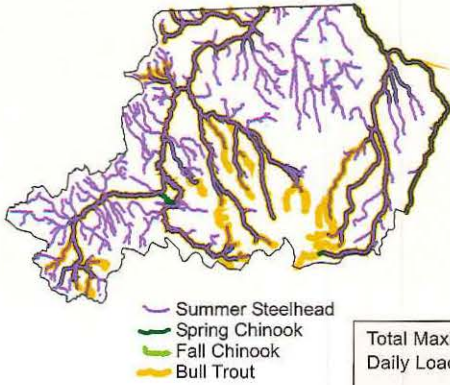
\*Funding by individual activity type not available, cost is reported as "combined".

Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



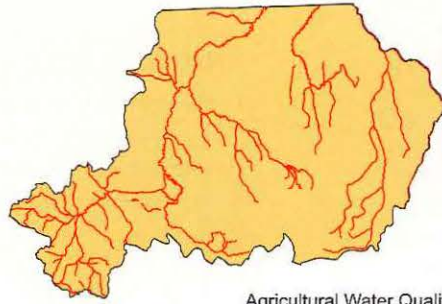
# Stressors

## Federal Endangered Species Act Salmonid Listings

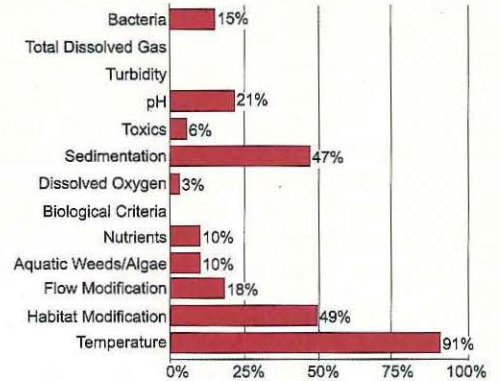


## Water Quality Concerns

### Water Quality Plans



## 303d Listed Streams by Standard



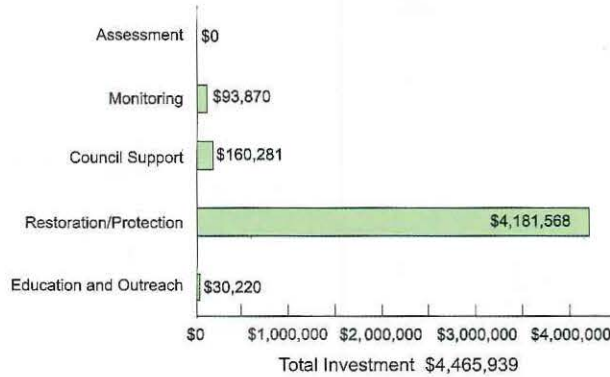
Note: Each value represents a percentage of total surveyed stream length in violation of the 303d water quality standard. Multiple violations can occur for the same length of stream.

# Investments

## Public Investment in Restoration/Conservation Projected State or Federal 2001-2003 Biennia

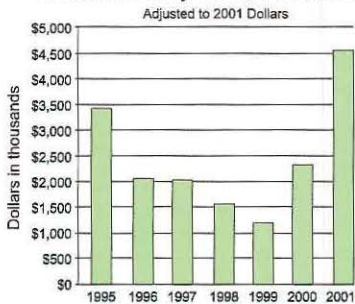
OWEB	\$4,465,939
NRCS	203,814
BPA	15,114,954
USFS	2,000,000
EPA/DEQ 319	116,000

## OWEB Investment in Restoration and Capacity 2001-2003 Biennium

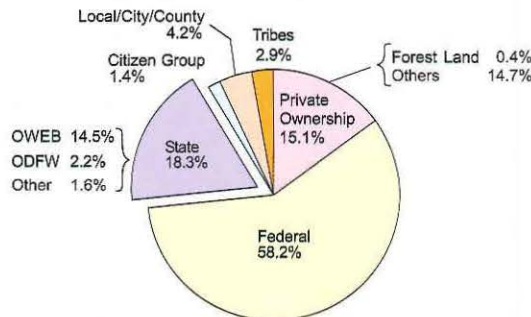


# Accomplishments

## Funding for Completed and Reported Restoration by Year, 1995-2001



## Source of Funding for Completed and Reported Restoration, 2000 and 2001



Based on \$7.0 Million Reported

## Accomplishments

- 141 completed restoration projects were reported in 2000-01; 54 of these were on private lands
- 73 OWEB project grants for \$5,797,163 remain open (work not completed)
- Several channel restoration projects (e.g., Milk Creek, McCoy Creek)
- Major fish passage projects (e.g., Catherine Creek)
- Riparian habitat enhancements included off-stream watering projects & CREP enrollment
- The Nez Perce tribe was a key participant and partner in restoration planning for upper basin

## Challenges

- The complex system of stream diversions makes streamflow restoration difficult
- Anadromous fish must pass 8 mainstem Columbia dams between this basin and the ocean
- Opposition to restoration efforts remains in some areas of the basin

Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)

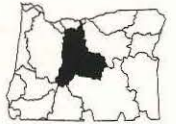


# Deschutes Basin

Bordered by the Cascade Range to the west, this basin includes the Lava Lands, high Cascade lakes, wild and scenic waterways, and a rapidly growing human population. Tourism, agriculture, forestry, ranching, and the high technology industry dominate the economy of the basin. The Deschutes River hosts world famous trout and steelhead fisheries. The Confederated Tribes of the Warm Springs Reservation operate Kah-Nee-Ta Lodge, a lumber mill and other tribal enterprises. Pelton, Round Butte, Ochoco, and Prineville dams generate electricity and block fish runs to the upper basin. Bull trout and steelhead are listed under the federal Endangered Species Act. Fed by snowfields of the Cascade and Ochoco Ranges, the basin's headwaters flow through high elevation wet meadows and lava plains before dropping through scenic canyons and shrub steppe. Irrigated agriculture, rangeland, and wheatlands lie along the Lower Deschutes.

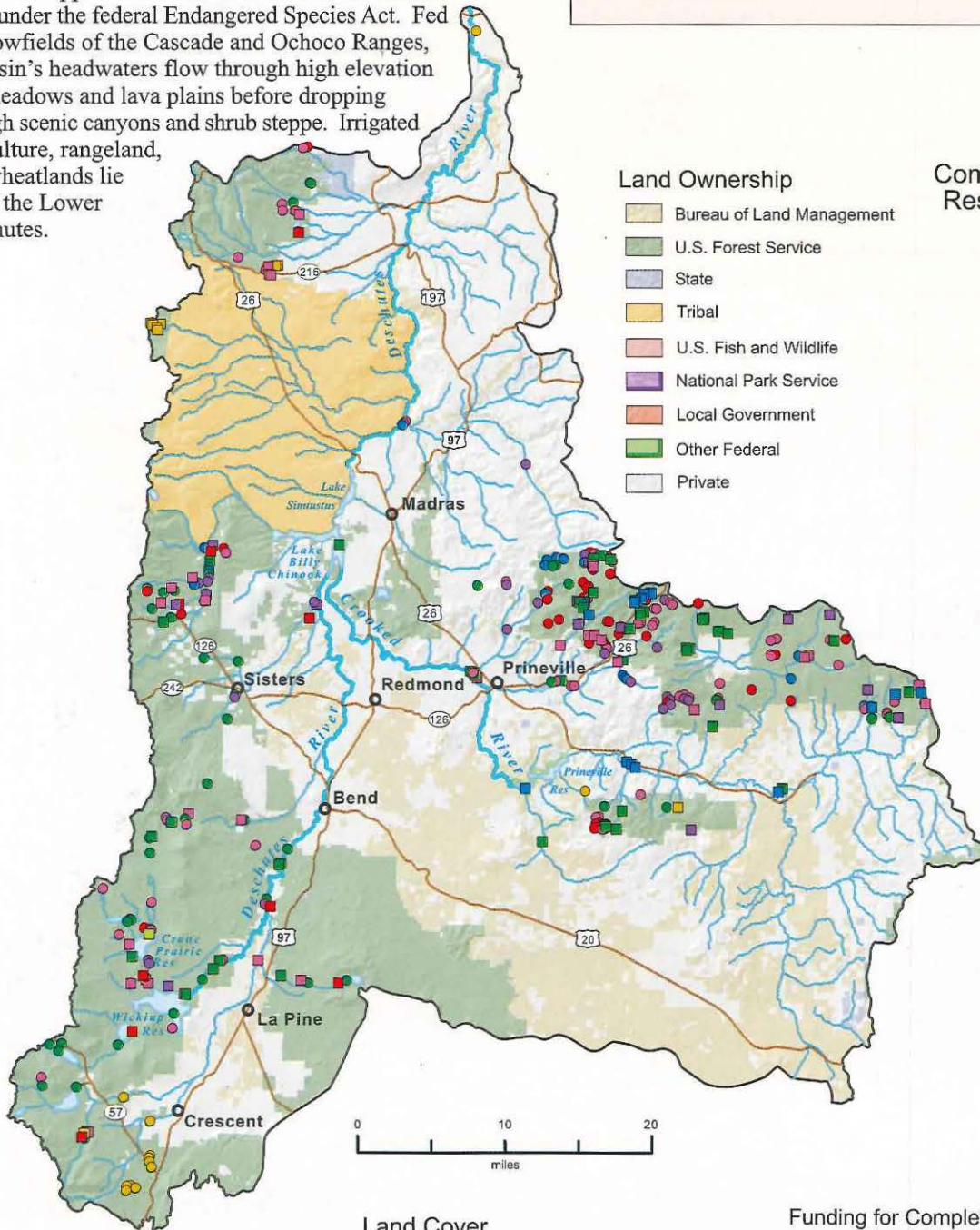
### Basin Facts

Population (2000) .....	159,047	Watershed Councils.....	7
Cities over 10,000 .....	2	SWCD's .....	6
Area (acres).....	6,886,142	<b>State or Federal Listed</b>	
		Plant Species .....	7
		Animal Species .....	3



### Restoration Issues

- Restore fish passage at culverts, dams, and diversions
- Improve range & forest health to enhance riparian condition, manage fuel loads and exotic species, and reduce sedimentation
- Improve water management to enhance instream flows in key areas

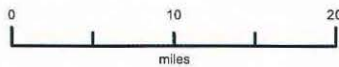


### Completed and Reported Restoration, 1995-2001

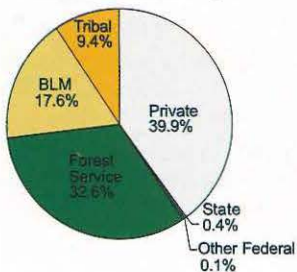
- 00-01
- 95-99
- Riparian
- Fish Passage
- Upland
- Wetland
- Instream
- Combined
- Road

### Land Ownership

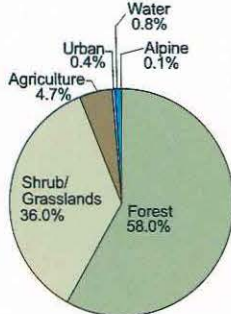
- Bureau of Land Management
- U.S. Forest Service
- State
- Tribal
- U.S. Fish and Wildlife
- National Park Service
- Local Government
- Other Federal
- Private



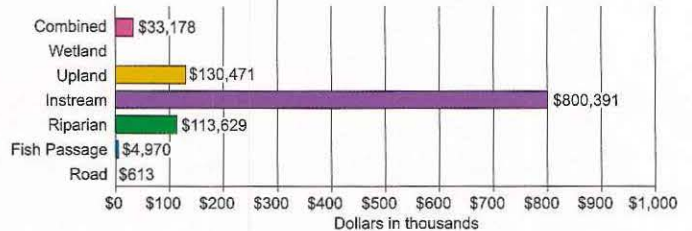
### Land Ownership



### Land Cover



### Funding for Completed and Reported Restoration by Activity Type, 2000 and 2001



Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



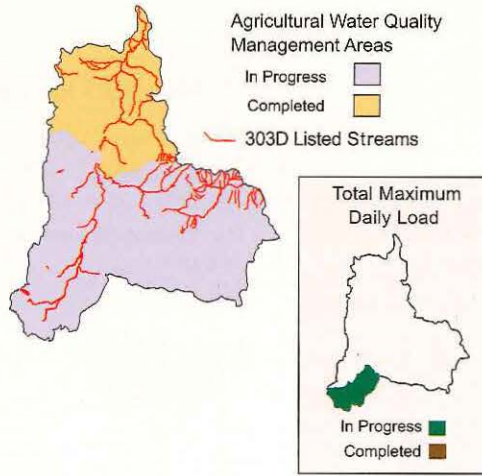
## Stressors

### Federal Endangered Species Act Salmonid Listings

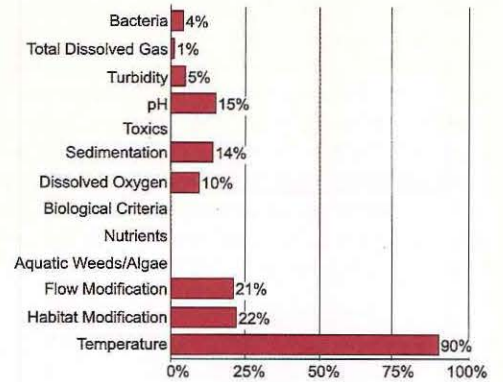


## Water Quality Concerns

### Water Quality Plans



### 303d Listed Streams by Standard



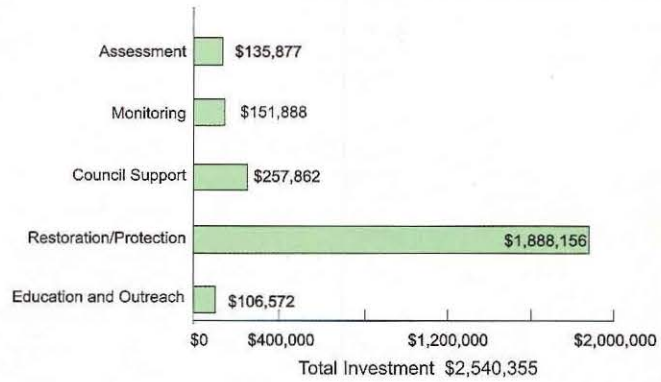
Note: Each value represents a percentage of total surveyed stream length in violation of the 303d water quality standard. Multiple violations can occur for the same length of stream.

## Investments

### Public Investment in Restoration/Conservation Projected State or Federal 2001–2003 Biennia

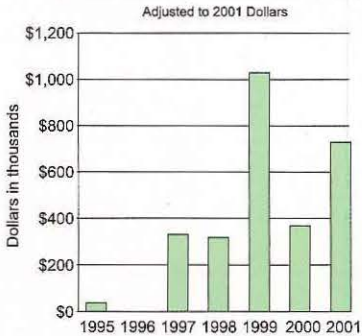
OWEB	\$2,540,355
NRCS	591,999
BPA	2,939,580
USFS	6,600,000
EPA/DEQ 319	166,261

### OWEB Investment in Restoration and Capacity 2001–2003 Biennium

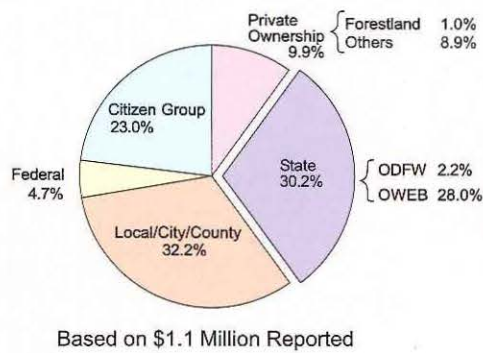


## Accomplishments

### Funding for Completed and Reported Restoration by Year, 1995–2001



### Source of Funding for Completed and Reported Restoration, 2000 and 2001



## Accomplishments

- 131 completed restoration projects were reported in 2000-01; 20 of these were on private lands
- 49 OWEB project grants for \$2,533,810 remain open (work not completed)
- Whole watershed scale restoration efforts (e.g., Buck Hollow Creek) are being implemented over many years and involve many landowners
- Basin-wide planning effort underway with many community partners
- The Warm Springs Tribe is re-introducing anadromous fish to the upper basin
- Significant instream flow enhancement projects in Tumalo & Squaw Creek

## Challenges

- Accommodating conflicting resource demands of growing population, tourism, traditional activities with watershed restoration and needs of listed fish stocks
- Funding for CREP enrollment is currently limited to the present-day distribution of anadromous fish
- Continued controversy surrounding instream flow enhancement efforts in some areas of the basin

Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)

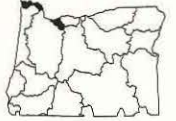


# Lower Columbia Basin

Lewis and Clark spent the winter of 1904-1905 in this basin. This region's relatively small streams drain onto floodplains and into the tidal reaches of the Columbia River. Waters flow either from the Coast Range (Skipanon, Young's, and Clatskanie rivers, Big and Gnat creeks), or from the west slope of the Cascades (the Sandy River). These streams generally have heavily forested hillsides in headwater areas and steep valleys. Nearly the entire Columbia River floodplain has been diked. Undiked areas of the floodplain support very high species diversity. Anadromous fish species listings under the federal Endangered Species Act include chum and chinook salmon, and steelhead. Maritime shipping, forestry, and wood processing are key elements of the economy in this basin. Extensive hybrid cottonwood plantations occupy much of the diked floodplain.

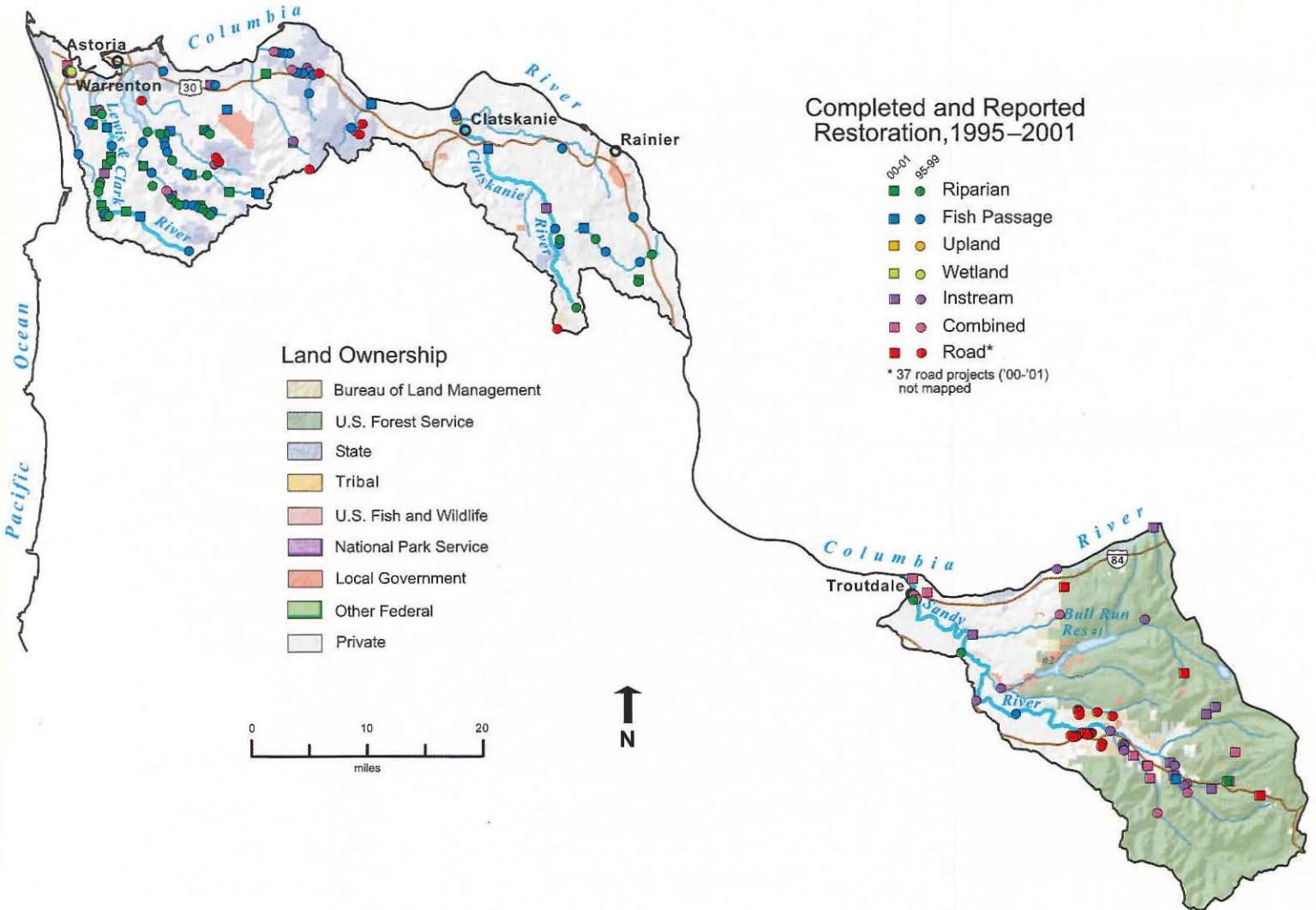
### Basin Facts

Population (2000).....	97,783	Watershed Councils.....	5
Cities over 10,000.....	1	SWCD's.....	4
Area (acres).....	771,803	<b>State or Federal Listed</b>	
		Plant Species.....	10
		Animal Species.....	3



### Restoration Issues

- Increase stream complexity and coho over-winter habitat
- Improve productivity of estuarine, diked, and lowland areas for salmonids
- Prevent or limit aquatic invasive species in estuaries & lower rivers
- Restore fish passage at culverts, dams, and dikes



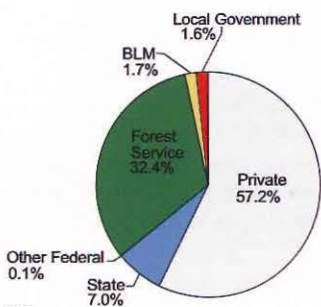
Completed and Reported Restoration, 1995-2001

- 00-01 95-99
  - Riparian
  - Fish Passage
  - Upland
  - Wetland
  - Instream
  - Combined
  - Road\*
- \* 37 road projects ('00-'01) not mapped

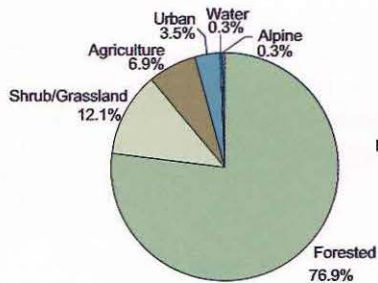
### Land Ownership

- Bureau of Land Management
- U.S. Forest Service
- State
- Tribal
- U.S. Fish and Wildlife
- National Park Service
- Local Government
- Other Federal
- Private

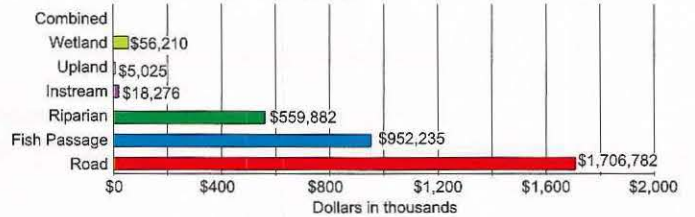
### Land Ownership



### Land Cover

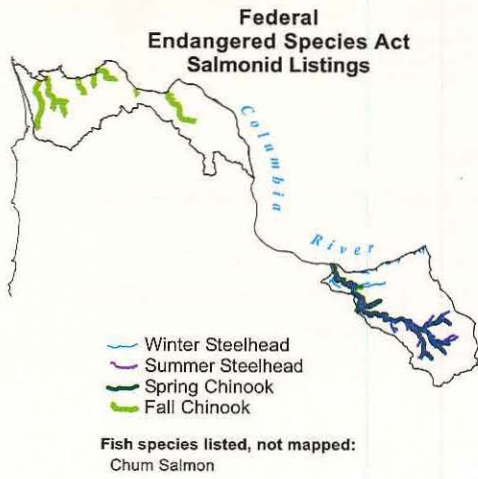


### Funding for Completed and Reported Restoration by Activity Type, 2000 and 2001

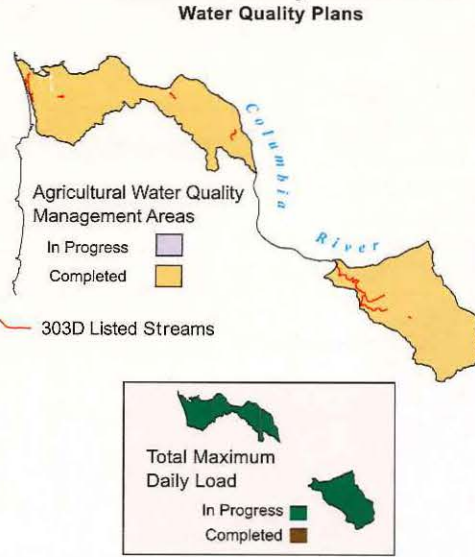


Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)

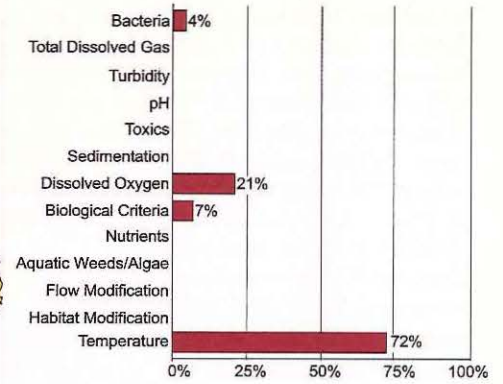
## Stressors



## Water Quality Concerns



## 303d Listed Streams by Standard



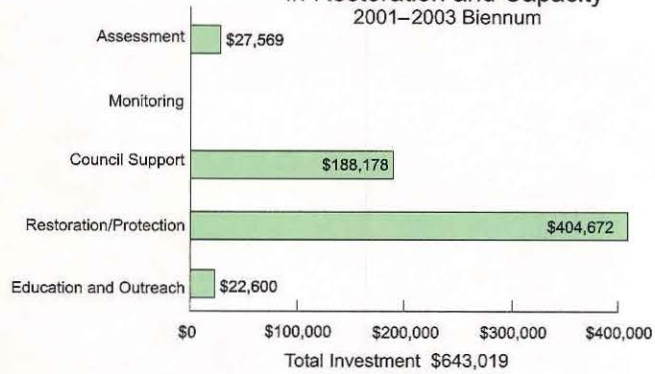
Note: Each value represents a percentage of total surveyed stream length in violation of the 303d water quality standard. Multiple violations can occur for the same length of stream.

## Investments

### Public Investment in Restoration/Conservation Projected State or Federal 2001–2003 Biennia

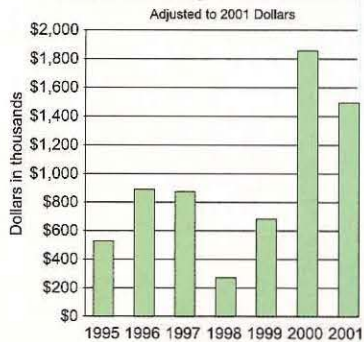
OWEB	\$643,019
NRCS	204,650
BPA	1,085,519
USFS	1,400,000
EPA/DEQ 319	155,803

### OWEB Investment in Restoration and Capacity 2001–2003 Biennium

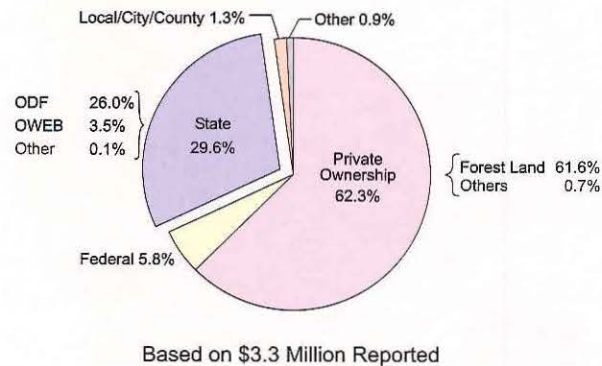


## Accomplishments

### Funding for Completed and Reported Restoration by Year, 1995–2001



### Source of Funding for Completed and Reported Restoration, 2000 and 2001



### Accomplishments

- 92 completed restoration projects reported in 2000-01; 63 of these were on private lands
- 14 OWEB grants for \$732,137 remain open in this basin (work not completed)
- Improved passage at Skipanon 8th Street dam
- Reconnection of Westport slough & Clatskanie River
- Completion of watershed assessments
- Development of Coho recovery plan for state-listed species

### Challenges

- Fish passage barriers at hatcheries
- Difficulty of re-establishing naturally produced coho populations close to intense hatchery production and harvest
- Restoration of diked tidal areas may affect management practices of many landowners
- Complex policy issues associated with Marmot Dam removal and Columbia River Channel deepening

Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



# Willamette Basin

The Willamette basin supports extensive high technology, agriculture, forestry, and wood products industries, along with roughly three quarters of Oregon's human population. Streams that flow from the Coast Range to the Willamette tend to be relatively small. Streams that drain from the Cascades are relatively large and support native cutthroat, rainbow, and bull trout, plus spring chinook salmon and winter steelhead. Large dams on most Cascade tributaries significantly alter stream flow regimes. The Willamette Valley was originally characterized by wet prairies and oak savannahs, but these have largely been replaced by urbanization and intensive agriculture.

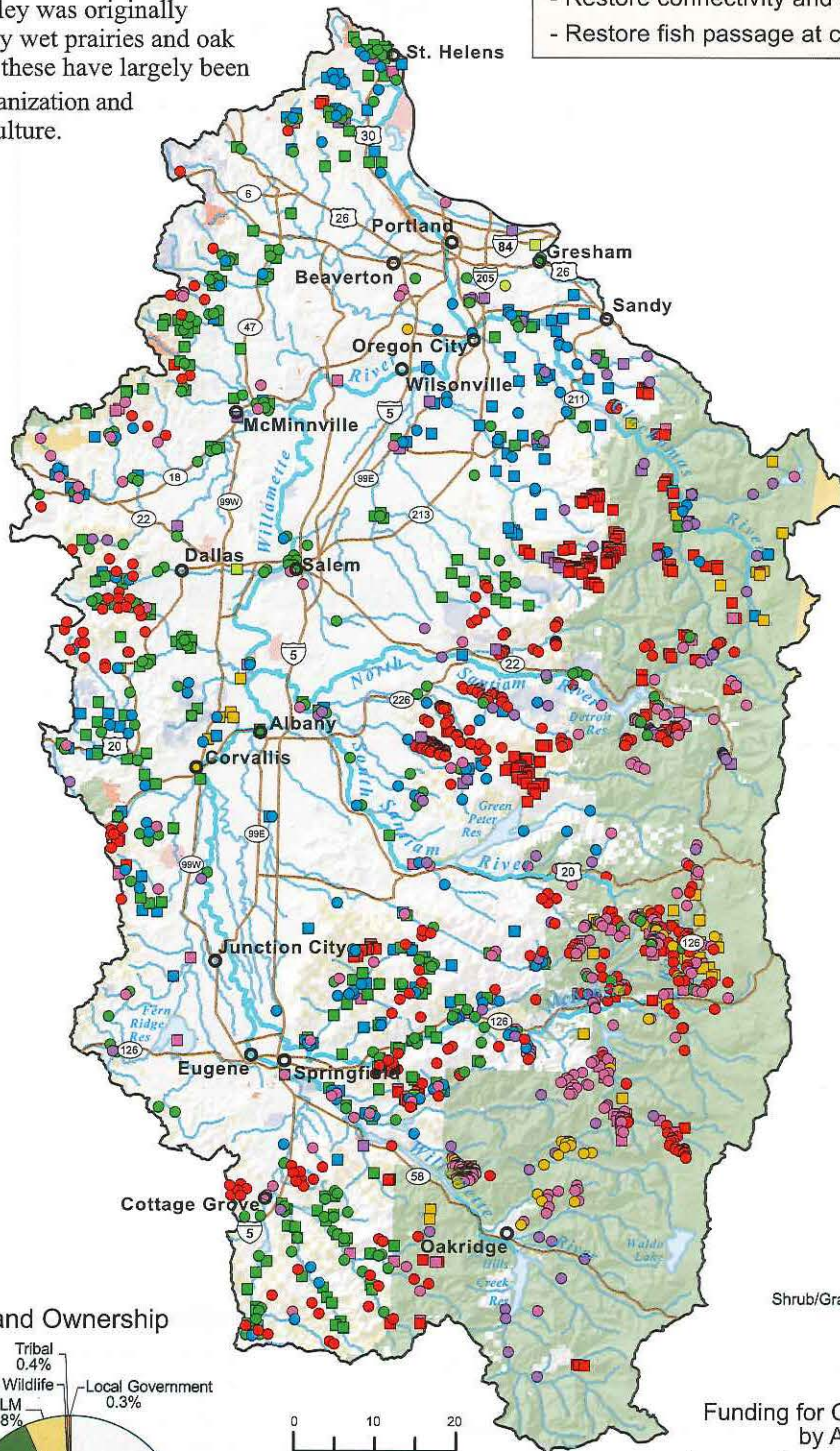
### Basin Facts

Population (2000)	2,327,548	Watershed Councils	26
Cities over 10,000	27	SWCD's	11
Area (acres)	7,337,000	<b>State or Federal Listed</b>	
		Plant Species	17
		Animal Species	11



### Restoration Issues

- Integration of urban development with watershed restoration, including identification of strategic investments
- Protection from agricultural runoff and erosion
- Restore connectivity and complexity of rivers and flood plains
- Restore fish passage at culverts & dams



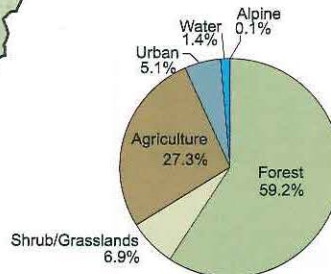
### Completed and Reported Restoration, 1995-2001



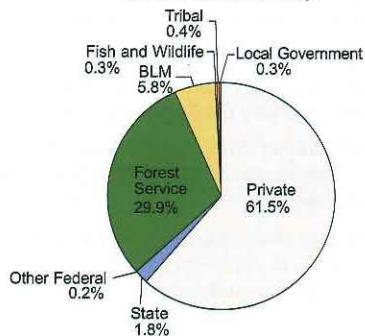
### Land Ownership



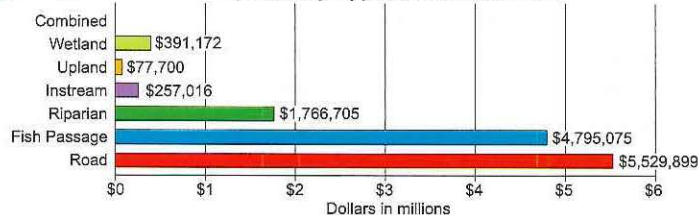
### Land Cover



### Land Ownership



### Funding for Completed and Reported Restoration by Activity Type, 2000 and 2001

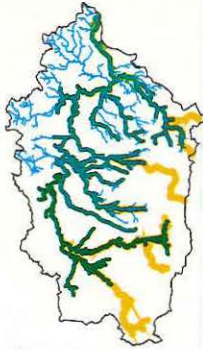


Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



## Stressors

### Federal Endangered Species Act Salmonid Listings



Winter Steelhead  
Spring Chinook  
Fall Chinook  
Bull Trout

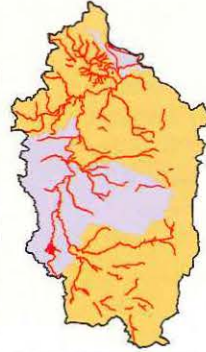
Fish species listed, not mapped:  
Oregon Chub  
Chum Salmon

## Water Quality Concerns

### Water Quality Plans



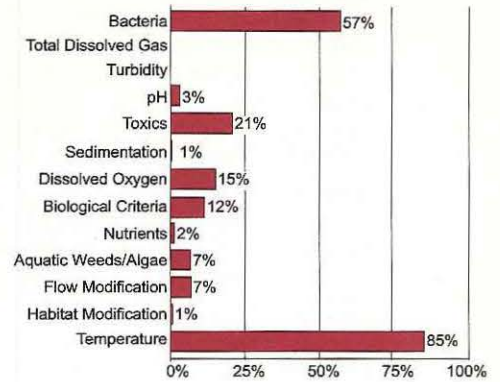
In Progress  
Completed



Agricultural Water Quality Management Areas  
In Progress  
Completed

303D Listed Streams

### 303d Listed Streams by Standard



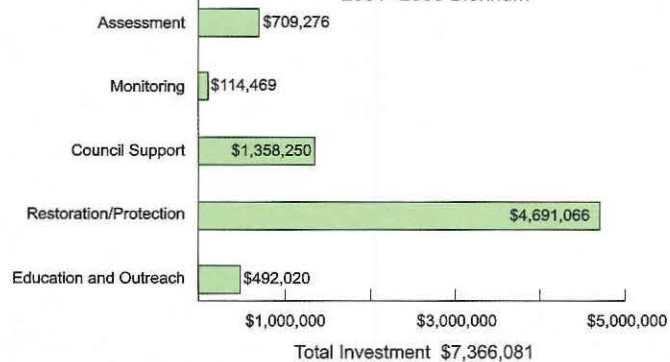
Note: Each value represents a percentage of total surveyed stream length in violation of the 303d water quality standard. Multiple violations can occur for the same length of stream.

## Investments

### Public Investment in Restoration/Conservation Projected State or Federal 2001-2003 Biennia

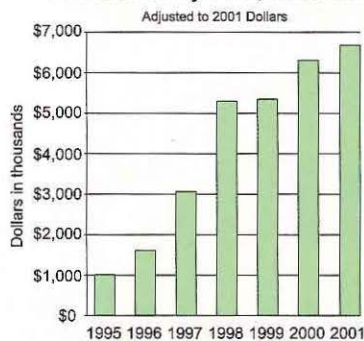
OWEB	\$7,366,081
NRCS	3,110,731
BPA	4,548,479
USFS	8,000,000
EPA/DEQ 319	909,554

### OWEB Investment in Restoration and Capacity 2001-2003 Biennium

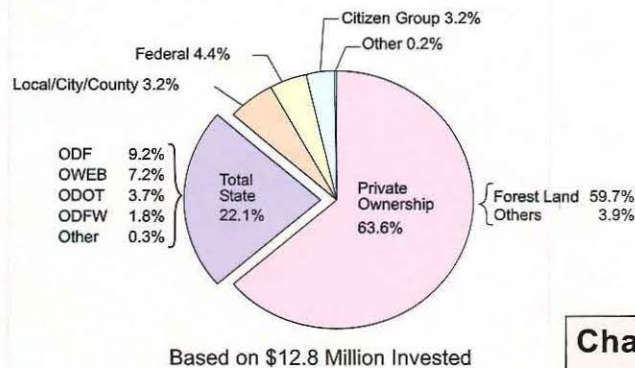


## Accomplishments

### Funding for Completed and Reported Restoration by Year, 1995-2001



### Source of Funding for Completed and Reported Restoration, 2000 and 2001



### Accomplishments

- 1001 completed restoration projects were reported in 2000-01; 736 of these were on private lands
- 135 OWEB grants for \$8,843,089 remain open (work not completed)
- Collaboration among diverse landowner interests was greatly improved
- Development of Willamette basin conservation strategy
- Willamette Planning Atlas identifies priorities

### Challenges

- Cumulative impact on water quality from intense urban, industrial, and agricultural development of basin
- Impacts of large dams on anadromous fish runs (fish passage & water temperature)
- Impact of exotic fish on native species
- Continuing loss of wetlands
- Historic river channel simplification and subsequent economic uses of the floodplain limit restoration opportunities
- Expense associated with urban watershed restoration

Note: Spatial location of reported federal projects is mapped, however, fiscal values are not noted in basin sections (see federal and statewide summary sections)



# Agency Actions

## Oregon Plan Teams

A network of interagency teams, comprised of volunteers from agencies and organizations, has been established to support local and state efforts.

The **Core Team** provides policy direction to the other state teams and coordinated direction for agency implementation efforts.

The **Implementation Team** provides a forum to identify and solve implementation issues for the Oregon Plan.

The **Outreach Team** coordinates public communication and develops outreach and educational tools to support the plan.

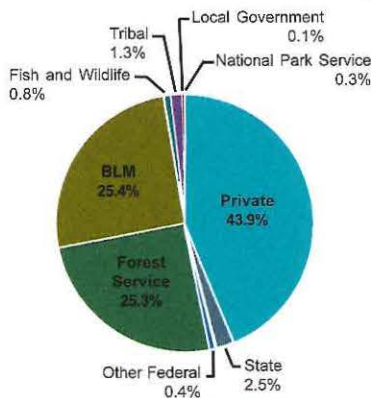
The **Monitoring Team** coordinates monitoring, data collection, and evaluation of changes in salmon populations and watershed health.

**A**gency actions that are both coordinated and integrated to better implement existing programs are a critical component of Oregon Plan success. When effectively implemented, state agency regulatory programs provide the foundation for addressing natural resources issues. Likewise, land management decisions of federal and state agencies have significant impacts on the health of Oregon watersheds, recovery of salmonids, and improvement of water quality.

### General Observations

- Compliance monitoring of Oregon's environmental protection regulations is weak.
- Fish screen installations increased, but it will still be decades before high priority diversions are all screened.
- Oregon has made tremendous progress developing agricultural water quality management plans and Total Maximum Daily Loads (TMDLs). The challenge of implementing and monitoring effectiveness remains.
- State and federal agency staff have grown accustomed to working together on a regular basis to problem solve and implement the Oregon Plan.
- Interviews with private landowners, watershed councils, and Soil and Water Conservation District (SWCD) staff across the state reveal four continuing hindrances to Oregon Plan implementation: 1) permits for restoration work can be difficult and time consuming to obtain; 2) technical assistance remains insufficient; 3) opportunities to better coordinate agency activities must be realized; and 4) landowner incentives are inadequate.
- The Conserved Water Program is an under utilized tool for restoring instream flows.
- The Conservation Reserve Enhancement Program is a largely untapped resource for riparian restoration.
- There is cautious optimism that the Northwest Power Planning Council's subbasin planning process will enhance the effectiveness of watershed restoration efforts in the Columbia Basin (information available at [www.subbasins.org](http://www.subbasins.org)).

## Statewide Land Ownership



Over half of Oregon is in public ownership and management programs for these lands are essential to recovery of listed species, improving watershed health, and sustaining local economies.



**Agency Roles and Responsibilities**

The Oregon Plan rests on a framework of state laws, rules, and executive orders designed to enhance and protect watershed health, at risk species, and water quality by governing forest and agricultural practices, water diversions, wetlands, water quality, and fish and wildlife protection. This foundation of environmental laws is consistent with the federal Clean Water Act (CWA) and Endangered Species Act (ESA), giving Oregonians greater control over Oregon’s natural resources while still meeting standards and obligations at the federal level. The pages that follow highlight the activities of some of the many agencies tasked to implement these authorities under the Oregon Plan.

**Accomplishments and Ongoing Efforts**

**Regulatory Baseline Compliance Rates**

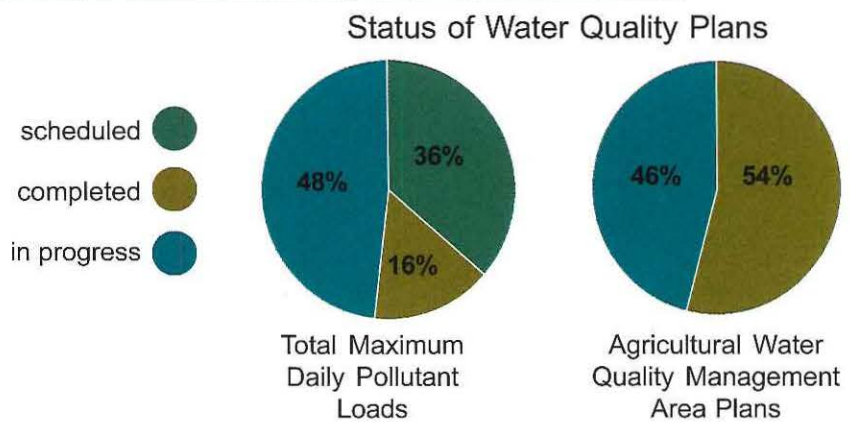
Executive Order 99-01 states, “agencies with regulatory programs will determine levels of compliance with regulatory standards and identify and act on opportunities to improve compliance levels.”

- The Oregon Department of Forestry (ODF) evaluates Oregon Forest Practices Rules compliance and effectiveness. Statewide compliance in riparian areas is over 95 percent and 70 percent of new stream crossings on private lands pass fish. Monitoring led to recommendations for revision of rules on small streams, landslides, public safety, and roads.
- The Oregon Department of Agriculture (ODA) Confined Animal Feeding Operation inspection program intends to inspect every permitted operation at least once each year. In 2001, 72 percent (355/494) of the permitted sites were inspected, and 61 percent of these were in compliance with permit conditions.
- Meaningful measures of compliance rates for other state regulatory permit programs (e.g., water withdrawals, removal and fill permits, permitted pollutant discharges, effectiveness of fish screens at water diversions) are not fully developed or suffer from lack of funding for implementation.

**Water Quality Restoration**

- Agricultural Water Quality Management Area Plans are complete in 21 of 39 planning units and the remaining 18 are expected to be completed by winter 2003-04.
- TMDL Water Quality Management Plans are complete in 14 of 91 subbasins, are underway in 44 subbasins, and are scheduled for 33. All TMDLs are scheduled for completion by 2007.

*DEQ and ODA use a comprehensive approach to address water quality problems under Clean Water Act requirements. DEQ calculates pollution load limits for each subbasin in the state, called a TMDL. Working with local advisory committees, ODA develops plans to help agricultural landowners and operators identify issues and measures needed to improve water quality in their area to be incorporated as part of a TMDL.*



Agency Actions

- Roads have been surveyed on all state forestlands and improvements prioritized. From 1995 – 2001 approximately 1,618 miles were surveyed (57 of those were surveyed in 2000-01).

**Water Quantity Restoration**

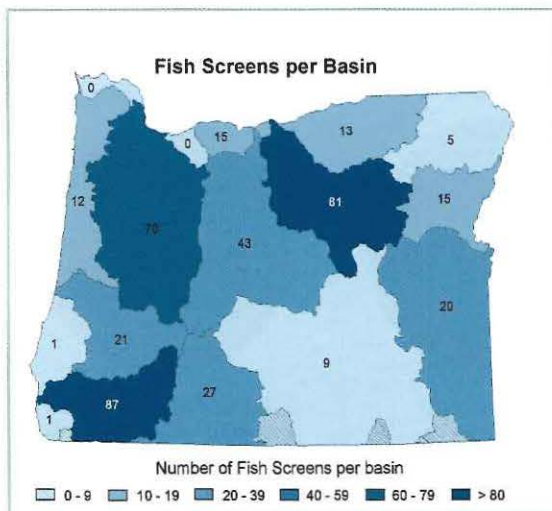
- Statewide priority areas for streamflow restoration were identified in 2002, and are used by watermasters, watershed councils, SWCDs, the Oregon Water Trust, OWEB, and others to identify key stream reaches where instream leases, conservation projects, and transfers would most benefit critical fish runs.
- Protected instream flows have increased by nearly 300 cubic feet per second since 1997. These increased flows are attributable to a combination of leases, transfers, and the conserved water program:

	1997	2002
<b>Leases</b>	92.8 CFS	217.5 CFS
<b>Transfers</b>	2.1 CFS	152.8 CFS
<b>Conserved Water Program</b>	0.1 CFS	0.6 CFS
<b>TOTAL</b>	95.0 CFS	370.9 CFS

**Fish Management and Passage**

- A Native Fish Conservation Policy was adopted in fall 2002 after statewide public review. This policy replaces Oregon’s former wild fish policy, and will result in formal guidance that matches the efforts already in place to ensure that hatchery policies and programs support wild fish recovery.
- Ocean harvest rates of coastal coho continue to be strictly managed in accordance with recovery needs.
- Fish passage surveys were completed on all state forest-land roads, and for all U.S. Forest Service (USFS) managed lands.
- Estimates of the number of water diversions in state waterways exceed 70,000. The state has identified 3,000 that need fish screens on an urgent basis, and is mapping these to aid in further prioritization, including information on ownership, water rights, location, diversion type, and operational status of any existing fish screens. Completion is targeted for 2005. In recent years accelerated funding provided greater technical support and materials for private landowners to install fish screens at 419 of these high priority water diversions.
- State and federal agencies have collaborated to develop basin-scale fish passage barrier prioritization guidance for use around the state.

Work is underway to identify and assess water diversions statewide. In recent years fish screens were installed at 419 diversions, but screens are still needed at about 3,000 high priority water diversions.



**Agency Support for Voluntary Restoration**

- The Division of State Lands (DSL) contracted for Local Wetland Inventories in 25 cities and urban areas.
- Many state and federal agency staff have been assigned to assist private landowners, SWCDs, and watershed councils to design and implement habitat restoration projects. A complete accounting of all time spent on these activities is unavailable. However, one example is available – ODFW habitat biologists devote roughly 6,000 hours per biennium helping private landowners with their projects.
- A statewide survey of potential for landowner enrollment in the Conservation Reserve Enhancement Program was conducted. The survey identifies both the scope of eligible enrollments as well as



technical assistance needs for each county. The report provides a foundation for significantly enhancing landowner enrollment.

- The federal Regional Ecosystem Office (REO) reported completion of about 1,200 restoration projects on federal lands (one third of total reported projects on all lands) with a value of over \$18 million in 2000 and 2001 by the U.S. Forest Service, the Bureau of Land Management (BLM), and the U.S. Fish and Wildlife Service (USFWS). Contributions of restoration work on federal lands complement work on private lands to improve water quality and recover ESA-listed fish species. The statewide work reported by REO is included in summaries provided in the Voluntary Restoration Action section of this report. For more information about investments of individual federal agencies please see the Federal Restoration section at the end of the basin summaries in this report (pp. 36-37).
- Using Bonneville Power Administration (BPA) funding, the Northwest Power Planning Council (NWPPC) is making grants available for subbasin planning in all Oregon tributaries to the Columbia River. This is an opportunity to obtain financial support from the NWPPC for basin-wide planning that should have a significant role in integrating recovery work at federal, state, and local levels.

### Challenges Ahead

**Regulatory Baseline:** Systematic evaluation of regulatory compliance rates and effectiveness of regulatory programs needs to be expanded.

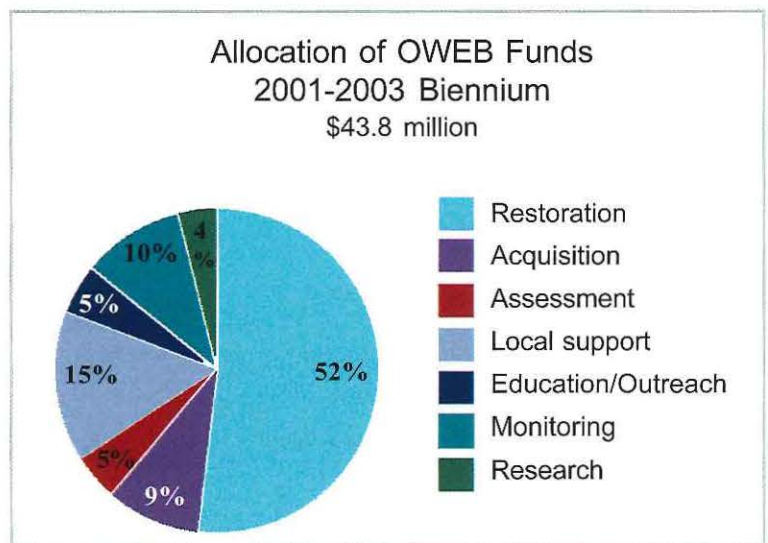
**Water Quality Plans:** Moving from planning to implementation of Total Maximum Daily Load and Agricultural Water Quality Management Area plans is the next step. A corresponding challenge will be devising methodologies that correlate restoration with implementation activities.

**Permitting:** Opportunities for permit streamlining need further examination in order to eliminate acknowledged barriers to restoration work.

**Technical Assistance:** In spite of recent progress, both government coordination and availability of technical assistance need further improvement. Recent surveys identified technical assistance and coordination as a significant limit to conservation/restoration action by landowners.

**Fish Management:** Implementation of the Native Fish Conservation Policy will require coordination with other agency programs and the participation of diverse interests in order for the program to be effective.

**Water Quantity:** Stabilizing or enhancing instream flows for fish is critical to success of the Oregon Plan in a large number of watersheds but returning water instream is a controversial issue for many.

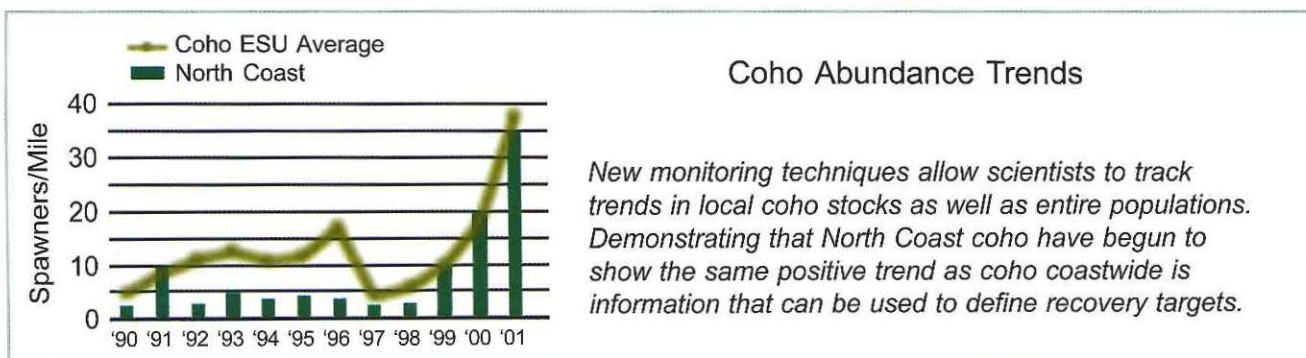


# Monitoring

**M**onitoring under the Oregon Plan includes documenting the current condition of watershed health, evaluating changes over time, and determining the effectiveness of actions and programs. OWEB is charged by statute to coordinate Oregon Plan Monitoring Program activities among natural resource agencies to answer a variety of questions related to watershed health, water quality, and salmon recovery. This requires an interdisciplinary approach to tracking trends of key indicators over time so that implementation efforts can be adapted to maintain progress towards watershed protection and restoration goals.

### General Observations

- A comprehensive strategy to guide an integrated Oregon Plan monitoring effort has been completed and adopted by OWEB with support of state natural resource agencies, NOAA Fisheries, other federal agencies, and the state's Independent Multidisciplinary Science Team.
- As the monitoring strategy is being implemented, it is imperative that consensus be achieved on the specific policy and science questions that Oregon's long-term monitoring efforts will be designed to answer over time.
- Where Oregon has adequately invested in monitoring, data have been very useful, even resulting in a decision by NOAA Fisheries to not list Klamath Mountain Province steelhead under the federal Endangered Species Act.
- Local monitoring is essential to understanding watershed health and to setting restoration priorities. When properly designed, local efforts also provide data critical to statewide programs.
- Oregon Plan monitoring implementation has been strongest on the "westside" (those basins west of the Cascades). Implementation must now be expanded statewide.
- Emphasis on status and trends monitoring yields considerable data, but further analysis, synthesis, and effectiveness monitoring is needed before we can correlate recovery efforts to long-term trends in salmon and watershed health.
- Research has focused on wadeable fish-bearing streams, leaving gaps in understanding about larger waterbodies such as estuaries, large rivers, and oceans.





**Oregon Plan Monitoring Strategy:** The Oregon Plan Monitoring Team, chaired by OWEB, consulted with the state's Independent Multidisciplinary Science Team (IMST) to develop a strategic framework to guide monitoring under the Oregon Plan. The Monitoring Strategy is designed to integrate existing monitoring efforts, identify gaps in current programs, and direct future assessments of the Oregon Plan. It describes the scope of monitoring and is intended to guide Oregon Plan partners in an integrated effort to evaluate the effectiveness of Oregon Plan restoration projects and programs. See page 49 of this report for an overview of the Monitoring Framework and [www.oweb.state.or.us](http://www.oweb.state.or.us) for a copy of the entire Monitoring Strategy.

### **Accomplishments and Ongoing Efforts**

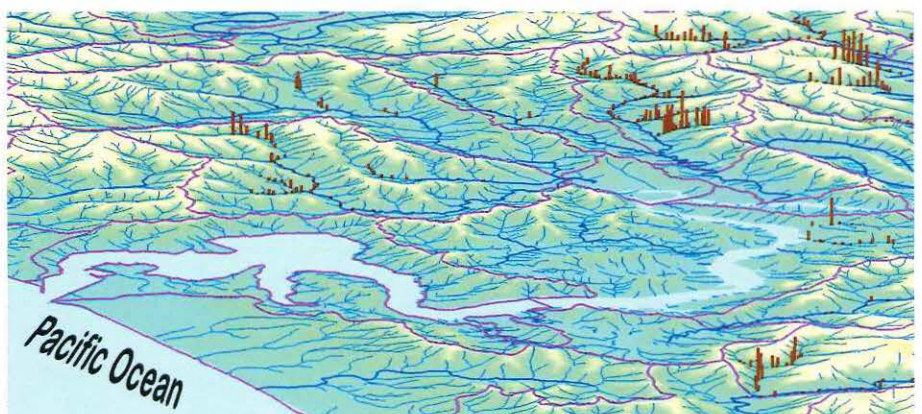
**Oregon Plan Monitoring Program:** New monitoring and enhancements to existing programs have been achieved by better coordination among state agencies. These improvements are also designed to complement federal agency programs and support local monitoring projects.

**Improved Methods/Better Data:** A new sampling framework used by the Oregon Department of Fish and Wildlife (ODFW) and the state Department of Environmental Quality (DEQ) to monitor salmon populations, water quality, and habitat increased the accuracy of status and trend monitoring by 30-40 percent. Better quality information like this will be key to developing realistic and measurable recovery goals.

**Support for Policy Decisions:** Oregon's investments in monitoring provide critical data to federal Endangered Species Act decision making. Most recently, Klamath Mountain Province steelhead were not listed as "threatened" under the ESA based on the use of Oregon Plan monitoring data that showed steelhead abundance and distribution did not warrant a listing. Continued monitoring will determine if steelhead continue to do well following the 2002 fire season. Without such information, the listing process is likely to be reopened.

**Comprehensive Coastal Monitoring:** Monitoring in coastal watersheds provides accurate annual assessments of coho populations, stream and riparian habitat, water quality, and biotic condition. Based on statistical sampling design, 100 coho spawning surveys, 50 juvenile surveys, 50 habitat surveys, and biotic assessments are completed annually in each of five coastal coho monitoring areas. While efforts need not be as comprehensive in every basin across the state, an integrated strategy must be implemented beyond coastal basins.

The MidCoast Watershed Council has mapped juvenile coho abundance in many of their streams. Comparing patterns of fish abundance (bars represent juvenile coho density/pool in Yaquina Bay basin) with habitat and water quality assessments, helps the Council identify and prioritize restoration opportunities.









In the 2001-03 biennium, the OWEB Board considered and approved requests to fund three research grants. Each was consistent with priorities established by the OWEB Board and received strong favorable scientific peer review. The funded projects are:

- 1) Willamette Toxics and Fish Deformities. This work represents a first step toward discovering the causes of fish deformities observed in certain stretches of the Willamette River.
- 2) Hinkle Creek Paired Watershed Study. This work, funded by several partners including the forest industry, represents a modest effort to evaluate the impact of current forest practices rules on fish and water quality.
- 3) Coastal Hatchery Improvement Project. OWEB funding to date is only the minimum needed to support a spartan beginning of research needed to explore establishment of conservation hatcheries. Considerable additional funding will be required to continue this work beyond July 2003.

### Challenges Ahead

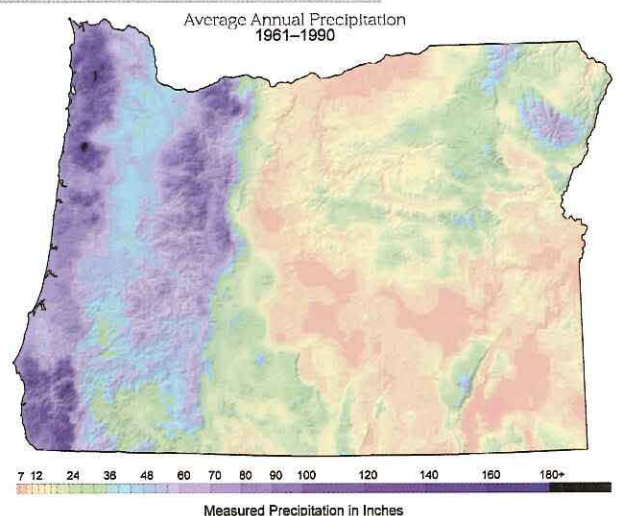
**Landscape Perspective:** Modern resource science considers urban, agricultural, and forested landscapes as connected and treats water quality, water quantity, and fish populations as interrelated factors that must be managed through integrated, coordinated actions. The improved coordination of agencies under the Oregon Plan has not been able to overcome the barriers to effective integrated action inherent in the present segregated administrative structure of natural resource management agencies.

**Restoration and Program Effectiveness:** Scientifically correlating the effectiveness of restoration activities to changes in the physical environment and trends in the recovery of salmonids poses a tremendous challenge. Just as important, and even more challenging, is developing credible projections of the anticipated impacts of Oregon Plan restoration efforts.

**Freshwater and Ocean Survival:** Recent favorable ocean conditions have produced large returns of salmonids, mainly hatchery fish, in the Pacific Northwest. This is no guarantee, however, of long-term viability. Documenting relative effects of freshwater and ocean environments requires monitoring like the life-cycle monitoring sites established in some coastal watersheds. Improvement of freshwater conditions is crucial to sustaining viable stocks during the next downturn in ocean or climatic conditions.

**Scientific Uncertainty:** A major challenge for the IMST and the Oregon Plan is the need to make decisions when the technical information for these decisions is not as robust as desired.

*Precipitation has a profound influence on watershed conditions, fish habitat, and our ability to distinguish the effectiveness of restoration activities. Oregon experiences significant interannual variability and is characterized by very distinct regional patterns of precipitation. Effective management policies, programs, and restoration must take both spatial and temporal precipitation variability into consideration.*





## Observations of the OWEB Board

OWEB Board members and staff worked with many people around the state as part of conducting Board meetings and preparing this biennial report. Naturally, a wide variety of opinions have been expressed about challenges and opportunities for implementation. Many of these ideas are reported in the individual basin summaries of this report. Several observations about watershed restoration and Oregon Plan implementation are common to many basins and therefore merit special note.

### **Observations regarding the physical status of watersheds**

- Portions of streams in every basin in Oregon continue to suffer from water quality problems, often from multiple types of land use activities.
- Insufficient streamflows pose significant limitations to listed fish stocks in all basins.
- Inadequate riparian habitat and stream complexity limiting fish production and recovery efforts occur in portions of nearly all basins.
- Significant progress is being made addressing fish passage barriers in most basins on both private and public lands; however, much work still remains to be done.
- Management of estuaries and uplands has a profound effect on water quality, quantity, and recovery of listed fish runs. Oregon Plan implementation efforts often lack adequate emphasis on these landscape issues.
- Watershed assessments completed by local citizens have significantly helped to identify key limiting factors present in individual watersheds and guide local restoration activities.

### **Observations regarding people and government**

- Long-term success of the Oregon Plan will require persistent and strong leadership from the Governor, the Legislature, and local citizens.
- The relationship between the health of local economies and watersheds is inextricably linked, and Oregon Plan implementation efforts are most successful where this is openly recognized and discussed.
- Whether real or perceived, many Oregonian's believe that the process for obtaining permits for restoration work is complicated, time consuming, or both, thereby impeding implementation and willingness for landowners to participate in voluntary restoration projects.
- Successful implementation of the Oregon Plan is unavoidably dependant on sustained funding:
  - *For agencies* – Stable budgets supporting regulatory programs and initiatives providing technical assistance and support for voluntary restoration work are critical.
  - *For watershed councils and Soil and Water Conservation Districts* – Base funding to support the capacity of these local entities to work with citizens and landowners is essential if they are to remain effective at supporting Plan implementation.
  - *For private landowners* - An aggregated source of grant funds administered competitively to help fund projects that assist landowners willing to undertake restoration projects provides a powerful economic incentive to fulfill the goals of the Oregon Plan.



# Recommendations of the OWEB Board

Senate Bill 945 (ORS 541.405) directs the OWEB Board to make "...recommendations for enhancing the effectiveness of the Oregon Plan."

The following are areas requiring attention and concerted effort by Oregon Plan partners over the next two years. OWEB alone cannot implement action to address all the recommendations but will work to facilitate progress.

### ***Secure Federal Recognition of the Oregon Plan:***

All promising options for securing formal federal agency recognition of the Oregon Plan as a vehicle to meet requirements of the Endangered Species and Clean Water Acts should be examined and pursued. Formal recognition and linkage to these federal environmental programs would provide measurable benefits to Oregon's natural resources, private landowners, and local economies. The substantial effort required to achieve federal acceptance must be weighed carefully by all Oregon Plan partners before proceeding.

### ***Develop and Implement Basin Restoration and***

***Program Priorities:*** Establishing clear priorities at a basin or other meaningful scale is needed to guide and focus restoration investments and Oregon Plan program initiatives into the future. Local, state, and federal participants in the Plan continue to accomplish meaningful progress improving key habitat, water quality, and watershed conditions in every part of the state. Sustaining effective implementation over time, however, will require these efforts to be more strategically targeted and tailored to meet the most critical resource and community needs of each basin.

***Tracking Restoration and Recovery Trends:*** Sustained program support and investment from different Oregon Plan partners is needed to maintain and expand Oregon's ability to monitor, quantify, and report progress of ongoing restoration and recovery efforts. Agreement on a small, defined set of indicators designed to help Oregonians assess watershed health over time could significantly enhance ongoing monitoring efforts by focusing and coordinating investments in data collection and reporting activities. Assessing the effectiveness of the Plan in the future depends on our work and commitment to implementing monitoring and reporting efforts now.

***Improve Accessibility of Information:*** A lack of consistent sharing and coordination of key information and data by Oregon Plan partners continues to inhibit and fragment restoration planning, implementation, and reporting. In the next biennium, it will be a priority for OWEB to obtain commitments for improving the accessibility of data and information for a variety of uses.

### ***Enhance Citizen Understanding of the Oregon Plan:***

Successful implementation of the Oregon Plan over the long term will depend on informed backing by Oregon's citizens. Enhanced outreach efforts to diverse constituencies across the state are needed to develop a common understanding of the Oregon Plan among all Oregonians. We must communicate, using more effective messages and channels, that Oregon Plan actions to enhance fish habitat, improve water quality, and restore watersheds are working to support local values and economies.

# Data Sources and Credits

## Cartography and GIS

University of Oregon InfoGraphics Lab, Department of Geography

**Project Manager:** Kenneth S. Kato

**Project Director:** James E. Meacham

**Researchers:** Nicholas P. Kohler, Mike Engelmann

**Student Cartographers:** Erin Aigner, Craig Greene, Kevin Mock, Eric A. Sproles, Erik R. Strandhagen

## Data Sources

**AWQMAP Information:** ODA

**Coho abundance:** ODFW

**Elevation:** USGS (10 meter DEM)

**EMAP Sampling:** ODFW

**ESA data:** ODFW, Oregon Natural Heritage Program, NOAA Fisheries, USFWS, StreamNet

**Fish passage:** ODFW

**Land Cover:** Oregon Natural Heritage Program (GAP Analysis)

**Land Ownership:** BLM

**Oregon Plan Basins:** OGDC (5th field watersheds), OWEB

**OWEB Grant Information:** OWEB

**Populated Places:** USGS (GNIS)

**Population:** PSU, Population Research Center

**Projected Agency Investments:** respective agencies

**Precipitation:** *Atlas of Oregon 2001*, University of Oregon Press

**Oregon Watershed Restoration Inventory:** Completed projects partially or entirely funded by OWEB and private landowner projects voluntarily reported.

**Grande Ronde Model Watershed:** Cecilia Noyes. The GRMWP is composed of local representatives, landowners, tribes and agency personnel involved with the multiple uses of natural resources within the Grande Ronde River Basin.  
[www.fs.fed.us/pnw/modelwatershed/](http://www.fs.fed.us/pnw/modelwatershed/).

**Regional Ecosystem Office (REO):** Dale Gunther. The REO is an interagency staff supporting the Northwest Forest Plan.  
[www.reo.gov](http://www.reo.gov).

**Natural Resources Conservation Service (NRCS):** Danny Burgette

**Roads:** ODOT

**Streams:** EPA, StreamNet, USGS

**TMDL/303(d) Information:** DEQ

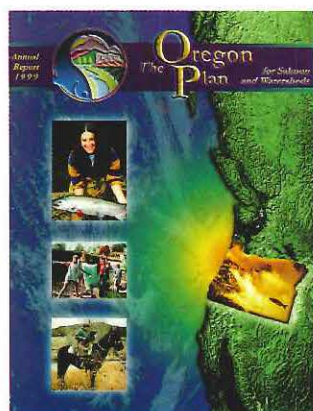
**Yaquina coho abundance:** Justin Mills, MidCoast Watershed Council

**Production Team:** Jay Nicholas, Cathy Pearson, and John Ledges. Great effort has been made to review this report for errors. Undoubtedly, some errors remain—we hope that these provide an opportunity for learning and a smile.

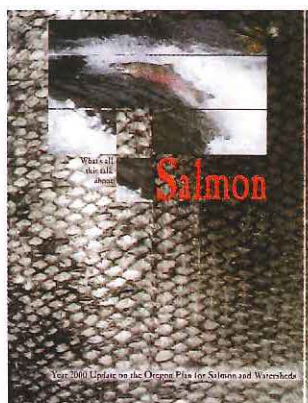
**Front cover photo of salmon:** © Richard Grost, [www.richardgrost.com](http://www.richardgrost.com)

**Cover theme:** Monitoring frames effective investment in restoration and recovery of listed species.

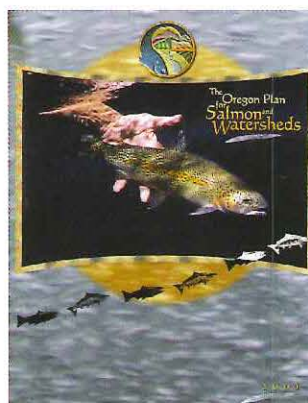
**Back cover:** Aerial view of Whalen Island



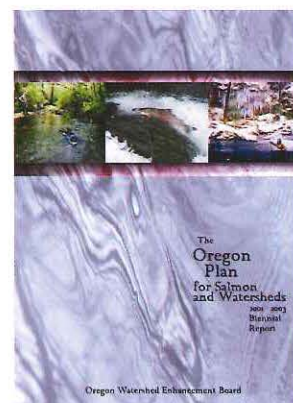
1999



2000



2001



The Oregon Plan for Salmon and Watersheds Biennial Report 2001-2003

Oregon Plan Annual Reports



## OWEB Board Members 2001 - 2002

**Mark Reeve** (Board Co Chair) serves as representative from the Environmental Quality Commission. He is an attorney and lives in Portland.

**Mark Suwyn** (Board Co Chair) is chairman of the Board and CEO for Louisiana Pacific Corporation Portland Division. He serves as a public member of OWEB, and resides in Portland.

**George Brown** is Dean emeritus of the Oregon State University College of Forestry in Corvallis, Oregon. He retired in August 1999 after 33 years of service to OSU including the past 10 years as Dean. He serves as a public member of OWEB, and resides in Corvallis.

**Bobby Brunoe** is Head of the Natural Resources Division for the Confederated Tribes of the Warm Springs Indian Reservation. He serves as the tribal representative on the OWEB Board, and lives in Bend.

**Ron Nelson** is Secretary-Manager of the Central Oregon Irrigation District, in Redmond Oregon. He serves as a public member of OWEB.

**Jane O'Keeffe** is a Lake County Commissioner and serves on the Southeastern Oregon Resource Advisory Council for BLM. She serves as a public member of OWEB, and lives in Adel.

**Jack Shipley** serves as chair of the North Applegate Watershed Protection Association and is a board member of the Applegate Partnership. He is a private landowner in Medford, and serves as a public member of OWEB.

**Zane Smith** serves as representative from the Fish and Wildlife Commission. He is currently a forester and international natural resource policy consultant in Springfield, where he lives.

**Dan Thorndike** is General Counsel for Medford Fabrication. He serves as the representative from the Water Resources Commission, and lives in Medford.

**Brad Witt** is secretary-treasurer of the Oregon AFL-CIO. He serves as the representative from the Oregon Board of Forestry, and lives in Clatskanie, Oregon.

**Pat Wortman** serves as the representative from the Board of Agriculture. He runs a cattle ranch near Enterprise, Oregon. He is also a former Willowa County Commissioner.

**Hugh Barrett\*** is the Rangeland Management Specialist for the Oregon/Washington State Office of the BLM, and serves as the representative of the U.S. Bureau Land Management.

**Peter Bloome\*** is Associate Director of the Oregon State University Extension Service in Corvallis, Oregon. He serves as representative of OSU Extension Administration.

**Alan Christensen\*** is the Regional Environmental Coordinator at the Forest Service Regional Office in Portland, Oregon, and serves as representative of the U.S. Forest Service.

**Gayle Norman\*** is the Partnership Liaison with the U.S. Department of Agriculture Natural Resource Conservation Service in Portland Oregon, and represents them on the OWEB Board.

**Dave Powers\*** is a Senior Policy Advisor for Natural Resources at the U.S. EPA in Portland, Oregon, and represents them on the OWEB Board.

**Michael Tehan\*** is the Oregon State Branch Chief for the Habitat Conservation Division of the National Oceanic and Atmospheric Administration, and represents them on the OWEB Board.

\* non-voting members



## OWEB's Vision

*"To help create and maintain healthy watersheds and natural habitats that support thriving communities and strong economies."*



UNDERWRITERS LABORATORIES INC.

ENVIRONMENTAL MANAGEMENT SYSTEM REGISTRATION

# Novellus Systems, Inc.

4000 North First Street, San Jose, CA 95134

(see the Certificate Addendum for off-site locations)

Underwriters Laboratories Inc.® (UL) issues this certificate to the Firm named above, after assessing the Firm's environmental management system and finding it in compliance with

## ISO 14001:1996

### ENVIRONMENTAL MANAGEMENT SYSTEM

for the following scope of registration

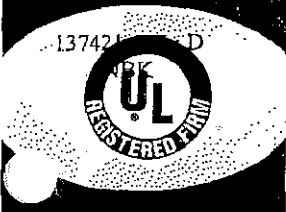
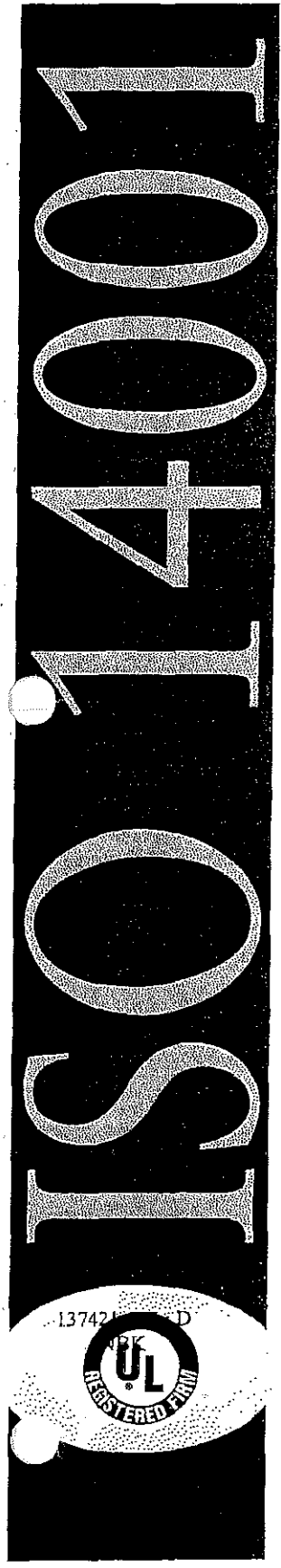
The Environmental Management System of Novellus Systems, Inc. associated with the design, development, manufacture, installation, and servicing of semiconductor production equipment used in the semiconductor manufacturing industry at 4000 North First Street, San Jose, CA, U.S.A. This also includes the following offsite locations:

- Building 3950, North First Street, San Jose, CA 95134
- Building 3011, North First Street, San Jose, CA 95134
- Building 4041, North First Street, San Jose, CA 95134
- Building 3970, North First Street, San Jose, CA 95134
- Building 3960, North First Street, San Jose, CA 95134
- Building 3940, North First Street, San Jose, CA 95134
- 81 Vista Montana, San Jose, CA 95134
- PTC Wilsonville Facility, 26277 SW 95<sup>th</sup> Avenue, Suite 402, Wilsonville, OR 97070
- SIG Operations, 2730 Junction Avenue, San Jose, CA 95134
- SIG Operations, 404 E. Plumeria Drive, San Jose, CA 95134
- 11155 SW Layeton Drive, Tualatin, OR 97062

This environmental management system registration is included in UL's Directory of Registered Firms and applies to the operations of the address(es) shown above. By issuance of this certificate the firm represents that it will maintain its registration in accordance with the applicable requirements. This certificate is not transferable and remains the property of Underwriters Laboratories Inc. ®.

File Number: A8682  
 Volume: 1  
 Issue Date: March 1, 2000  
 Revision Date: March 6, 2002  
 Renewal Date: March 1, 2004

S. Joe Bhatia  
 Executive Vice President and  
 Chief Operating Officer - International



**UNDERWRITERS LABORATORIES INC.**  
**ENVIRONMENTAL MANAGEMENT SYSTEM REGISTRATION**

**ADDENDUM**

File No: A8682

Volume: 1

Registered Company:

**Novellus  
Systems, Inc.**

4000 North First Street, San Jose, CA 95134

The following off-site locations are included under this registration for the functions as identified in the scope of registration and appearing on the Certificate of Registration:

Building 3950  
North First Street  
San Jose, CA 95134

Building 3011  
North First Street  
San Jose, CA 95134

Building 4041  
North First Street  
San Jose, CA 95134

Building 3970  
North First Street  
San Jose, CA 95134

Building 3960  
North First Street  
San Jose, CA 95134

Building 3940  
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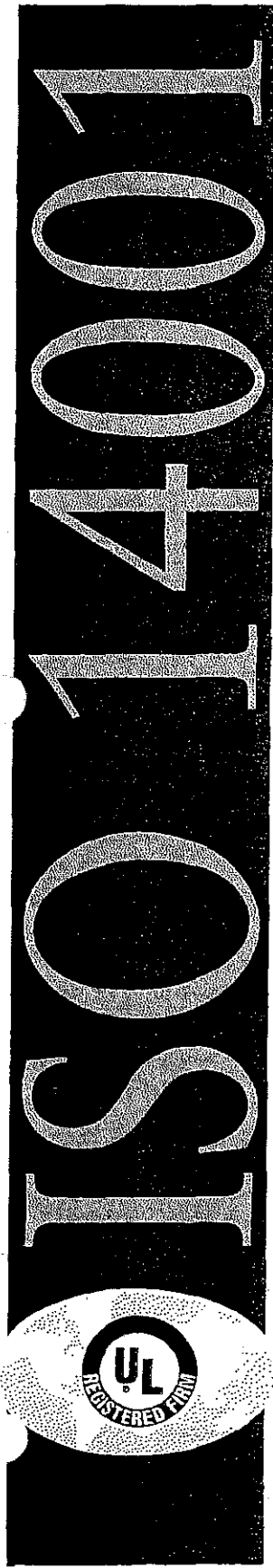
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SIG Operations  
404 E. Plumeria Drive  
San Jose, CA 95134

SIG Operations  
2730 Junction Avenue  
San Jose, CA 95134

11155 SW Leveton Drive  
Tualatin, OR 97062





# **Attachment C**

## **Certificate Correction & Reissue**

The Department recommends the Environmental Quality Commission reissue a certificate to Boyd Coffee Company to show the corrected 35% maximum allowable credit. Boyd Coffee Company concurs with this correction.

The EQC certified Boyd Coffee Company's tax credit (application number 6218) on December 13, 2002. The Commission issued Pollution Control Facility Certificate Number 10225 for a 50% maximum allowable credit based on the Department's recommendation as provided in the Review Report. The Department later determined that the first page of the Review Report erroneously recommended the 50% maximum allowable credit, while the second page of the Review Report provided the justification for the correct 35% maximum allowable credit. The Department provides the corrected Review Report with this attachment.



State of Oregon  
Department of  
Environmental  
Quality

Directors	
Recommendation:	<b>Approve</b>
Applicant	<b>Boyd Coffee Company</b>
Application No.	<b>6218</b>
Facility Cost	<b>\$152,780</b>
Percentage Allocable	<b>100%</b>
Maximum Tax Credit	<b>35%</b>
Useful Life	<b>10 years</b>

## Tax Credit Review Report

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### **Pollution Control Facility: Water**

#### **Final Certification**

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

#### ***Applicant Identification***

Organized As: **S Corp**

Business: **Coffee roaster and manufacturer  
of dry food products**

Taxpayer ID: **93-0127630**

The applicant's address is:

**19730 NE Sandy Boulevard  
Portland, OR 97230**

#### ***Facility Identification***

The certificate will identify the facility as:

#### **Effluent pH adjustment system**

The applicant is the **Owner/Operator** of the facility located at:

**19730 NE Sandy Boulevard  
Portland, OR 97230**

#### ***Technical Information***

The applicant installed an effluent pH adjustment system to provide surge storage and treatment of process wastewater prior to discharge to the City of Gresham. The system treats two waste streams, one from a food process area and one from an equipment repair area. The system provides metering and flow controls as well as pH effluent recording.

Prior to the installation of this facility, the wastewater was being treated using batch type technology of 4,000 to 5,000 gallons of wastewater a day. The pH of this wastewater was treated manually by adding the appropriate amount of acid or caustic and then releasing the wastewater into the sewer. With no monitoring devices or automated regulators, consistent pH control was impossible. The 5 to 10 pH range requirement imposed by the City of Gresham was often violated.

The new system discharges an average of 6,000 to 7,000 gallons of pretreated wastewater daily, with the capacity to treat approximately 20,000 gallons. The applicant now has consistent control over the pH discharge of their waste stream and remains in compliance with pH requirements.

**Eligibility**

**Timely Filing** The application must be filed within one year of the date that construction of the facility was completed if construction was completed on or after January 1, 2002.  
ORS 468.165 (6)

**TRUE:** The applicant filed the application within the one-year timing requirement provided in law.

<i>Construction Started</i>	<b>4/1/2001</b>
<i>Construction Completed</i>	<b>2/28/2002</b>
<i>Facility Placed into Operation</i>	<b>3/1/2002</b>
<i>Application Filed</i>	<b>7/22/2002</b>

**Purpose: Required** The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ or EPA to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.  
ORS 468.155  
(1)(a)(A)  
OAR 340-016-0060(2)(a)

**TRUE:** The facility complies with the 5 to 10 pH range for discharged wastewater imposed by the City of Gresham Industrial Pretreatment Program. Metering and flow controls are for pollution control purposes and unrelated to billing.

**Method** The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.  
ORS 468.155  
(1)(b)(A)

**"Industrial waste"** means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

**"Treatment works"** means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

**TRUE:** Process wastewater meets the definition of industrial waste because it is a combination of liquid and solid wastes resulting from the food processing and the equipment repair areas. The effluent pH adjustment system meets the definition of a treatment works because it provides surge storage and treatment of process wastewater prior to discharge to the City of Gresham.

**Maximum Credit** The maximum tax credit available to the applicant is **35%** if construction of the facility was completed on or after January 1, 2002, the application was filed between January 1, 2002 and December 31, 2008, inclusively; and the certified facility cost does not exceed \$200,000.  
 ORS 468.173(3)(f)  
 ORS 468.170(10)  
 ORS 468.165(6)

**TRUE:** The application was filed on **7/22/2002** and the certified facility cost is **\$152,780**.

**Facility Cost**

Claimed Cost	\$152,778
Calculation Error	2
<b>Eligible Cost</b>	<b>\$152,780</b>

Copies of invoices and a project summary report substantiated the claimed facility cost.

**Facility Cost Allocable to Pollution Control**

The following factors were used to determine that **100%** of the facility cost is allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a)	<b>Salable/Usable Commodity:</b> The pH adjust system produces no salable or usable commodities.
ORS 468.190(1)(b)	<b>Return on Investment (ROI):</b> The functional life of the facility used in considering the ROI is <b>10</b> years. The facility does not have a positive cash flow. The percentage of the cost allocable to pollution control is 100% when calculated according to rule.
ORS 468.190(1)(c)	<b>Alternative Methods:</b> No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	<b>Savings/Increase Costs:</b> No savings or increases in costs were identified.
ORS 468.190(1)(e)	<b>Other Relevant Factors:</b> No other relevant factors were identified.

**Compliance and Other Tax Credits**

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. No DEQ permits have been issued to the applicant. City of Gresham Industrial Pretreatment discharge permit #321 expires 07/31/2003.

One certificate was issued to Boyd Coffee Company at this location on 08/29/1969 for a gas-fired afterburner and related controls which eliminate smoke and odorous materials emitted by the coffee roasters.

Reviewers: Maggie Vandehey, DEQ

# Attachment D

## Certified Wood Chipper Report

### 12/21/02 - 3/31/03

On October 4, 2002, the Environmental Quality Commission (EQC, Commission) adopted OAR 340-016-0009. The rule delegates the Commission's authority to certify wood chippers for tax credit purposes to the Department of Environmental Quality (Department). The Commission requested that the Department periodically provide a listing of the wood chipper certifications.

This listing of wood chipper certifications is in application order within the certification date. The Department issued the certificates according to OAR 340-016-0009. The certification of these **35** wood chippers will reduce taxes paid to the State of Oregon by a maximum of **\$51,937**.

#### **340-016-0009 Certification of wood chippers**

For the purpose of subdelegating authority to approve and issue final certification of pollution control facilities under OAR 340-016-0080(2):

(1) The Environmental Quality Commission authorizes the Director of the Department of Environmental Quality or the Director's delegate to certify wood chippers as provided in OAR 340-016-0060(4)(h)(C) if:

(a) The Department determines the facility is otherwise eligible under OAR 340-016-0060; and

(b) The claimed facility cost does not exceed \$50,000 as set forth in OAR 340-016-0075(1).

(2) The Department may elect to defer certification of any facility to the Environmental Quality Commission.

(3) If the Department determines the facility cost, the percentage of the facility cost allocable to pollution control, or the applicable percentage under ORS 468.173 is less than the applicant claimed on the application then the Department shall:

(a) Notifying the applicant in writing; and

(b) Include a concise statement of the reasons for the proposed certification of a lesser amount or percentage; and

(c) Include a statement advising the applicant of their rights under section (4).

(4) Applicants that receive a notification under section (3) may elect to defer certification to the Environmental Quality Commission by notifying the Department within 30 days of the notification date.

(5) The Department shall defer certification to the Environmental Quality Commission according to sections (2) and (4).

(6) The Director or the Director's delegate shall certify facilities that otherwise qualify under this rule and have not been deferred according to sections (2) or (4).

**Adopted 10-4-02; effective 11-01-02**

# Certified Wood Chipper Report

## 12/21/02 - 3/31/03

Certification Date	App #	Applicant	Claimed	Certified	Difference	% Allocable	Maximum Tax Credit	GF Liability
1/9/2003	6393	Larry R. Bierman	\$ 2,500	\$ 2,500	0	100%	35%	\$ 875
1/9/2003	6398	Leroy W. Dunn	2,500	2,500	0	100%	35%	875
1/9/2003	6401	Jason P. Houy	1,499	1,499	0	100%	35%	525
1/9/2003	6402	Don Mosley	3,060	3,060	0	100%	35%	1,071
1/9/2003	6403	Miller's Tree Service, Inc.	8,500	8,500	0	100%	50%	4,250
1/9/2003	6404	Clark's Tree & Landscape	10,500	10,500	0	100%	35%	3,675
1/9/2003	6408	Michael L. Goodman	2,450	2,450	0	100%	35%	858
1/9/2003	6409	Nancy Burchfield	504	504	0	100%	35%	176
1/9/2003	6411	Gerald W. Ackles	2,750	2,750	0	100%	35%	963
1/9/2003	6412	Lonnie Plumley	2,350	2,350	0	100%	35%	823
1/9/2003	6413	Joel T. Haugen	2,228	2,228	0	100%	35%	780
1/9/2003	6414	David L. Bryan	2,900	2,900	0	100%	35%	1,015
1/9/2003	6415	Calvin C. Perkins	1,800	1,800	0	100%	35%	630
1/9/2003	6418	Cecil Roth	5,925	5,925	0	100%	35%	2,074
1/9/2003	6422	Joyce A. Rosenwald	650	650	0	100%	35%	228
3/14/2003	6066	Vernon L. Esplin	9,000	9,000	0	100%	50%	4,500
3/14/2003	6417	Vernon Schwin	1,666	1,666	0	100%	35%	583
3/14/2003	6419	Daniel Buser	10,284	10,250	(34)	100%	35%	3,588
3/14/2003	6424	Steven H. Nichols	12,900	12,900	0	100%	35%	4,515
3/14/2003	6427	Howard W. Benson	925	925	0	100%	50%	463
3/14/2003	6428	Roger W. McCorkle	464	464	0	100%	50%	232
3/14/2003	6429	Thomas Wiemann	645	645	0	100%	35%	226
3/14/2003	6430	Mark Van Buskirk	1,399	1,399	0	100%	35%	490
3/14/2003	6435	Kathryn Lewis	1,399	1,399	0	100%	35%	490
3/14/2003	6440	Daniel Duane Kort	3,196	3,395	199	100%	35%	1,188

**Certified Wood Chipper Report**

Continued...

<b>Certification Date</b>	<b>App #</b>	<b>Applicant</b>	<b>Claimed</b>	<b>Certified</b>	<b>Difference</b>	<b>% Allocable</b>	<b>Maximum Tax Credit</b>	<b>GF Liability</b>
3/14/2003	6441	Robert L. James	13,000	13,000	0	100%	35%	4,550
3/14/2003	6442	David K. Bateman	2,250	2,250	0	100%	35%	788
3/14/2003	6445	Gordon L. Beckley	1,499	1,499	0	100%	35%	525
3/14/2003	6448	David F. Gould	799	799	0	100%	35%	280
3/14/2003	6449	William Sarver	1,449	1,449	0	100%	35%	507
3/14/2003	6453	James M. Walker	555	555	0	100%	35%	194
3/14/2003	6455	Skaife Farms, Inc.	22,300	22,300	0	100%	35%	7,805
3/14/2003	6456	Morg G. & Janine Hollamon	3,395	3,395	0	100%	35%	1,188
3/14/2003	6457	George W. Epley	2,274	2,412	138	100%	35%	844
3/14/2003	6458	Harley R. Bates	477	477	0	100%	35%	167
			\$	\$				
	<b>35 Apps</b>		<b>140,295</b>	<b>139,992</b>				<b>\$51,937</b>